

HOUSE BILL 560

IN THE HOUSE

February 3, 1979

Introduced and referred to
Committee on Judiciary.

February 15, 1979

Committee recommend bill,
as amended, do not pass.

February 16, 1979

Report adopted.

1 ~~Blank~~ *House* BILL NO. *560*
2 INTRODUCED BY *REICHERT* *Sunder Brand*

Gilley Holmes Frates Kaye FARR Kewes Spelden
3 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A SYSTEM *Heyler*
4 OF NO-FAULT VEHICLE INSURANCE; AND AMENDING SECTION *Ellis*
5 OF 61-1-102, MCA."

6 *Cooney Melcal* *Daily Johnson Boeth Hambar*
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Murphy*
8 *Healy*
9 NEW SECTION. Section 1. Short title. [Sections
10 through 21] may be cited as the "Montana No-Fault Insurance
11 Act".

12 NEW SECTION. Section 2. Purpose. The purpose of
13 [sections 1 through 21] is:

- 14 (1) to require medical, surgical, funeral, and
15 disability insurance benefits to be provided without regard
16 to fault under motor vehicle policies that provide bodily
17 injury and property damage liability insurance or other
18 security for motor vehicles registered in this state; and
- 19 (2) with respect to claims under this act, to limit
20 the amount of damages that may be claimed for pain,
21 suffering, mental anguish, and inconvenience.

22 NEW SECTION. Section 3. Definitions. As used in
23 [sections 1 through 21], the following definitions apply:

- 24 (1) "Named insured" means a person, usually the owner
25 of a vehicle, identified in a policy by name as the insured

1 under the policy.

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

6 NEW SECTION. Section 4. Required security. (1) No
7 motor vehicle may be registered in this state unless the
8 application for registration is accompanied by proof of
9 financial security as required by subsection (3) in effect
10 continuously throughout the registration period.

11 (2) Every nonresident owner or registrant of a motor
12 vehicle which, whether operated or not, has been physically
13 present within this state for more than 90 days during the
14 preceding 365 days shall thereafter maintain security as
15 defined by subsection (3) in effect continuously throughout
16 the period such motor vehicle remains within this state.

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

- 19 (a) Security by insurance may be provided with respect
20 to such motor vehicle by an insurance policy delivered or
21 issued for delivery in this state by an authorized or
22 eligible motor vehicle liability insurer which is actually
23 writing insurance which provides the benefits and exemptions
24 contained in [sections 1 through 21]. Any such policy of
25 motor vehicle insurance covering motor vehicles registered

1 in this state and any policy of insurance represented or
 2 sold as providing the security required hereunder for
 3 registered motor vehicles shall be considered to provide
 4 insurance for the payment of such benefits.

5 (b) Security may be provided with respect to any motor
 6 vehicle by any other method authorized by subsection (1)(b),
 7 (1)(c), or (1)(d) of 61-6-132 and approved by the division
 8 of motor vehicles as affording security equivalent to that
 9 afforded by a policy of insurance, if such security is
 10 continuously maintained throughout the motor vehicle's
 11 registration period. The person filing such security has all
 12 of the obligations and rights of an insurer under [sections
 13 1 through 21].

14 (4) An owner of a motor vehicle with respect to which
 15 security is required by this section who fails to have such
 16 security in effect at the time of an accident has no
 17 immunity from tort liability but is personally liable for
 18 the payment of benefits under [section 7]. With respect to
 19 such benefits, such an owner has all of the rights and
 20 obligations of an insurer under [sections 1 through 21].

21 NEW SECTION. Section 5. Proof of security -- security
 22 requirements -- penalties. (1) The provisions of Title 61,
 23 chapter 6, part 1, which pertain to the method of giving and
 24 maintaining proof of financial responsibility apply to proof
 25 of security or financial responsibility required by

1 [sections 1 through 21]. The provisions of Title 61, chapter
 2 6, part 1, relating to proof of financial responsibility
 3 required of each operator and each owner of any motor
 4 vehicle continue in full force and effect.

5 (2) A person shall be fined not more than \$1,000 or
 6 imprisoned not more than 1 year, or both, who:

7 (a) gives information required in a report or
 8 otherwise as provided for in [sections 1 through 21] knowing
 9 or having reason to believe that such information is false;

10 (b) forges or, without authority, signs any evidence
 11 of proof of security; or

12 (c) files or offers for filing any such evidence of
 13 proof, knowing or having reason to believe that it is forged
 14 or signed without authority.

