

STATE OF MICHIGAN  
IN THE SUPREME COURT

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FARMERS INSURANCE EXCHANGE,

Plaintiff-Appellant,

v

MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

----- *and* -----

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Plaintiff-Appellant,

v

MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

**Supreme Court No. 144144**

Court of Appeals No.: 298984

Mason County Circuit Court  
Case No: 09-035-NF  
(Hon. Richard I. Cooper)

**\*\* Consolidated with: \*\***

**Supreme Court No. 144145**

Court of Appeals No.: 298985

Mason County Circuit Court  
Case No: 09-172-NF  
(Hon. Richard I. Cooper)

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**APPELLANT'S BRIEF ON APPEAL**

**FILED ON BEHALF OF PLAINTIFF-APPELLANT,  
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

*Oral Argument Requested*

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**STATEMENT OF THE BASIS FOR JURISDICTION**

Plaintiff-Appellant, State Farm Mutual Automobile Insurance Company, filed an application for leave to appeal on November 28, 2011, from the Court of Appeals' opinion issued October 18, 2011. On May 23, 2012, this Court issued an Order granting leave to appeal on limited issues, vesting jurisdiction in this Court under MCR 7.302(F)(3).

**STATEMENT OF QUESTIONS PRESENTED FOR REVIEW**

This Court, through its May 23, 2012, limited this appeal to consideration of the following legal question(s):

- I. WHETHER THE “PRIMARY PURPOSE / INCIDENTAL NATURE” TEST FOR DETERMINING WHETHER A COMMERCIAL VEHICLE IS BEING USED IN THE BUSINESS OF TRANSPORTING PASSENGERS IS CONSISTENT WITH THE LANGUAGE OF MCL 500.3114(2), AND, IF SO, WHETHER IT WAS APPLIED PROPERLY TO THE FACTS OF THIS CASE.**

Plaintiff-Appellant, State Farm, answers “No” to both parts of the question.

Defendant-Appellee, Michigan Insurance Company, would answer “Yes” to both parts of the question.

The Court of Appeals would answer “yes” to both parts of the question.

This Court is urged to answer “No” to both parts of the question, declare that the “primary purpose / incidental nature” test is invalid, reverse the judgment of the Court of Appeals, and reinstate the judgment of the Mason County Circuit Court in its entirety.

## INTRODUCTION - - SUMMARY OF THE ARGUMENTS

Section 3114(2), as written, applies to all “motor vehicles operated in the business” of transporting passengers” - - not just those that are “*primarily*” so. Disregarding this, as its name implies, the “primary purpose / incidental nature test” engrafts onto the statute innumerable undefined inquiries that artificially narrow the scope of the rule. As conceived, the test is inconsistent with the plain language of the statute. As applied, the test defeats the Legislature’s intent almost entirely, such that the provision becomes a virtual nullity.

When it was passing the No-Fault Act, the Legislature identified a problem with the “order of priority” rules: under the “general” rule, insurers of business vehicles would rarely – *if ever* – have primary liability for the payment of PIP benefits. In order to combat this problem, and achieve a more equitable distribution of liability between the insurers of private/personal vehicles and commercial/business vehicles, the Legislature enacted MCL 500.3114(2), which operates to make the insurers of business vehicles primarily liable for benefits for people injured “*while an operator or passenger of a motor vehicle operated in the business of transporting passengers[.]*” The overarching question, in this case, is how narrowly the provision (together with its litany of exceptions) should be construed before the Legislature’s intended purpose is defeated.

The “primary purpose / incidental nature” test, developed by the Court of Appeals, is inconsistent with the plain language of MCL 500.3114(2), and the Legislature’s intent in enacting (and later amending) that section. Under the test, instead of achieving a more equitable distribution of the priorities, the provision has become one of virtually complete exclusion – in effect, illustrating the problem that the Legislature identified, but ignoring the solution. Moreover, *as applied in this case*, the test will result in claims processing that is so utterly

impractical and cumbersome that a proper priority determination could rarely be made without initiating a lawsuit, conducting full discovery, and often times trial. This, State Farm asserts, is an equal frustration of the Legislature's intent to establish priority rules that would promote the prompt and cost-efficient handling of claims without the necessity of lawsuits.

Reversal is warranted in this case because of the broad and adverse impact the ruling will have on innumerable no-fault insurers and no-fault insurance claimants alike (including injured persons, medical providers, and businesses that own vehicles used to transport passengers), who hope for predictability and efficacy from the operation of the No-Fault Act. If neither claimants nor insurers can determine the proper order of priority without filing lawsuit and conducting extensive discovery, then a major part of the promise of the No-Fault Act – efficiency and cost containment – would be defeated. Moreover, underwriters will be no less affected, as they will be required to consider all of the same facts and data, profit margins and statistics, that the Court of Appeals' test, as applied, will require before an insurer can determine its level of risk and calculate premiums.

## STATEMENT OF FACTS

### **I. THE AIRPORT SHUTTLE SERVICE AND THE ACCIDENT IN THIS CASE.**

The “We Want The Music Company” (WWTMC for short) is a “for profit” Corporation, organized and established pursuant to the Michigan Corporation Act, “for all purposes” permitted under the act. (14a, 45a).<sup>1</sup>

The WWTMC annually promotes “The Womyn’s Music Festival” (hereinafter referred to as the “Festival”) to prospective patrons *across the country*, using a website on the World Wide Web. (12a). The purpose of the website is to spread the word about the Festival, and to attract prospective ticket purchasers. (12a). As the marketing materials make clear, the fact that the festival is attended by women from across the country is a major selling point for the festival organizers. (17a).

The website explains what is included when a patron purchases an “all inclusive” ticket to the Festival. (12a). Among the benefits identified is that transportation is provided throughout the site by the Festival organizers. (12a). The website boasts that “*We provide a well-organized system of community services and shuttles...*” and that “*Shuttles bring you and your gear into the festival interior upon your arrival, and circle the Land providing rides throughout the week.*” Moreover, the website boasts that the Festival provides an extensive Disabled Access Resource Team, or “DART,” which provides special transportation for handicapped or special needs patrons on an ongoing basis throughout the event. (14a).

The Corporation owns, operates, and insures a fleet of no less than twenty six (26) vehicles. (14a). Included within the fleet are three (3) large vans that are specially designed and

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<sup>1</sup> Lisa Vogel is the President and sole shareholder of the We Want the Music Company. (Exhibit F, p. 5). She was deposed on July 1, 2009, producing extensive records, which were marked as exhibits to her Deposition.

equipped for the transportation of up to fifteen (15) passengers. **(13a)** (Defendant's Answer to the Complaint, ¶ 15). The vans are used entirely for business purposes, to further the business by making the Festival more enjoyable for patrons and Festival organizers. **(14a)**. The vans are not used for any purpose besides the business; they are not for personal use, and are put in storage when not being operated in connection with the business. **(15a)**.

In addition to providing transportation in and around the grounds, the website advertises the availability of an "Airport Shuttle" that transports passengers and their luggage, round-trip, to and from the airport in Grand Rapids up to the Festival grounds near Walhalla. **(8a-9a)**. According to the advertisement on the website, the Airport Shuttle is offered to out-of-state patrons for an additional fee of \$45.00 per person. **(9a)**.

In exchange for payment of the additional \$45.00 Airport Shuttle fee, WWTMC makes arrangements to transport the patrons between the airport and the Festival grounds in one of two ways: (1) via common carrier, a professional motor coach hired for that purpose; or (2) via one of the three 15-Passenger vans owned, operated and insured by the Company. **(9a, 11a, 19a)**.

Ann Drucker and her two young children, Loraina and Lulu Drucker, purchased "all inclusive" tickets to the Festival (hereinafter referred to as the "Drucker/Dineen Group"). The Druckers are residents of the state of Colorado, who planned to travel to the Festival via airplane, through the Grand Rapids airport. **(8a; 31a-38a)**.

In addition to purchasing "all inclusive" tickets to the Festival, the Druckers also purchased the airport shuttle service offered by WWTMC. In accordance with the advertisement on the Company's website, the Druckers submitted an "Airport Shuttle Reservation" form and paid additional fees of \$45.00 per person (a total of \$180.00) to the Company in exchange for the Company to provide the advertised Airport Shuttle service to the Festival. **(31a-38a)**.