15 (3) [Sections 1 through 21] do not apply to any motor
 16 vehicle owned by the state, a political subdivision of the
 17 state, or the federal government.

18 NEW SECTION. Section 6. Operation of a motor vehicle
 19 illegal without security -- penalties. (1) Any owner or
 20 registrant of a motor vehicle with respect to which security
 21 is required under [section 4] who operates such motor
 22 vehicle or permits it to be operated in this state without
 23 having in full force and effect security complying with the
 24 terms of [section 4] shall have his operator's license and
 25 registration suspended.

1 (2) Any motor vehicle liability insurance policy under
 2 [sections 1 through 21] is considered to comply with the
 3 applicable limits of liability required under the financial
 4 responsibility or compulsory insurance laws of any other
 5 state.

6 NEW SECTION. Section 7. Required personal injury
 7 benefits -- property damage benefits -- exclusions --
 8 priority. (1) Every insurance policy complying with the
 9 security requirements of [section 4] shall provide personal
 10 injury protection providing for payment of all reasonable
 11 expenses incurred for necessary medical, surgical, x-ray,
 12 dental, and rehabilitative services, including prosthetic
 13 devices; necessary ambulance, hospital, and nursing
 14 services; and funeral and disability benefits to the named
 15 insured, relatives residing in the same household, persons
 16 operating the insured motor vehicle, passengers in such
 17 motor vehicle, and other persons struck by such motor
 18 vehicle and suffering bodily injury while not an occupant of
 19 a self-propelled vehicle, all as specifically provided in
 20 subsection (4) and [section 8(1)(d)], to a limit of \$25,000
 21 for loss sustained by any such person as a result of bodily
 22 injury, sickness, disease, or death arising out of the
 23 ownership, maintenance, or use of a motor vehicle as
 24 follows:

25 (a) 80% of all reasonable expenses for necessary

1 medical, surgical, x-ray, dental, and rehabilitative
 2 services, including prosthetic devices, and necessary
 3 ambulance, hospital, and nursing services. Such benefits
 4 shall also include necessary remedial treatment and services
 5 recognized and permitted under the laws of the state for an
 6 injured person who relies upon spiritual means through
 7 prayer alone for healing, in accordance with his religious
 8 beliefs.

9 (b) 80% of any loss of gross income and loss of
 10 earning capacity per individual, unless such benefits are
 11 considered not includable in gross income for federal income
 12 tax purposes, in which event such benefits are limited to
 13 60%, from inability to work proximately caused by the injury
 14 sustained by the injured person, plus all expenses
 15 reasonably incurred in obtaining from others ordinary and
 16 necessary services in lieu of those that, but for the
 17 injury, the injured person would have performed without
 18 income for the benefit of his household. All disability
 19 benefits payable under this provision shall be paid not less
 20 than every 2 weeks. Any insurer providing medical or
 21 disability benefits which have been reduced under this
 22 section shall also provide a corresponding rate reduction to
 23 the insured in proportion to the reduction of benefits
 24 provided.

25 (c) funeral, burial, or cremation expenses in an

1 amount not to exceed \$1,000 per individual.

2 (2) Every insurance policy complying with the security
3 requirements of [section 4] shall provide property damage
4 protection to a limit of \$5,000 for loss sustained because
5 of injury to or destruction of property in any one accident.

6 (3) Only insurers writing motor vehicle liability
7 insurance in this state may provide the required benefits of
8 this section, and no such insurer shall require the purchase
9 of any other motor vehicle coverage as a condition for
10 providing such required benefits. Such insurers shall make
11 such benefits available through normal marketing channels.
12 Any insurer writing motor vehicle liability insurance in
13 this state failing to comply with such availability
14 requirement as a general business practice shall be
15 considered to have violated 33-18-1003. Such violation
16 constitutes an unfair method of competition or an unfair or
17 deceptive act or practice involving the business of
18 insurance, and any insurer committing such violation is
19 subject to the penalties specified in 33-18-1003 through
20 33-18-1005 as well as those which may be specified elsewhere
21 in Title 33.

22 (4) Any insurer may exclude benefits:

23 (a) for injury sustained by the named insured and
24 relatives residing in the same household while occupying
25 another motor vehicle owned by the named insured and not

1 insured under the policy or for injury sustained by any
2 person operating the insured motor vehicle without the
3 express or implied consent of the insured;

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

7 (i) causing injury to himself intentionally;

8 (ii) being convicted of driving while under the
9 influence of alcohol or narcotic drugs to the extent that
10 his driving faculties are impaired; or

11 (iii) being injured while committing a felony.

12 (5) Whenever an insured is charged with conduct as set
13 forth in (ii) or (iii) of subsection (4)(b), the 30-day
14 payment provision of [section 8(1)(b)] shall be held in
15 abeyance and the insurer shall withhold payment of any
16 personal injury protection benefits pending the outcome of
17 the case at the trial level. If the charge is nolle prosequere
18 or dismissed or the insured is acquitted, the 30-day payment
19 provision runs from the date the insurer is notified of such
20 action.

21 (6) No insurer may have a lien on any recovery in tort
22 by judgment, settlement, or otherwise for personal injury
23 protection benefits, whether suit has been filed or
24 settlement has been reached without suit. An injured party
25 who is entitled to bring suit under the provisions of

[section 12], or his legal representative, has no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, may not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff may not recover such special damages for personal injury protection benefits paid or payable.

NEW SECTION. Section 8. Benefits -- when due. (1) Benefits due from an insurer under [sections 1 through 21] shall be primary, except that benefits received under any workers' compensation law or medicaid as provided under 42 U.S.C. 1396 shall be credited against the benefits required by [section 7(1)]. Benefits shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under [sections 1 through 21].

(2) (a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by [sections 1 through 21].

(b) Personal injury protection insurance benefits are

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

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

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

(i) accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not

1 an occupant of a self-propelled vehicle if the injury is
2 caused by physical contact with a motor vehicle;

3 (ii) accidental bodily injury sustained outside this
4 state, but within the United States of America or its
5 territories or possessions or Canada by the owner while
6 occupying the owner's motor vehicle;

7 (iii) accidental bodily injury sustained by a relative
8 of the owner residing in the same household under the
9 circumstances described in (i) and (ii) of this subsection
10 (d), provided the relative at the time of the accident is
11 domiciled in the owner's household and is not himself the
12 owner of a motor vehicle with respect to which security is
13 required under [sections 1 through 21].

14 (3) Accidental bodily injury sustained in this state
15 by any other person while occupying the owner's motor
16 vehicle or, if a resident of this state, while not an
17 occupant of a self-propelled vehicle, if the injury is
18 caused by physical contact with such motor vehicle, provided
19 the injured person is not himself:

20 (a) the owner of a motor vehicle with respect to which
21 security is required under [sections 1 through 21]; or

22 (b) entitled to personal injury benefits from the
23 insurer of the owner or owners of such a motor vehicle.

24 (4) If two or more insurers are liable to pay personal
25 injury protection benefits for the same injury to any one

1 person, the maximum payable shall be as specified in
2 subsection (2), and any insurer paying the benefits is
3 entitled to recover from each of the other insurers an
4 equitable pro rata share of the benefits paid and expenses
5 incurred in processing the claim.

6 NEW SECTION. Section 9. Charges for treatment of
7 injured persons. Any physician, hospital, clinic, or other
8 person or institution lawfully rendering treatment to an
9 injured person for a bodily injury covered by personal
10 injury protection insurance may charge only a reasonable
11 amount for the products, services, and accommodations
12 rendered, and the insurer providing such coverage may pay
13 for such charges directly to such person or institution
14 lawfully rendering such treatment, if the insured receiving
15 such treatment or his guardian has countersigned the invoice
16 or bill upon which such charges are to be paid for as having
17 actually been rendered, to the best knowledge of the insured
18 or his guardian. In no event, however, may such a charge be
19 in excess of the amount the person or institution
20 customarily charges for like products, services, or
21 accommodations in cases involving no insurance.

22 NEW SECTION. Section 10. Discovery of facts about an
23 injured person -- disputes. (1) Every employer shall, if a
24 request is made by an insurer providing personal injury
25 protection benefits under [sections 1 through 21] against

1 whom a claim has been made, furnish forthwith, in a form
2 approved by the department of insurance, a sworn statement
3 of the earnings since the time of the bodily injury and for
4 a reasonable period before the injury of the person upon
5 whose injury the claim is based.