When the Druckers arrived at the airport in Grand Rapids, on August 5, 2008, there was no professional motor coach available to take them to the Festival. (13a). Instead, they were met by a Festival volunteer, who shuttled them to the Festival (along with 11 other similarly situated paying patrons) in one of the three 15-Passenger vans owned and insured by the Company. (9a, 13a, 11a-12a). All 15 of the passengers in the van, aside from the driver, were out-of-state ticket holders for the Festival who had paid the additional \$45.00 per person fee for the Company's Airport Shuttle. (10a).

The passenger van itself was a 1998 Ford Super Wagon (hereinafter the "Van"), owned by the Corporation and insured by the Corporation through the Defendant. (8a). MIC admitted, in its Answer to the Complaint, that the Van was "*specially designed and equipped to accommodate up to fifteen (15) passengers.*" (State Farm's Complaint, ¶ 15; Defendant's Answer, ¶ 15).

Ms. Vogel, the sole shareholder of the WWTMC, confirmed during her deposition these large passenger vans were "typically" used to transport passengers like musical artists and their bands from the front gate of the property to the stage areas, or to transport festival volunteers both on and off the site. (13a).

The vans were also undeniably used as a part of the airport shuttle service. Ms. Vogel testified plainly, in response to a question on the ultimate issue:

**Q- In regards to this particular trip in which Carol Dineen and others [including the Druckers] were involved in this accident, your van was being used in the business of transporting passengers from the airport to the Festival for a fee; isn't that correct?**

**A- Our van was being used to transport passengers. They had purchased a shuttle ticket.**

(11a-12a) (objections omitted) (emphasis added). See also, (12a-13a). Importantly, this was not a "fluke" or the only occasion on which the vans were used in this way. (19a). Indeed, Ms.

Vogel testified that there were at least five (5) instances where the vans had been used to shuttle patrons. (10a, 11a).

Moreover, Ms. Vogel testified that although she customarily used commercial busses for the airport shuttle, the van was used in this instance - and others - to satisfy the Company's obligation to these shuttle ticket holders. (19a). Indeed, review of the record confirms that approximately 10% of the airport shuttle ticket holders were transported via these large passenger vans as opposed to in commercial busses. (11a, 16a).

In any event, at approximately 1:00 p.m. on August 5, 2008, while shuttling the Druckers and 11 other shuttle ticket holders to the Festival, this particular van was involved in a single car accident. The driver lost control of the vehicle; it rolled, and virtually all of the passengers were injured – one passenger was killed.

## **II. CLAIMS HANDLING; THE LITIGATION; AND DEFENDANT-APPELLEE'S REFUSAL TO ACKNOWLEDGE ITS PRIORITY STATUS.**

After the Accident, the Druckers made claims to the Defendant, Michigan Insurance Company, for Personal Injury Protection (PIP) benefits, pursuant to the Michigan No-Fault Act, being MCL 500.3107 *et seq.* (Plaintiff's Complaint, ¶29; Defendant's Answer, ¶29). Although Defendant has denied that it "denied" or otherwise refused to pay the Drucker's claims, it is undisputed that MIC has not adjusted or paid any claims to the Druckers. (Plaintiff's Complaint, ¶ 30; Defendant's Answer, ¶29).

Ann Drucker has her own automobile insurance through State Farm, in the state of Colorado (i.e., it is not a Michigan No-Fault policy). Upon learning that Ms. Drucker and her two young children were involved in the airport shuttle accident, and that MIC refused to pay

their benefits, State Farm began to adjust their claims so as to avoid any unreasonable delays. (70a).

After MIC refused to adjust or pay the Druckers' claims or voluntarily reimburse State Farm, State Farm filed a lawsuit in Kent County Circuit Court. (69a-72a). State Farm's Complaint demanded reimbursement and compensation for all costs of adjusting the claim and pursuing the litigation under an "unjust enrichment" theory. See State Farm's Complaint (specifically, ¶¶53-55 and *ad damnum* ¶B). Co-Plaintiff, Farmers, subsequently filed a similar lawsuit against MIC in Mason County Circuit Court, seeking reimbursement for the claims of its insured, Carol Dineen. Ultimately, State Farm volunteered to transfer its case to Mason County, so that the two lawsuits could be consolidated and dealt with together. The matter was, therefore, reassigned to Judge Richard I. Cooper of the Mason County Circuit Court.

After the close of discovery, the parties filed cross-motions for summary disposition, pursuant to MCR 2.605(A)(1) and MCR 2.116(C)(10). The trial court granted Plaintiffs' motions, denied Defendant's motion, and declared that MIC was highest in priority, under MCL 500.3114(2), for the payment of PIP benefits to the Druckers and Ms. Dineen.

### **III. MICHIGAN INSURANCE COMPANY'S APPEAL AND THE JUDGMENT OF THE COURT OF APPEALS.**

After entry of a final judgment in the trial court, MIC filed an appeal of right to the Michigan Court of Appeals. The Court of Appeals reversed, purportedly by application of the so-called "primary purpose/incidental nature test." In applying the test, the Court of Appeals acknowledged that the van at issue in this case was owned and insured by the Corporation, and that it was used solely for business purposes. The Court then drew several distinctions, however, in applying the test to conclude that Section 3114(2) was not implicated. The Court drew a

distinction between different types of passengers, differentiating between transporting “performers,” “staff,” and “volunteers,” and the transporting of ticket holding “attendees,” as well as drawing a distinction between transportation “on site” versus “off site” with regard to each. Next, the Court looked at various statistics, including the percentages of “attendees” who drove their own vehicles to the Festival versus those who were shuttled from the airport; then parsed out those who were shuttled from the airport in vans versus charter busses, and then looked at data regarding profit margins for those specific categories of passengers who matched the injured passengers from this accident precisely. In the end, after parsing the facts down into this statistical minutia, the Court concluded that the Druckers and Ms. Dineen were not injured in a motor vehicle operated in the business of transporting passengers, such that Section 3114(2) was not triggered. **(90a-101a)**.

Both State Farm and Farmers timely filed Applications for Leave to Appeal. On May 23, 2012, this Court granted leave, ordering:

On order of the Court, the applications for leave to appeal the October 18, 2011 judgment of the Court of Appeals are considered, and they are GRANTED, limited to the issue of whether the “primary purpose / incidental nature” test for determining whether a commercial vehicle is being used in the business of transporting passengers is consistent with the language of MCL 500.3114(2), and, if so, whether it was properly applied to the facts of this case.

The Insurance Institute of Michigan and the Insurance and Indemnity Law Section of the State Bar of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.

(Order, dated May 23, 2012).

## STANDARD OF REVIEW

The issues below were decided on cross-motions for summary disposition under MCR 2.605(A)(1) and MCR 2.116(C)(10) on materially undisputed facts. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Shepard Montessori Ctr Milan v Ann Arbor Chapter Twp*, 486 Mich 311, 317; 783 NW2d 695 (2010); *Dressel v Ameribank*, 486 Mich 557, 561; 664 NW2d 151 (2003); *Farm Bureau Ins Co v Abalos*, 277 Mich App 41, 43; 742 NW2d 264 (2007).

The proper interpretation of a statute is, likewise, a question of law that the Court reviews de novo. *Eggleston v Bio-Med Applications of Detroit, Inc.*, 468 Mich 29, 32; 658 NW2d 139 (2003). The primary goal when interpreting statutes is to discern the intent of the Legislature. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205-206; \_\_\_ NW2d \_\_\_ (2012) (citing *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001)). To do so, the Court focuses on the best indicator of that intent, the language of the statute itself. *Joseph*, 491 Mich at 205-206.

## ARGUMENTS

The "primary purpose / incidental nature" test is not consistent with the plain language of Section 3114(2). In short, the test engrafts onto the plain language an undefined series of subjective inquiries that have the effect of artificially narrowing the breadth of the provision. Indeed, as applied, the test is not only inconsistent with the provision - - *it defeats the intent of the statute almost entirely.*

In the subsections that follow, this brief will go back to basics. First, the general principles of statutory interpretation will be outlined. Next, the history behind the enactment of MCL 500.3114(2) will be explored, to assist in ascertaining the Legislature's intent. The section

will then conclude by tracing the development of the so-called “primary purpose/incidental nature” test, in order to assist this Court in evaluating whether the test actually gives effect to the intent of the Legislature. Ultimately, State Farm submits that one of three things should be concluded; either: (1) the test was flawed to begin with; (2) the test was developed to analyze a materially different type of factual scenario; or (3) the Court of Appeals *in this case* applied the test in such a way that it completely frustrated the Legislature’s intent. In any event, the decision of the Court of Appeals should be overturned.