6 (2) Every physician, hospital, clinic, or other
7 medical institution providing, before or after bodily injury
8 upon which a claim for personal injury protection insurance
9 benefits is based, any products, services, or accommodations
10 in relation to that or any other injury or in relation to a
11 condition claimed to be connected with that or any other
12 injury shall, if requested to do so by the insurer against
13 whom the claim has been made, furnish forthwith a written
14 report of the history, condition, treatment, dates, and
15 costs of such treatment of the injured person, together with
16 a sworn statement that the treatment or services rendered
17 were reasonable and necessary with respect to the bodily
18 injury sustained and identifying which portion of the
19 expenses for said treatment or services was incurred as a
20 result of such bodily injury and produce forthwith and
21 permit the inspection and copying of his or its records
22 regarding such history, condition, treatment, dates, and
23 costs of treatment. The sworn statement shall read as
24 follows: "Under penalty of perjury, I declare that I have
25 read the foregoing, and the facts alleged are true, to the

1 best of my knowledge and belief." No cause of action for
2 violation of the physician-patient privilege or invasion of
3 the right of privacy may be permitted against any physician,
4 hospital, clinic, or other medical institution complying
5 with the provisions of this section. The person requesting
6 such records and sworn statement shall pay all reasonable
7 costs connected therewith.

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

23 (4) The injured person shall be furnished, upon
24 request, a copy of all information obtained by the insurer
25 under the provisions of this section and shall pay a

HE 300

1 reasonable charge, if required by the insurer.

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

4 NEW SECTION. Section 11. Mental and physical
5 examination of injured person -- reports. (1) Whenever the
6 mental or physical condition of an injured person covered by
7 personal injury protection is material to any claim that has
8 been or may be made for past or future personal injury
9 protection insurance benefits, such person shall, upon
10 request of an insurer, submit to mental or physical
11 examination by a physician or physicians. The costs of any
12 examinations requested by an insurer shall be borne entirely
13 by the insurer. Such examination shall be conducted within
14 the city of residence of the insured. If there is no
15 qualified physician to conduct the examination within the
16 city of residence of the insured, the examination shall be
17 conducted in an area of the closest proximity to the
18 insured's residence. Personal protection insurers are
19 authorized to include reasonable provisions in personal
20 injury protection insurance policies for mental and physical
21 examination of those claiming personal injury protection
22 insurance benefits.

23 (2) If requested by the person examined, a party
24 causing an examination to be made shall deliver to him a
25 copy of every written report concerning the examination

1 rendered by an examining physician, at least one of which
2 reports must set out the examining physician's findings and
3 conclusions in detail. After such request and delivery, the
4 party causing the examination to be made is entitled, upon
5 request, to receive from the person examined every written
6 report available to him or his representative concerning any
7 examination, previously or thereafter made, of the same
8 mental or physical condition. By requesting and obtaining a
9 report of the examination so ordered or by taking the
10 deposition of the examiner, the person examined waives any
11 privilege he may have, in relation to the claim for
12 benefits, regarding the testimony of every other person who
13 has examined or may thereafter examine him in respect to the
14 same mental or physical condition. If a person unreasonably
15 refuses to submit to an examination, the personal injury
16 protection carrier is no longer liable for subsequent
17 personal injury protection benefits.

18 NEW SECTION. Section 12. Tort exemption -- limitation
19 on right to damages -- punitive damages. (1) Every owner,
20 registrant, operator, or occupant of a motor vehicle with
21 respect to which security has been provided as required by
22 [sections 1 through 21], and every person or organization
23 legally responsible for his acts or omissions is hereby
24 exempted from tort liability for damages because of bodily
25 injury, sickness, or disease arising out of the ownership,

1 operation, maintenance, or use of such motor vehicle in this
 2 state to the extent that the benefits described in [section
 3 7(1)] are payable for such injury, or would be payable but
 4 for any exclusion or deductible amount, authorized by
 5 [sections 1 through 21] under any insurance policy or other
 6 method of security complying with the requirements of
 7 [section 4] or by an owner personally liable under [section
 8 4] for the payment of such benefits, unless a person is
 9 entitled to maintain an action for pain, suffering, mental
 10 anguish, and inconvenience for such injury under the
 11 provisions of subsection (2).