I. **THE “PRIMARY PURPOSE / INCIDENTAL NATURE TEST” IS NOT CONSISTENT WITH THE LANGUAGE OF MCL 500.3114(2) AND SHOULD, THEREFORE, BE DISCARDED.**

Section 3114(2), as written, applies to all “motor vehicles operated in the business of transporting passengers” - - not just those that are “*primarily*” so. The Legislature **did not say**, for example, that it applies only to:

“a motor vehicle *primarily* operated in the business of transporting passengers,” or

“a motor vehicle operated *in a business that primarily transports* passengers,” or

“a motor vehicle operated in *a business that intends that transportation of passengers is its sole or primary service,*” or

“a motor vehicle operated in *a business that transports large volumes of* passengers,” or

“a motor vehicle operated *by transporting most of the business’s clients or attendees,*” or

“a motor vehicle *profitably* operated in the business of transporting passengers,” or

“a motor vehicle *primarily intended by the business to be operated in the business of transporting passengers.*”

The plain language of Section 3114(2), including its various amendments, provides:

(2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a passenger in the following, unless that passenger is not entitled to personal protection insurance benefits under any other policy:

- (a) A school bus, as defined by the department of education, providing transportation not prohibited by law.
- (b) A bus operated by a common carrier of passengers certified by the department of transportation.
- (c) A bus operated under a government sponsored transportation program.
- (d) A bus operated by or providing service to a nonprofit organization.
- (e) A taxicab insured as prescribed in section 3101 or 3102.
- (f) A bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.

MCL 500.3114(2).

The statute identifies the proverbial “who, what, when, and where” of its subject. Who? “[A] person.” What kind of person? “A person suffering accidental bodily injury.” When? “[W]hile an operator or a passenger of a motor vehicle.” A motor vehicle doing what? A motor vehicle being “operated in the business of transporting passengers.”

Importantly, the statute does not say that the *business* that owns the vehicle must be “in the business of transporting passengers.” Instead, it says that the *vehicle* must be “operated in the business of transporting passengers.” This is perhaps a fine distinction, but its importance should not be overlooked.

Moreover, the statute does not refer to a particular category of businesses; it refers to a *use* to which a motor vehicle may be put, or “operated.” In this regard, note the phraseology of each of the amendments, which refer to the exclusion of certain *vehicles*, not the businesses or industries that utilize them. This point of reference in the phraseology provides a clue into the focus of the provision. It is not on the business, but on the particular *use* of the subject vehicle at the time of the occurrence.

And even if the statute did say that the *business* must be “in the business of transporting passengers” it most certainly does not require an inquiry into the extent to which the business *intends* to *primarily* be in the business of transporting passengers. The language does not imply that the business must *primarily* transport passengers, or *routinely* transport passengers, or transport a *high volume* of passengers, or turn a *profit* from transporting passengers.

The best illustration of the intended scope of the provision can be gleaned from the text of the provision itself. As will be discussed *infra*, the text of the amendments makes it clear that certain types of motor vehicles *would be* subject to the provision, but because of certain amendments, they are not. For example, school busses *would be*, but because of an amendment, they are not. Busses operated by common carriers and non-profits *would be*, but because of amendments, they are not. Taxicabs *would be*, but because of an amendment, they are not. And busses operated by liveries *would be*, but because of an amendment, they are not. It is also clear that these amendments did not operate to repeal Section 3114(2), either expressly or impliedly. This necessarily means that the provision continues to apply to other categories of motor vehicles, in other businesses.

Ultimately, again, Section 3114(2), as written, applies to all “motor vehicles operated in the business of transporting passengers” - - not just those that are “*primarily*” so. Disregarding

this, as its name implies, the “primary purpose / incidental nature test” engrafts onto the statute innumerable undefined inquiries that artificially narrow the scope of the rule. As conceived, the test is inconsistent with the plain language of the statute. As applied, the test defeats the Legislature’s intent almost entirely, such that the provision becomes a virtual nullity.

**II. THE LEGISLATURE INTENDED FOR SECTION 3114(2) TO CAST A BROADER NET THAN THE COURT OF APPEALS HAS PERMITTED BY VIRTUE OF ITS DEVELOPMENT AND APPLICATION OF THE SO-CALLED “PRIMARY PURPOSE / INCIDENTAL NATURE” TEST.**

**A. Principles of Statutory Interpretation.**

The primary goal of statutory interpretation is to “ascertain the legislative intent that may be reasonably inferred from the statutory language.” *Krohn v Home-Owners Ins Co*, 490 Mich 145, 157; 802 NW2d 281 (2011); *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 526; 697 NW2d 895 (2005); *Sotelo v Grant Twp*, 470 Mich 95, 100; 680 NW2d 381 (2004). “The first step in that determination is to review the language of the statute itself.” *Krohn*, 490 Mich at 157, citing *In re MCI Telecom Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). When construing a statute, a court must read it as a whole. *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011), citing *People v Jackson*, 487 Mich 783, 791; 790 NW2d 340 (2010).

Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. MCL 8.3a; *2000 Baum Family Trust v Babel*, 488 Mich 136, 175; 793 NW2d 633 (2010); *Robertson v DiamlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). When given their common and ordinary meaning, “[t]he words of a statute provide the most reliable evidence of its intent....” *Klooster*, 488 Mich at 296; *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596

NW2d 119 (1999), quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 246 (1981).

Recently, this Court appears to have debated, internally, the proper standard for determining whether a statute is, in fact, “ambiguous.” *See, Petersen v Magna Corp*, 484 Mich. 300; 773 NW2d 564 (2009). For example, in *Lansing Mayor*, this Court articulated the standard as follows:

[A] provision of the law is ambiguous only if it “irreconcilably conflicts” with another provision, or when it is *equally* susceptible to more than a single meaning.

*Lansing Mayor v Mich Pub Serv Comm*, 470 Mich. 154, 166; 680 NW2d 840 (2004) (citing, *Klapp v United Insurance*, 468 Mich 459, 467; 663 NW2d 447 (2003)) (italics in original).

More recently, however, it has been suggested that the standard from *Lansing Mayor* is “exceedingly narrow” and should be overturned. *Petersen, supra* at 311, n. 23. The *Petersen* decision, however, was a plurality opinion and there appears to have been no consensus on the issue.<sup>2</sup> Compare, *Robinson v City of Lansing*, 486 Mich 1; 782 NW2d 171 (2010) (J. Young, Concurring) (citing *Lansing Mayor, supra*).<sup>3</sup>

Justice Kelly, writing the lead opinion in the plurality decision in *Petersen*, indicated that she would overrule *Lansing Mayor* and adopt a definition of “ambiguity” that encompasses several different standards that were arguably in effect prior. Justice Kelly’s definition of “ambiguity” would be as follows:

When there can be reasonable disagreement over a statute’s meaning, or, as others have put it, when a statute is capable of being understood by reasonably well-informed persons in two or more different senses, a statute is ambiguous.

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<sup>2</sup> Justice Kelly’s lead opinion in *Petersen* was joined only by Justice Cavanaugh; Justices Hathaway and Weaver concurred in the result, but appear not to have expressed any opinions regarding the appropriate standard for evaluating whether “ambiguity” exists in a statute. The three dissenting Justices appear to have agreed that *Lansing Mayor* was correct.

<sup>3</sup> See, Slip Op, at 38-39, n. 3; 40-41, n. 5.

*Petersen, supra* at 329 (C.J. Kelly) (emphasis added). The three dissenting Justices in *Petersen* joined to criticize this standard, however, saying “[i]t is hard to conceive of a much lower barrier to ambiguity than that propounded by the Chief Justice.” *Petersen, supra* at 366 (J. Markman, joined by J. Corrigan and J. Young).

This Court has never had an occasion to consider whether MCL 500.3114(2) is ambiguous. The Court of Appeals has only considered the issue on a handful of occasions; each time concluding that the language was ambiguous because the operative terms “lack definition.” *Cf., Farmers Ins Exch v AAA of Michigan*, 256 Mich App 691; 671 NW2d 89 (2003).

Contrary to what the Court of Appeals has said on the subject, the fact that not all of the words and phrases in Section 3114(2) are expressly defined by the Act does not render the statute ambiguous. If a statute was rendered ambiguous anytime a word or phrase was left “undefined” by the Legislature, there would be literally no occasion on which any statute could be deemed unambiguous. Again, this Court has repeatedly held that where a word or phrase is left undefined, the words or phrases should be accorded their plain and ordinary meaning, taking into account the context in which the words are used. MCL 8.3a; *2000 Baum Family Trust, supra*; *Robertson, supra*. Similarly, in the context of contract interpretation, it has been held that a lack of definition does not necessarily render a term ambiguous. *Cf., Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999); *Vanguard Ins Co v Racine*, 224 Mich App 229, 232-233; 568 NW2d 156 (1997).

Regardless of the “means” for determining whether a particular statute is ambiguous, the “ends” remain clear. When construing the language of an ambiguous statute, a court must apply a reasonable construction that best carries out the purpose of the Legislature, looking to the object of the statute in light of the problem it was designed to remedy. *Macomb Co Prosecutor v*

*Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001); *Marquis v Hartford Accident & Indemity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1999).

The intent of the Legislature in enacting Section 3114(2) will be discussed below. As will become clear, the “primary purpose / incidental nature test” developed by the Court of Appeals is both inconsistent with, and indeed *defeats*, the Legislature’s intent.

**B. The Legislature’s intent in passing MCL 500.3114(2) was to achieve a more equitable balance and distribution of the no-fault priorities.**

Clues to ascertaining the Legislature’s intent in enacting Section 3114(2) exist in both the legislative history/analysis, and in the later-included amendments. This discussion will take a chronological approach, which ultimately makes it clear that the Legislature intended Section 3114(2) to be more inclusive than “primary purpose/incidental nature” test achieves.

1. *The Legislative History makes it clear that Section 3114(2) was enacted to combat a specific problem: inequitable distribution of priority status between insures of “personal” vehicles and insurers of “business” vehicles, under the “general rule.”*

The use of legislative history to assist the Court in determining the Legislature’s intent appears to be somewhat controversial. *Cf.*, *McCormick v Carrier*, 487 Mich 180, 220-221, 244; 795 NW2d 517 (2010); *Petersen v Magna Corp*, 484 Mich 300, 359, 381; 773 NW2d 564 (2009). Moreover, there is some indication that reference to legislative history may be unnecessary or inappropriate where as statute is unambiguous. *Cf.*, *McCormick, supra* at 220-221. Nevertheless, again, in all instances this Court appears to endeavor to effectuate the intent of the Legislature in construing its statutes.

While it was crafting the No-Fault Act, the Legislature identified a basic problem with the fundamental premise of the priority scheme. As conceived, the order of priority rules were first tied to individual families and “households,” such that injured persons would generally look

to either their own insurer or the insurer of other relatives in their household, before looking elsewhere. *See*, MCL 500.3114(1).

Early on in the Legislative process, however, it was recognized that this would yield an inequitable distribution of liability. In short, while everyone was mandated to purchase no-fault insurance and all would thus enjoy the benefits of expediency and cost-containment, the insurers of *individuals* (as opposed to insurers of businesses that owned vehicles) would bear the brunt of the primary priority status for the payment of benefits. It was understood that because business vehicles do not have relatives or “households” in the ordinary sense, the insurers of commercial and business vehicles would virtually never have priority liability for the payment of benefits - - thus, the insurers of business vehicles would gain all of the advantages of the Act, without a proportionate sharing of the costs.

In order to combat this problem, the Legislature enacted Section 3114(2), with the express intention of achieving a more equitable distribution of the instances where businesses would have priority status.

Section 3114 of the No-Fault Act had its origins in companion bills introduced by both the House and the Senate in 1971. Senate Bill 782 (which ultimately became the No-Fault Act) was originally introduced in the Senate on June 2, 1971, and referred to the Commerce Committee. (Ex/A-2). In its original form, SB 782 did not include any provision relating to the priority status of business vehicles. Concomitantly, the House was also working on a series of bills, including HB 4734 and 4735. (Ex/B). In addition, members of the House issued proposed “Substitutions” for SB 782. (Ex/C). The House Bill, developed in accord with (and somewhat in response to) SB 782, is where Section 3114(2) originated.

Among the issues addressed in the development and eventual passage of Section 3114 was the interplay between insurers of private passenger vehicles and commercial passenger vehicles. As reports from the Commerce Department make plain, there was perceived inequity in the priority provisions included in the early versions of the Bills, in that commercial insurance carriers would rarely – if ever – bear any liability for the payment of “basic reparation” benefits (which would later become known as Personal Injury Protection or “PIP” benefits). Indeed, according to the Commerce Department, via the Insurance Commissioner Russell Van Hooser, amendments were required to address and balance this situation:

In House Bill 4735, the limitation on damages recoverable for pain and suffering will apply to all motor vehicles and will reduce premium costs for all vehicles. Nonprivate passenger vehicles may obtain the exemption by electing the no-fault coverage; but the no-fault coverage won't cost anything for a public or commercial vehicle because the no-fault coverage only applies to the named insured, members of his family residing in the same household, and guest passengers. Public and commercial vehicles have no guest passengers, and they would have a named insured who would never suffer bodily injury or have any relatives. The occupants of public and commercial vehicles would usually receive no-fault benefits; but unless the vehicle owner was at fault, the no-fault benefits would be paid under policies issued on private passenger vehicles. Consequently, House Bills 4734 and 4735 together will reduce costs relatively more for public and commercial vehicles than for private passenger vehicles. The suggested amendments would apply the no-fault coverage to all vehicles and all passengers and will reduce costs for private passenger vehicles and other vehicles **more equitable and more nearly the same** under the present system.

**(Ex/B-3 through B-4)** (emphasis added). In other words, it was quickly recognized that by connecting the payment of no-fault benefits to the individual and his/her household, inequity would arise in instances involving commercial passenger vehicles. In essence, as the Commissioner observed, the insurers of commercial vehicles would realize much of the benefit of the No-Fault reforms (i.e., limitations on tort liability), but would rarely – if ever – be

responsible for the payment of those benefits that balanced that limitation. Thus, the Commissioner suggested amendments that would become the foundation for the business priority exceptions in Section 3114.

The remedy proposed by the Commissioner of Insurance, Russell Van Hooser, was to add a new Section 3114 to address “a motor vehicle while it is being used in the business of transporting persons or property” which would look to the insurer of the *vehicle*, rather than the household of the passenger. His proposal, entitled “Second Substitute for House Bill No. 4734” included the following addition, which appears to have been the origin of the language regarding motor vehicles “used in the business of transporting passengers” that later became part of the Act, suggested the following:

[PROPOSED] Sec. 3114. (1) IN CASE OF INJURY TO AN OCCUPANT, INCLUDING THE DRIVER, OF A MOTOR VEHICLE WHILE IT IS BEING USED IN THE BUSINESS OF TRANSPORTING PERSONS OR PROPERTY, THE BASIC REPARATION SECURITY APPLICABLE IS THE SECURITY COVERING THE VEHICLE.

(Ex/B-4, Ex/B-10). Note: the Commissioners other suggestions drew very nearly the same distinctions and priorities that would ultimately make it into the enacted version of Section 3114, albeit in a different arrangement of the subparts from the final version.

Tracing the Commissioner’s suggestion forward, the “business of transporting persons” language was incorporated into the proposed “House Substitute for Senate Bill 782” where it appeared, verbatim, as a part of proposed Section 3113(1). Ultimately, the suggestion was incorporated into Section 3114, with some minor language and organizational changes, and passed as a part of Senate Bill 782, which would become known as the body and substance of the “No-Fault Act.”

The Court of Appeals has, on at least one occasion, confirmed most of what is outlined above. According to the Court of Appeals, the purpose of the provision was indeed to achieve balance among the priorities, by developing what it termed "the business household."

The Court of Appeals in *Farmers Ins Exchange v AAA of Michigan*, 256 Mich App 691; 671 NW2d 89 (1985) recognized that there had been virtually no formal statutory interpretation regarding MCL 500.3114(2). Nevertheless, the Court was able to glean various aspects of the Legislature's intent from prior analyses that had considered Section 3114(2) in conjunction with its counterpart MCL 500.3114(3). For example, the *Farmers* Court looked at *Michigan Mut Ins Co v Farm Bureau*, 183 Mich. App. 626, 633-634; 455 NW2d 352 (1990), that had analyzed the Legislative purpose behind the priority exceptions for commercial vehicles. In *Michigan Mutual*, the Court of Appeals succinctly explained the "business household" concept:

While a business can be an owner or registrant of a motor vehicle, and thus required to purchase no-fault insurance, a business obviously cannot be a "household," or have a "spouse" or "relative," in the primary and generally understood meaning of those words. Accordingly, insurers of business vehicles usually would not be first in order of priority under the general priority scheme. The Legislature recognized this and created what amounts to a business household in § 3114(2) and (3), so that responsibility for providing benefits would be spread equitably among all insurers of motor vehicles.