12 (2) In any action of tort brought against the owner,
 13 registrant, operator, or occupant of a motor vehicle with
 14 respect to which security has been provided as required by
 15 [sections 1 through 21], against any person or organization
 16 legally responsible for his acts or omissions, a plaintiff
 17 may recover damages in tort for pain, suffering, mental
 18 anguish, and inconvenience because of bodily injury,
 19 sickness, or disease arising out of the ownership,
 20 maintenance, operation, or use of such motor vehicle only if
 21 the injury or disease consists in whole or in part of:

22 (a) significant and permanent loss of an important
 23 bodily function;

24 (b) permanent injury within a reasonable degree of
 25 medical probability, other than scarring or disfigurement;

1 (c) significant and permanent scarring or
 2 disfigurement;

3 (d) death.

4 (3) When a defendant in a proceeding brought pursuant
 5 to [sections 1 through 21] questions whether the plaintiff
 6 has met the requirements of subsection (2), the defendant
 7 may file an appropriate motion with the court, and the court
 8 shall, on a one-time basis only, 30 days before the date set
 9 for the trial or the pretrial hearing, whichever is first,
 10 by examining the pleadings and the evidence before it,
 11 ascertain whether the plaintiff will be able to submit some
 12 evidence that the plaintiff will meet the requirements of
 13 subsection (2). If the court finds that the plaintiff will
 14 not be able to submit such evidence, the court shall dismiss
 15 the plaintiff's claim without prejudice.

16 (4) In any action brought against an automobile
 17 liability insurer for damages in excess of its policy
 18 limits, no claim for punitive damages shall be allowed.

19 NEW SECTION. Section 13. Collateral sources of
 20 indemnity. (1) In any action for personal injury or wrongful
 21 death arising out of the ownership, operation, use, or
 22 maintenance of a motor vehicle, the court shall admit into
 23 evidence the total amount of all collateral sources paid to
 24 the claimant, and the court shall instruct the jury to
 25 deduct from its verdict the value of all benefits received

HB 560

1 by the claimant from any collateral source.

2 (2) For purposes of this section, "collateral sources"
3 means any payments made to the claimant, or on his behalf,
4 by or pursuant to:

5 (a) the United States Social Security Act; any
6 federal, state, or local income disability act; or any other
7 public programs providing medical expenses, disability
8 payments, or other similar benefits;

9 (b) any health, sickness, or income disability
10 insurance; automobile accident insurance that provides
11 health benefits or income disability coverage; and any other
12 similar insurance benefits except life insurance benefits
13 available to the claimant whether purchased by him or
14 provided by others;

15 (c) any contract or agreement of any group,
16 organization, partnership, or corporation to provide, pay
17 for, or reimburse the costs of hospital, medical, dental, or
18 other health care services;

19 (d) any contractual or voluntary wage continuation
20 plan provided by employers or any other system intended to
21 provide wages during a period of disability.

22 NEW SECTION. Section 14. False and fraudulent claims.

23 (1) (a) A person is guilty of theft and punishable as
24 provided in 45-6-301 who, with the purpose to injure,
25 defraud, or deceive any insurance company:

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

7 (ii) prepares or makes any written or oral statement
8 that is intended to be presented to any insurance company in
9 connection with or in support of any claim for payment or
10 other benefit pursuant to an insurance policy, knowing that
11 such statement contains false, incomplete, or misleading
12 information concerning any fact or thing material to such
13 claim.

14 (b) All claim forms shall contain a statement in a
15 form approved by the department of insurance that clearly
16 states in substance the following: "Any person who knowingly
17 or with the purpose to injure, defraud, or deceive any
18 insurance company files a statement of claim containing
19 false, incomplete, or misleading information is guilty of a
20 felony and punishable as provided in 45-6-301."

21 (2) A physician licensed under 37-13-301 through
22 37-13-306, chiropractor licensed under 37-12-301 through
23 37-12-308, osteopath licensed under 37-5-301 through
24 37-5-307, or any other practitioner licensed under the laws
25 of this state who knowingly or purposely benefits from the

1 proceeds derived from the use of such fraud, is guilty of
 2 theft and punishable as provided in 45-6-301. In the event
 3 that a physician, osteopath, chiropractor, or practitioner
 4 is adjudicated guilty of a violation of this section, the
 5 appropriate licensing authority shall hold an administrative
 6 hearing to consider the imposition of administrative
 7 sanctions as provided by law against the physician,
 8 osteopath, chiropractor, or practitioner.

9 (3) Any attorney who knowingly or purposely assists,
 10 conspires with, or urges any claimant to fraudulently
 11 violate any of the provisions of [sections 1 through 21] or
 12 any person who, due to such assistance, conspiracy, or
 13 urging on such attorney's part, knowingly benefits from the
 14 proceeds derived from the use of such fraud is guilty of
 15 theft and punishable as provided in 45-6-301.

16 (4) No person or governmental unit licensed under
 17 Title 50, chapter 2, part 5, to maintain or operate a
 18 hospital and no administrator or employee of any such
 19 hospital shall knowingly or purposely allow the use of the
 20 facilities of the hospital by an insured party in a scheme
 21 or conspiracy to fraudulently violate any of the provisions
 22 of [sections 1 through 21]. Any hospital administrator or
 23 employee who violates this subsection is guilty of theft and
 24 punishable as provided in 45-6-301. Any adjudication of
 25 guilt for a violation of this subsection or the use of

1 business practices demonstrating a pattern indicating that
 2 the spirit of the law set forth in [sections 1 through 21]
 3 is not being followed is grounds for suspension or
 4 revocation of the license to operate the hospital or the
 5 imposition of an administrative penalty of up to \$5,000 by
 6 the department of health and environmental sciences.

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

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

19 (7) The provisions of this section also apply to any
 20 insurer or adjusting firm or its agents or representatives
 21 who knowingly or purposely, injure, defraud, or deceive any
 22 claimant with regard to any claim. The claimant may recover
 23 the damages provided in this section.

24 (8) It is unlawful for any person, in his individual
 25 capacity or in his capacity as a public or private employee,

1 or for any firm, corporation, partnership, or association to
 2 solicit any business in or about city receiving hospitals,
 3 city and county receiving hospitals, county hospitals,
 4 justice courts, or municipal courts; in any public
 5 institution; in any public place; upon any public street or
 6 highway; in or about private hospitals, sanitariums, or any
 7 private institution; or upon private property of any
 8 character whatsoever for the purpose of making motor vehicle
 9 tort claims. Any person who violates the provisions of this
 10 subsection is punishable by a fine not to exceed \$5,000 or
 11 by imprisonment in the state prison for a term not to exceed
 12 2 years, or both.

13 (9) It is unlawful for any attorney to solicit any
 14 business relating to the representation of persons injured
 15 in a motor vehicle accident for the purpose of filing a
 16 motor vehicle tort claim. Any attorney who violates the
 17 provisions of this subsection is punishable by a fine not to
 18 exceed \$5,000 or by imprisonment in the state prison for a
 19 term not to exceed 2 years, or both. Whenever any special
 20 grievance committee acting under the jurisdiction of the
 21 supreme court finds probable cause to believe that an
 22 attorney is guilty of a violation of this section, the
 23 committee shall forward to the appropriate state attorney a
 24 copy of the finding of probable cause and the report being
 25 filed in the matter.

1 NEW SECTION. Section 15. Physical damage deductibles.
 2 In providing collision coverage for physical damage to an
 3 insured's motor vehicle, insurers shall make available, upon
 4 request, deductibles of \$500 or any other amount for which
 5 the parties may contract, subject to the insurer's filed
 6 rating plan.

7 NEW SECTION. Section 16. Personal injury protection
 8 -- optional limitations -- deductibles -- optional methods
 9 of payment for repair work. (1) In order to prevent
 10 duplication with other private or governmental insurance or
 11 benefits for senior citizens and others with access to such
 12 insurance or benefits, each insurer providing the coverage
 13 and benefits described in [section 7(1)] shall offer to the
 14 named insureds modified forms of personal injury protection
 15 as described in this section. Such election may be made by
 16 the named insured to apply to the named insured alone or to
 17 the named insured and dependent relatives residing in the
 18 same household. Any person electing such modified coverage
 19 or subject to such modified coverage as a result of the
 20 named insured's election has no right to claim or to recover
 21 any amount so deducted from any owner, registrant, operator,
 22 or occupant of a vehicle or any person or organization
 23 legally responsible for any such person's acts or omissions
 24 who is made exempt from tort liability by [sections 1
 25 through 21]. Premium reductions for each modification or

1 combination of modifications shall be adequate to recognize
2 the reduction in hazard and are subject to the approval of
3 the department of insurance.