The business household in § 3114(3) consists generally of occupants of the motor vehicle who are related to the employee of the business. The household in § 3114(2) consists of the operator of the motor vehicle, and passengers under certain circumstances. It is apparent that the Legislature used the terms "operator" and "passenger" in § 3114(2) so that, as in § 3114(3), it could define a "household" of reasonable size in convenient terms. See MCL 500.3114(2)(a)-(f); MSA 24.13114(2) (a)-(f).

*Michigan Mut. Ins. Co. v. Farm Bureau Ins. Group*, 183 Mich. App. 626, 633-634; 455 N.W.2d 352 (1990).

Similarly, in an earlier case, *State Farm v Sentry Insurance*, 91 Mich. App. 109, 114; 283 NW2d 661 (1979), the Court of Appeals recognized the same principles, highlighting how important the “commercial setting” is to the analysis:

The exceptions in § 3114(2) and (3) related to commercial situations. It was apparently the intent of the Legislature to place the burden of providing no-fault benefits on the insurers of these motor vehicles, rather than on the insurers of the injured individual. This scheme allows for predictability; coverage in “the commercial” setting will not depend on whether the injured individual is covered under another policy. A company issuing insurance covering a motor vehicle used in an (2) or (3) situation will know in advance the scope of the risk it is insuring. The benefits will be speedily paid without requiring a suit to determine which of the two companies will pay what is admittedly due by one of them.

*State Farm v Sentry Ins.*, *supra* at 114.

Thus, in the end, as the Legislative analysis and prior decisions of the Court of Appeals make plain, it is clear that the entire premise underlying the enactment of Section 3114(2) was focused on balancing the order of priority, such that insurers of business vehicles would bear the burden of having primary priority status with more equitable frequency. As will be discussed below, the “primary purpose/incidental nature” test, adopted and applied by the Court of Appeals operates to frustrate that goal, rather than carry it out.

2. *The Amendments to Section 3114(2) illustrate the fact that the main provision was intended to be inclusive enough that exceptions were required to benefit certain industries – amendments that would have been entirely unnecessary if the Legislature had intended that the Section be interpreted under the “primary purpose/incidental nature” test developed and applied by the Court of Appeals.*

This Court has repeatedly confirmed that amendments made by the Legislature can have vital utility in determining the Legislature’s intent. *Cf.*, *In re Certified Question*, 468 Mich 109, 115 n 5, 659 NW2d 597 (2003). In the case of MCL 500.3114(2), the Legislature’s later amendments, which provide “exceptions” to the priority rules, provide an illustrative look into how broad a category of vehicles was intended to be swept into the ambit of the provision. In

short, if the provision were intended to be construed as narrowly as the Court of Appeals would have it, then there would have been no need to pass the amendments that will be discussed below.

In order to understand the manner in which the amendments to Section 3114(2) illustrate the Legislature's intent, it is important to trace the language of the provision forward from its original form to the present-day composition. As originally enacted, Section 3114(2) provided, in its entirety:

(2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle.

1972 PA 294, effective March 3, 1973. Note that, as originally enacted, Section 3114(2) did not include any exceptions; the only two categories for priority among no-fault insurers (for purposes of the issues in this case) were private vehicles and commercial "business" vehicles.

Beginning approximately two (2) years later, however, after gaining some practical experience with how the Act functioned in the real world, the Legislature began making amendments to tweak the balance of priorities, providing certain limited exceptions to certain categories of commercial vehicles.<sup>4</sup>

For example, in 1975, the Section was amended to add MCL 500.3114(2)(a), by the passage of HB 4622 (1975 PA 137) to exclude school busses, because school districts were struggling to pay the increased premiums of providing PIP coverage for the children that they

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<sup>4</sup> Notably, none of the amendments appear to have been made in direct response to any court decisions, as there were no appellate decisions interpreting the Section until the *Thomas* case was decided in 1985, a year after the most recent amendment. *Thomas v Tomczyk*, 142 Mich App 237; 369 NW2d 219 (1985).

transported. (Ex/D). This exception became the first of several amendments to favor certain industries that were otherwise swept into the commercial priority provision.

A year later, in 1976, a similar amendment passed to exempt common carriers, government sponsored transportation programs, and non-profits; HB 6448 (1976 PA 356), which became MCL 500.3114(2)(b), (c) and (d). (Ex/E). A year after that, in 1977, HB 4254 (1977 PA 53) was passed to add an exclusion for taxi cabs, because the industry was suffering under the law and many companies were on the verge of folding; this ultimately became MCL 500.3114(2)(e). (Ex/F).

Several years later, in 1984, the Senate got into the mix with Senate Bill 837 (1984 PA 372), carving out an exclusion for “liveries” of canoes, watercraft, bicycles and horses. According to the Legislative Analysis, these types of businesses fell into the “business of transporting passengers” priority provision, and the cost of insuring their patrons as passengers was becoming too financially burdensome; so, the Senate acted, and the MCL 500.3114(2)(f) was added. (Ex/J).

The exemption for liveries is illustrative. According to the Legislative Analysis (confirmed by common experience), these liveries occasionally used shuttles to transport their patrons to and from various locations, thus allowing them to enjoy the use of canoes, watercraft, bicycles and horses. In the case of canoes, for example, the livery may transport patrons to a dropping in point on a stream or river, following which they would canoe “back” to the livery as a part of the activity, or otherwise be picked up and driven back to the company’s headquarters. This practice, whereby the livery would undertake to shuttle patrons back and forth, apparently landed them squarely in the “business of transporting passengers” category of the no-fault

priorities; thus, these liveries became primarily liable for the provision of PIP benefits to all of their patrons during these shuttle rides.

Consider the livery example in the context of the arguments made by MIC in this case. MIC argues that WWTMC is primarily in the business of producing a music festival; that it is not in the business of transporting passengers. Surely, the same argument would have been made by the liveries, before the rule was amended in 1984. Surely, canoe and horse liveries would argue that they were not “in the business of transporting passengers” but rather they were in the business of running liveries; offering canoes or horses or bicycles to out-of-town tourists. In this regard, the liveries would no-doubt have maintained that transporting their patrons to-and-from various points of interest was only a small or “incidental” part of the primary goal of the company. Surely, liveries do not derive an appreciable degree of “profits” from the shuttling of their patrons. Yet, as is clear from the need to take up the amendment, the shuttles operated by these liveries just as surely fell within the commercial priority under Section 3114(2).

School districts, too, would surely have maintained that they were not “primarily” common carriers; that their primary duty was to educate students, and transporting them to the situs of that work was “merely incidental” to the overall purposes of the District. Likewise, it can be reliably presumed that school districts derived virtually no *profits* from transporting students. Yet, school districts obviously fell within the ambit of Section 3114(2), or else it would not have been necessary to amend the statute to exclude them.

Ultimately, when the entire provision is construed as a whole – including the amendments that provided exceptions to the primary category – it becomes apparent that the Legislature intended a much broader category of business vehicles than MIC or the Court of Appeals have advocated. Moreover, this more inclusive interpretation is also in accord with the

Legislature's overall goal of balancing the otherwise inequitable distribution of priorities. Clearly, the more restrictively this provision is construed, the less it operates to even approach an equitable "balancing" of the priorities.

**III. THE "PRIMARY PURPOSE / INCIDENTAL NATURE" TEST, DEVELOPED BY THE COURT OF APPEALS, OPERATES TO DEFEAT THE INTENT OF THE LEGISLATURE.**

There are only two published decisions of the Court of Appeals that have attempted to construe and apply MCL 500.3114(2): *Thomas v Tomczyk, supra* and *Farmers Ins. Exchange v AAA of Michigan*, 256 Mich. App. 691; 671 NW2d 89 (2003). These cases each shared a common feature: the Court of Appeals was asked to decide whether a person's personal vehicle was used in a manner that caused it to fall within the commercial priority provision, because the person elected to use it in incidental connection with business/quasi-business endeavors. In response to this type of factual scenario, the Court of Appeals developed what has become known as the "primary purpose/incidental nature" test, which it has declared should be used to interpret and enforce Section 3114(2).