4 (2) Insurers shall offer to each applicant and to each
5 policyholder, upon the renewal of an existing policy,
6 deductibles in amounts of \$250, \$500, \$1,000, \$2,000,
7 \$3,000, \$4,000, \$6,000, and \$8,000, such amount to be
8 deducted from the benefits otherwise due each person subject
9 to the deduction, and shall explain to each applicant or
10 policyholder that if he has coverage under private or
11 governmental disability plans, he may avail himself of
12 deductibles or other modifications as provided in
13 subsections (2) through (4).

14 (3) Insurers shall offer coverage wherein, at the
15 election of the named insured, all benefits payable under 42
16 U.S.C. 1395, the federal "medicare" program, or to active or
17 retired military personnel and their dependent relatives
18 shall be deducted from those benefits otherwise payable
19 pursuant to [section 7(1)].

20 (4) Insurers shall offer coverage wherein, at the
21 election of named insured, the benefits for loss of gross
22 income and loss of earning capacity described in [section
23 7(1)(b)] shall be excluded.

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

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

5 (b) a payment to any person, corporation, association,
6 or other business entity performing repair work upon the
7 motor vehicle, when the payee is under contract with the
8 insurer to perform such work at stipulated rates which are
9 no greater than 85% of prevailing rates for similar work
10 within the county where the payee performs the work upon the
11 motor vehicle.

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

24 (7) Insurers may offer coverage wherein, at the
25 election of the named insured, medical services shall be

1 limited to specified medical providers, including hospitals.

2 NEW SECTION. Section 17. Mandatory joinder of
3 derivative claim. In any action brought pursuant to the
4 provisions of [section 12] claiming personal injuries, all
5 claims arising out of the plaintiff's injuries, including
6 all derivative claims, must be brought together, unless good
7 cause is shown why such claims should be brought separately.

8 NEW SECTION. Section 18. Subrogation. Notwithstanding
9 any other provisions of [sections 1 through 21], any insurer
10 providing personal injury protection benefits on a private
11 passenger motor vehicle shall have, to the extent of any
12 personal injury protection benefits paid to any person as a
13 benefit arising out of such private passenger motor vehicle
14 insurance, a right of reimbursement against the owner or the
15 insurer of the owner of a commercial motor vehicle, if the
16 benefits paid result from such person having been an
17 occupant of the commercial motor vehicle or having been
18 struck by the commercial motor vehicle while not an occupant
19 of any self-propelled vehicle.

20 NEW SECTION. Section 19. Review of rates. Within 30
21 days after January 1, 1980, the department of insurance
22 shall commence a review of the rates of all licensed motor
23 vehicle insurers in effect at the time. If, after the
24 review, the department finds on a preliminary basis that the
25 rate may be excessive, inadequate, or unfairly

1 discriminatory, the department shall so notify the insurer.
2 Upon being so notified, the insurer shall within 60 days
3 file with the department all information which the insurer
4 believes proves the reasonableness, adequacy, and fairness
5 of the rate. In such instances, the insurer shall carry the
6 burden of proof. In the event the department finds that a
7 rate is excessive, inadequate, or unfairly discriminatory,
8 the department may order that a new rate schedule be
9 thereafter filed by the insurer and further specify the
10 manner in which noncompliance shall be corrected.

11 NEW SECTION. Section 20. Uniform risk classification
12 reporting system for motor vehicle insurance. (1) The
13 department of insurance shall establish and promulgate a
14 uniform statewide reporting system to classify risks for the
15 purpose of evaluating rates and premiums and for the purpose
16 of evaluating competition and the availability of motor
17 vehicle insurance in the voluntary market. The system shall
18 divide risks into classifications based upon variations in
19 hazards or expense of claims. The classification system may
20 include any difference among risks that can be demonstrated
21 to have a probable effect upon losses or expenses, but in no
22 event shall the system adopted by the department
23 discriminate among risks based upon race, creed, color, or
24 national origin. The classification system shall divide the
25 state into geographical areas based upon hazards or expenses

1 of claims.

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

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

18 NEW SECTION. Section 21. Administrative rules. The
19 department of insurance and division of motor vehicles shall
20 adopt rules necessary to implement the provisions of
21 [sections 1 through 21].

22 Section 22. Section 61-1-102, MCA, is amended to read:

23 "61-1-102. Motor vehicle. ~~(1) "Motor vehicle" means~~
24 ~~every vehicle which is self-propelled and every vehicle~~
25 ~~which is propelled by electric power obtained from overhead~~

1 ~~trolley wires but not operated upon rails, excluding~~
2 ~~motorcycles.~~

3 ~~(2) For 61-10-101 through 61-10-110, the term "motor~~
4 ~~vehicle" is defined in subsection (3).~~

5 ~~(3) "Motor vehicle" means every vehicle which is~~
6 ~~self-propelled and every vehicle which is propelled by~~
7 ~~electric power obtained from overhead trolley wires but not~~
8 ~~operated upon rails.~~

9 ~~(4) The word "motor vehicle" as used in 61-3-502 means~~
10 ~~automobiles, auto trucks, and motorcycles, propelled by~~
11 ~~their own power, used upon the public highways of the state.~~

12 ~~(5) The term "motor vehicle" as used in part 4 of~~
13 ~~chapter 4 shall mean every self-propelled vehicle moving~~
14 ~~over the highways of this state, whether patented or~~
15 ~~unpatented.~~

16 ~~(6) "Motor vehicle" means a self-propelled vehicle~~
17 ~~including, without limitation, an automobile, motorbus,~~
18 ~~motorcycle, truck, and truck tractor.~~

19 ~~(7) The word "motor vehicle" as used in [this title]~~
20 ~~shall include trailers, semitrailers, automobiles, auto~~
21 ~~trucks, motorcycles, cycle motors, and all other vehicles~~
22 ~~propelled by their own power, used upon the public highways~~
23 ~~of the state, excepting steam or gas tractors, or~~
24 ~~self-propelled wheelchairs or similar vehicles operated by~~
25 ~~invalids.~~

1 ~~{8}--The--term--"motor-vehicle"--as--used--in--61-3-202--and~~
 2 ~~61-3-322---includes---automobiles---trucks---motorcycle-type~~
 3 ~~vehicles--and--semitrailers--trailer--and--housetrailers~~

4 ~~{9}--The--words--"motor--vehicle"--as--used--in--chapters--3~~
 5 ~~and--4--shall--include--all--vehicles--which--are--self-propelled~~
 6 ~~except--road--rollers---traction-engines---and--railroad-cars~~
 7 ~~farm-tractors---and--motorcars--run--upon--stationary--rails--or~~
 8 ~~tracks~~

9 ~~{10}--"Motor--vehicle"--as--used--in--part--iv--chapter--6~~
 10 ~~means--every--self-propelled--vehicle--which--is--designed--for--use~~
 11 ~~upon--a--highway--including--trailers--and--semitrailers--designed~~
 12 ~~for--use--with--such--vehicles--(except--traction--engines---road~~
 13 ~~rollers---farm-tractors---tractor-cranes---power-shovels---and~~
 14 ~~well-drillers)---and--every--vehicle--which--is--propelled--by~~
 15 ~~electric--power--obtained--from--overhead--wires--but--not--operated~~
 16 ~~upon--rails~~

17 ~~{11}--"Motor--vehicle"--as--used--in--61-3-711--through~~
 18 ~~61-3-733---means--every--vehicle--which--is--self-propelled--and~~
 19 ~~every--vehicle--which--is--propelled--by--electric--power--obtained~~
 20 ~~from--overhead--trolley--wires---but--not--operated--upon--rails~~
 21 ~~"Motor vehicle" means every vehicle propelled by its own~~
 22 ~~power and designed primarily to transport persons or~~
 23 ~~property upon the highways of the state, except that for the~~
 24 ~~purpose of chapter 3 and chapter 6 the term also includes~~
 25 ~~trailers, semitrailers, and housetrailers."~~

1 Section 23. Codification. It is intended that sections
 2 1 through 21 be codified as an integral part of Title 61,
 3 and the provisions of Title 61 apply to sections 1 through
 4 21.

-End-