As will be discussed below, State Farm submits that the test is of relatively dubious origin, and at a minimum appears to have utility only in the precise factual context in which it was developed. In short: the test fails to give effect to the Legislature's intent when it is mechanically applied to purely commercial vehicles.

Alternatively, if this Court is inclined to endorse the test in form, then State Farm submits that the Court of Appeals' *application* of the test, *in this case*, took the test beyond its proper bounds, resulting in a disposition that is contrary to the Legislature's intent. In short, if the facts of this case do not satisfy the rigors of the test, then virtually none would – and even if some scenarios would satisfy the test, the frequency would be so modest as to defeat the Legislature's

clear intent to balance the priority rules in the first instance. Moreover, the expansive statistical inquiry mandated by the test, as applied in this case, would result in massive inefficacy on levels contrary to what the Legislature intended.

In order to properly understand the “primary purpose/incidental nature” test, it is important to recognize where it came from, and the very specific facts that gave rise to its development. In short, the thing arose in the context of analyzing whether a person’s own *personal vehicle* could fall within the commercial priority provision of Section 3114(2), when it was used in some marginally commercial way.

The so-called “test” actually originated from some bench-comments made by the trial judge in *Thomas*, 142 Mich App 237, which the Court of Appeals quoted in a footnote.

The *Thomas* case addressed the question of whether a college student who offered to give some classmates a ride home for the holidays - in his personal vehicle - fell within the commercial priority provision of Section 3114(2), merely because the other students gave him some money to offset the cost of gasoline. The parties apparently agreed to have the trial judge decide the issue, following which he made some statements regarding his view of the evidence. When the matter was appealed, the trial judge’s statements were quoted in footnote 2 of the appellate decision, which read as follows:

The court then having the power in this case to make findings of fact will find that this is not any business. And I’ll make a specific statement that, it wasn’t the primary function of the driver to carry passengers for hirer [sic], he’s a student, as far as I can tell. And it is not the primary purpose of the vehicle to carry passengers for hirer [sic], it just happened that incidental to coming home, it was convenient to take on passengers, and I don’t really blame him for trying to make a little extra money to cover the cost of gas; that’s a long ride up the Upper Peninsula.

*Thomas*, *supra* at 241, n.2 (bracketed language in original) (emphasis added). Importantly, however, the Court of Appeals cited these statements – *not for their substantive analysis* – but

rather, in connection with its questioning whether the trial court decided the matter on summary judgment or via some form of quasi bench trial. *Id.* at 240-241. Thus, in essence, the Court was most concerned with the first sentence of the quote, wherein the trial judge indicated that he had the power to “make findings of fact....” Then, however, the *Thomas* Court went on to *sua sponte* treat the matter as if the trial court’s decision was made on summary judgment. *Id.*

Substantively, the *Thomas* Court decided the legal issue under Section 3114(2) virtually without discussion. Indeed, after merely citing the provision, the sum-total of the Court’s analysis was just three conclusory sentences:

We are not persuaded that the Legislature intended by its enactment of § 14(2) of the no-fault act to abandon the general rule of coverage where college students pay other college students for the privilege of carpooling home for school holidays. We agree with the trial court that under the particular facts of these cases, plaintiffs were not passengers of “a motor vehicle operated in the business of transporting passengers”. We thus affirm the judgment of the trial court.

*Thomas*, 142 Mich App at 241-242. In other words, the Court of Appeals did not purport to adopt the trial judge’s bench-comments for their substantive value – and indeed, applied no “test” whatsoever under the statute. Instead, the Court merely expressed what could be construed as a sort of “absurd results” conclusion, indicating that the Legislature could not possibly have intended for Section 3114(2) to apply to these sorts of fact scenarios.

Yet, in spite of this dubious origin, these bench-comments quoted in footnote 2 later ripened into what would become the “primary purpose/incidental nature” test, adopted by the Court of appeals in *Farmers Ins Exch v AAA of Michigan*, 256 Mich App 691; 671 NW2d 89 (2003). In *Farmers*, the issue was similar to *Thomas* in that the case involved the use of a person’s own personal vehicle in a marginally commercial way. There, a daycare provider used her own personal vehicle to transport the children she was babysitting to school. After an accident, a dispute arose regarding whether the babysitter’s personal vehicle fell within the

commercial priority rule in Section 3114(2), or whether the injured children should have looked for coverage under their parents' own policies. The parties filed cross-motions for summary disposition; the trial court held that the daycare provider's personal auto was "a motor vehicle operated in the business of transporting passengers" and thus held the daycare provider's insurer, AAA, highest in priority.

On leave granted, the Court of Appeals reversed. In so doing, the Court first observed that the statutory phrase "motor vehicle operated in the business of transporting passengers" was not specifically defined in the Act. *Farmers, supra* at 697. Based on this observation, the Court determined that the phrase was ambiguous, and thus, subject to judicial interpretation. *Id.* at 697 (citing, *Proudfoot v State Farm Mut Ins Co*, 254 Mich App 702, 708; 658 NW2d 838 (2003)).

Having determined that the operative phrase of the statute to be subject to judicial construction, the *Farmers* Court then went on to discuss the intent of the legislature, noting that the provision was enacted to create what had been called a "business household" and that it was intended to apply to "commercial" situations, followed by a discussion of the "sparse" case law that had developed. *Id.* at 697-699 (citing, *Michigan Mut Ins Co v Farm Bureau Ins Group*, 183 Mich App 626, 633-634; 455 NW2d 352 (1990) and *State Farm Mut Auto Ins Co v Sentry Ins*, 91 Mich App 109, 114; 283 NW2d 661 (1979)).

Finally, the Court looked to the *Thomas* case, which it found to be "the only published opinion of this Court interpreting the meaning of 'a motor vehicle operated in the business of transporting passengers' within subsection 3114(2)." *Farmers, supra* at 699. After reciting the relatively conclusory analysis and holding from *Thomas*, the *Farmers* Court went on to accord great weight and significance to the bench-comments made by the trial judge, quoted in footnote 2 of the opinion. Indeed, after acknowledging that the comments had not even been adopted by

the *Thomas* Court, the *Farmers* Court announced that the commentary “accurately encompasses the intent of the Legislature in enacting subsection 3114(2).” *Farmers, supra* at 701. Thus, the *Farmers* Court explicitly held, based entirely on the trial judge’s bench-comments from *Thomas* that “a primary purpose/incidental nature test is to be applied to determine whether at the time of an accident a motor vehicle was operated in the business of transporting passengers pursuant to 3114(2).” *Id.*

After drawing a distinction between the daycare provider’s routine use of her personal vehicle to take the children she was babysitting to school and the “isolated incident” of the college student driving classmates home for the holidays, the Court of Appeals applied the two prongs it identified, to find that the daycare provider’s personal vehicle did not fall within Section 3114(2):

Applying the test to the instant case, we conclude that the day-care provider’s driving of the children to school would not fall within the scope of subsection 3114(2) because the record indicates, and the parties agree, that (1) her driving of the children to school in her vehicle occurred incidentally to the vehicle’s primary use as personal vehicle, and (2) her transportation of the children to and from school constituted an incidental or small part of her day-care business.

*Farmers, supra* at 701-702 (emphasis added). In other words, even though she used the vehicle to drive the children she was babysitting to school, the daycare provider’s personal vehicle did not fall within the Legislature’s “business household” or satisfy the business priority exception.

In essence, the “primary purpose/incidental nature” test, adopted by the Court of Appeals, appears to have been developed specifically to evaluate situations where a personal vehicle is occasionally used for a business-oriented purpose, to determine if the usage rises to the level where it could be said that the commercial priority provision ought to be applied in spite of the fact that it was a personal vehicle. The focus of the question, beginning with the first prong, as

originally conceived and applied, was whether the vehicle was primarily used for personal uses or business purposes.

Moreover, as announced, the “test” was a test in name only; it had no “prongs,” or elements, or specific requirements other than those that may have been implied by the name or those that could be divined from the manner in which the *Farmers* Court applied the new standard.

Applying the test, the Court of Appeals observed that the babysitter’s driving of the children to school in her own car “occurred incidentally to the vehicle’s primary use as a personal vehicle” and that her transporting the children to and from school was “an incidental or small part of her day-care business.” *Farmers*, 256 Mich App at 701-702. Then, the Court indicated that its findings were “consistent with this Court’s observations that the Legislature intended Subsection 3114(2) to apply to ‘commercial’ situations” - - a clear indication that the Court did not consider the babysitting service to be the sort of “commercial” situation to which the statute was intended to apply *Id.* Based on these observations, the Court decided that Section 3114(2) did not apply, and that the injured children should look first to their own household for coverage.

The test has been utilized just twice since its adoption in *Farmers*, both times in unpublished opinions (this case being the second occasion). The first was in a case called *State Farm Mut Ins Co v Progressive*, unpublished per curiam decision of the Court of Appeals, decided September 29, 2005 (Docket No 262833) (Ex/K-1), that evaluated a specially designed and equipped van, owned and operated by a business called “Michael J’s.” According to that Court, the “test” involved a “two-part analysis”:

The *Farmers* Court held “that a primary purpose / incidental nature test is to be applied to determine whether at the time of an accident a motor vehicle was

operated in the business of transporting passengers pursuant to subsection 3114(2).” In this Court’s actual application of that test it used a two-part analysis. The first part was whether the vehicle was transporting passengers in a manner incidental to the vehicle’s primary use. *Id.* The second part of the analysis was whether the transportation of passengers was an incidental or small part of the actual business in question.

*State Farm, supra* at 5-6 (internal citation omitted) (emphasis added). In other words, the test went from having no defined elements or prongs, to being a “two part analysis” – at least in application. Applying the test the Court found it significant that the van was specially equipped to handle transportation of wheelchair bound “*and other passengers*”; that business “purchased the van for that specific and primary purpose”; and that transporting passengers was “a significant enough component for Michael J’s” to trigger the exception. Thus, the Court engaged in a subjective inquiry, looking specifically at the company’s intent in purchasing the vehicle, as well as whether the transportation of passengers in the van was *important enough* a part of the business that it was warranted.

In this case, the Court of Appeals took the matter even further. According to the Panel, “the salient question in determining whether MCL 500.3114(2) applies in this case is whether transportation of passengers for hire was the primary function or purpose in operating the van.” (99a). Then, looking at the “two-part analysis” identified by the unpublished *State Farm* opinion, the Panel indicated that “[a]ccepting that the van’s primary use was for business purposes, the gravamen of the question is whether the van was transporting *attendees* in a manner incidental to the vehicle’s primary business use.” *Id.* Thus, the Court broke down the “first part” of the analysis in two ways: first, it implicitly differentiated between different types of passengers, separating “attendees” from other types, and then asked whether transporting those types of passengers was incidental to the “vehicle’s primary business use” (i.e., what the vehicle was normally used for).

Then, in answering these questions, the Panel looked at the subjective intent for purchasing the vans, and again focused on differentiating between “attendees” and other types of passengers (i.e., performers, staff, and volunteers). Then, the Panel decided that, in general, the vans were not *intended* for use by *attendees* “except in certain unusual or emergency circumstances.” In other words, the vans were intended (at least in part) to transport passengers, just not “attendees,” except in unusual circumstances. Thus, the Panel decided that the first prong of the test was unmet.

With regard to the second part of the analysis, the Panel decided that most of what the business intended to do was put on a festival, that transporting passengers – and not just any passengers, but *attendees* specifically, was a small or incidental part of the “overall” business. Here, the Panel focused on Defendant’s statistics, the number of attendees who used their own cars, versus those that purchased the airport shuttle, and then the number that were transported via private carrier versus those that were transported by van. And ultimately, again, the Panel came around to *intent*, indicating “More importantly, in arguing the significance of the shuttle service, State Farm and Farmers Insurance conveniently ignore that the van at issue, although sometimes used to transport attendees, was not actually intended for use as a shuttle transportation vehicle.” *Id.* Then finally, the Panel found it insignificant that all of the passengers involved in the crash had paid a separate fee for the airport shuttle, indicating that “shuttle fees were only a minor portion of the music festivals [sic] revenues.”

That the test evolved in this way, and to the point that it has, is perhaps no surprise. It originated from the evaluation of whether a purely non-commercial endeavor (student driving home for the holidays) was *commercial enough* to nevertheless trigger the provision, simply because money changed hands. In that context, it made sense for the trial judge to comment on

the fact that “it wasn’t the primary function of the driver to carry passengers for hirer [sic]” and that “it is not the primary purpose of the vehicle to carry passengers for hirer [sic], it just happened that incidental to coming home, it was convenient to take on passengers, and I don’t really blame him for trying to make a little extra money to cover the cost of gas, that’s a long ride up the Upper Peninsula.” *Thomas, supra* at 241, n 2. The trial judge was trying to justify his finding that the situation was so far outside the commercial realm, that the statute had no place in the analysis.

Moreover, it was perhaps no surprise that the Court found the analysis helpful in reviewing the daycare provider case, where again, the Court was asked to apply the commercial statute to a marginally commercial setting. There again, it was important to quantify the extent to which the babysitter, who was using her personal vehicle, would trigger the provision.

The test, by its very nature, is designed to *quantify* the extent to which *both*, the vehicle *and the business* are “in the business of transporting passengers.” Of necessity, then, the test will render the statute applicable only on a completely subjective, albeit graduated, scale.

But the statute has no gradient. It does not apply only to those vehicles operated *primarily* in the business of transporting passengers. It does not apply only to those vehicles *regularly* operated in the business of transporting passengers. It does not apply only to those vehicles operated in the business of transporting *high volumes* of passengers. It does not apply only to those vehicles operated in the business of transporting *attendees*, versus other types of passengers. And it does not apply only to those vehicles *profitably* operated in the business of transporting passengers.

Moreover, the statute has no *intent* element. It does not apply only to those vehicles *intended* to be operated in the business of transporting passengers. It does not apply only to

those vehicles *purchased with the intent of being* operated in the business of transporting passengers. It does not apply only to those vehicles that were *usually intended* to be the ones to be used in transporting passengers. Intent is irrelevant. The operative part of the phrase is “operated.” If the vehicle was “operated” in the business of transporting passengers, it qualifies. Period.

Ultimately, not only is the “primary purpose / incidental nature test” inconsistent with the plain language of the statute, in application, it has nullified the entire purpose for which the provision was enacted. The test has now ripened into an analysis with multiple “prongs” that – with a virtually limitless series of undefined inquiries. In the end, as this case illustrates, based on what the test has become it would be so difficult *and so rare* to satisfy the standard, that the Legislature’s overall intent – balancing the distribution of no-fault priorities – is rendered meaningless.

**IV. EVEN IF THIS COURT IS INCLINED TO ENDORSE THE “PRIMARY PURPOSE/INCIDENTAL NATURE” TEST AS AN APPROPRIATE MEANS FOR EFFECTUATING THE INTENT OF THE LEGISLATURE, IT SHOULD STILL FIND THAT THE COURT OF APPEALS ERRED IN THIS CASE BY APPLYING THE TEST FAR TOO NARROWLY.**

The “primary purpose/incidental nature” test is no more enlightening or objective than the plain language of the statute; that is to say, it begs just as many questions – or more – than the statute does itself. As a result, in use, the test is an invitation for judges to inject their own subjective views into the priority determination. This case is a perfect example.

The test, as applied by the Court of Appeals in this case, essentially evaluates how closely the business is to operating as a common carrier -- indeed, almost anything less would patently fail the test.

**A. The Court of Appeals in this case transfigured the first prong of the “primary purpose/incidental nature” test into a vehicle for hyper-differentiation.**

In this case, the Court of Appeals acknowledged the undisputed fact that the *only* purpose for these vans (and indeed, the entire fleet of vehicles owned and operated by the business) was for business, rather than personal use. But the Court did not stop there. Instead, the Court went on to re-draw the focus of the first prong of the test, to distinguish between different types of business purposes – drawing distinctions between different types of business passengers.

With respect to the first part of the analysis – whether the vehicle was transporting passengers in a manner incidental to the vehicle’s primary use – unlike in *Farmers Ins Exch* where the vehicle’s primary use was personal, there is no dispute that the van’s primary use in this case was for business purposes. However, contrary to Farmers Insurance’s contentions on appeal, the fact that the van was primarily, if not solely, used for business purposes, is not dispositive of the issue. **Accepting that the van’s primary use was for business purposes, the gravamen of the question then is whether the van was transporting attendees in a manner incidental to the vehicle’s primary business use.**

(99a) (emphasis added). In other words, the Court of Appeals in this case went beyond inquiring about the primary use of the vehicle (i.e., business versus personal) to parsing the “usage” down even further. The distinction was made even more bold when put into application: rather than acknowledge that the primary purpose of the vans was to transport *passengers*, as required by the statute, the Court went on to distinguish between different *types* of passengers: “attendees” versus other types of passengers.

Expanding on the first prong, “whether the vehicle was transporting passengers in a manner incidental to the vehicle’s primary use” the Court of Appeals attempted to draw a distinction between different types of passengers. On one hand, the Court acknowledged that the primary “intended use” of the vans was to transport “performers, staff, volunteers and equipment on the festival grounds” and when taken off-site, the intended use was “primarily to take

volunteers to greet and direct attendees at the airport....” Then, in contrast to these categories of passengers, the Court considered the transportation of “attendees” as being merely incidental, or “in certain unusual or emergency circumstances.”

Thus, the Court took the first prong of its own test, “whether transportation of passengers for hire was the primary function or purpose in operating the van” and parsed it down even further – distinguishing between different types of passengers – indeed, even going so far as to distinguish between different type of passengers “on the festival grounds” versus “off site” in order to find that the primary purpose did not include transportation of “attendees” of the festival.

It is important to note that the Legislature only appears to have recognized two categories of occupants: (1) operators, and (2) passengers. The Court of Appeals took those categories further, and distinguished between passengers who were “attendees” and passengers who were “performers,” “staff,” and “volunteers.” According to the Court, it is only where the *intended, primary function or purpose*, is to transport “attendees” that the commercial priority provision is triggered. Thus, under the Court of Appeals’ test, the fact that *intended* primary purpose of the vans was to transport other types of passengers, including “performers, staff and volunteers” is of no consequence.

At the first level of the test, the Court of Appeals departed from the plain language of the statute – looking beyond the two categories of persons identified in the statute, “operators” and “passengers,” to parsing out different categories of passengers: ticket holding “attendees” as distinguished from “performers” “staff” and “volunteers.” (99a). The Court said:

Accepting that the van’s primary use was for business purposes, the gravamen of the question then is whether the van was transporting attendees in a manner incidental to the vehicle’s primary business use.

Here, Vogel testified that the WWTMC purchased the three vans for, and intended to use them primarily for, business production purposes. WWTMC used the vans to transport **performers, staff, volunteers**, and equipment on the festival grounds ... [w]hen WWTMC took the vans off site, their use was primarily to take **volunteers** to greet and direct attendees at the airport ....”

(99a) (emphasis added). Thus, rather than focusing on all “passengers,” as prescribed by the statute, the Court of Appeals applied the test in a manner just about as *exclusively* as possible – differentiating between different types of passengers at different times. So, from the very first step in the analysis, the Court of Appeals applied the test in such a way as to isolate the manner in which the facts presented a narrow “common carrier” type endeavor.

Not content to stop there, however, because the fact was that *each and every passenger in the van at the time of the accident in this case was, indeed, a shuttle-ticket holder*, the Court of Appeals took the next step of the analysis even further, differentiating between different categories of uses to which the van was put. Again, the Court of Appeals focused on this distinction between using the van for “production” purposes, where “performers, staff, [and] volunteers” were transported, and the “unusual or emergency circumstances” when the vans would be used to shuttle ticket holding attendees who had purchased airport shuttle tickets. (99a). In essence, because Vogel testified that it was usually her intent to only use the vans to transport performers, staff and volunteers, in the vans, primarily using charter busses for the shuttling of “attendees” to and from the airport, then the van’s use in connection with the airport shuttle on those few “unusual or emergency” situations could be said to be more “incidental” to the “vehicle’s primary business use.” (99a-100a).

In this way, the Court of Appeals actually applied the test out of temporal context. This, too, ignores the reasonable implications of the plain language of the statute. The statute, by the way it is drafted and conceived, looks very precisely at the situation at the time of the accident.

Yet, the “primary purpose/incidental nature” test purports to look beyond that point in time, in effort to discover what the owner generally “intended” to use the vehicle for, most of the time. According to the Court, because Ms. Vogel self-servingly said that she mostly intended to use the vans to transport “performers, staff, [and] volunteers” rather than “attendees,” it became of little consequence that the van was *actually being used as an airport shuttle on the occasion of this accident – and that was why the “attendees” were “passengers” of the van at the time.* (99a). Notably, this was a stark departure from the *Farmers* Court’s prior articulation of the test, when it was adopted. *Farmers, supra* at 701 (stating, “[w]e hold that a primary purpose/incidental nature test is to be applied to determine whether at the time of an accident a motor vehicle was operated in the business of transporting passengers pursuant to subsection 3114(2)”).

In effect, as applied by the Court of Appeals in this case, the “primary purpose/incidental nature” test evaluated everything *except* what happened in this accident. It focused on all of the other types of “passengers” and all of the other types of “uses” to which these vans were allegedly “intended” to be put, while simultaneously ignoring or discounting the fact that, at the time of this particular accident, the van was unquestionably being used to transport paying passengers in connection with Company’s airport shuttle service.

**B. The Court of Appeals in this case transfigured the second prong of the “primary purpose/incidental nature” test, to make it so exclusive that the statute is effectively nullified.**

Next, in case the first prong of the test was not sufficiently tailored to isolate the common carrier-type businesses, the Court of Appeals applied the second prong of the test to make it a certainty. With regard to the second prong, the Court analyzed the statistical probability that this particular van was used to transport ticket-holding “attendees” from the airport in connection

with the airport shuttle contract, purportedly to determine whether the transportation of these passengers was “and incidental or small part of the business in question.” (100a).

The Court first decided that “statistically, the shuttle service was not a significant part of the WWTMC’s business.” Next, to buttress this finding, the Court of Appeals focused on the fact that the shuttle operation did not turn a significant profit, observing that “Vogel testified that most years WWTMC either broke even or lost money by providing the shuttle bus service” whereas most of the positive revenues for the business came from “ticket sales, festival apparel and paraphernalia sales, concession stands, craft fees, and raffles.” (100a).

Then, dipping back into the first prong of the test, the Court of Appeals again highlighted the fact that “although sometimes used to transport attendees, [the van in this case] was not actually intended for use as a shuttle transportation vehicle”; instead, the Company usually hired charter busses for that purpose. (100a-101a). Based on this, together with supporting statistics regarding the number of shuttle ticket holders and comparative number of runs, etc., the Court of Appeals decided that “WWTMC’s occasional transportation of attendees in its vans was in turn only incidental to the shuttle service.” (101a). Indeed, the Court then so far as to find that the fact that the Druckers purchased tickets for the shuttle was not even “significant” at all. (101a).

In short, the second prong of the Court of Appeals test operated with one goal in mind: isolating the extent to which the WWTMC could be considered what most would consider a common carrier – in effect, a business that derived all or a significant portion of its profits from transporting passengers for hire. And then, when applied in conjunction with its incantation of the first prong of the test, the Court was able to ignore the undisputed fact that, on the occasion of this particular accident, this particular van was, at worst, being used as a substitute common carrier for the Company.

By applying the “primary purpose/incidental nature” test in this way, the Court of Appeals effectively took the test to point that only common carriers would fall within the ambit of Section 3114(2). Only those businesses who derive all or a significant portion of their profits from the sole or virtually sole use of vehicles for transporting paying customers, in vehicles that are never or almost never used for any other purpose, will occupy the priority position under the rigors of the Court’s formulation of the test.

Coming full circle, then, and getting back to the intent of the Legislature, it is more than ironic that one of the very first “exceptions” to the rule, enacted as a part of the very first amendment to the provision in 1976, was to remove “common carriers” from the ambit of the rule. Note that the Legislature did not *repeal* the provision by passing this amendment, obviously suggesting (consistent with the nature of the other amendments) that it had intended the provision to cast a much broader net than the Court of Appeals appears to have envisioned. Yet, the Court of Appeals, by virtue of its application of the “primary purpose/incidental nature” test, has essentially nullified the statute by making it effectively apply only to an industry that has been excluded.

**C. From a practical standpoint, the “test” as applied by the Court of Appeals in this case would defeat the Legislature’s intent that priority determinations be made without the necessity of lawsuits.**

As was indicated above, the Court of Appeals in this case did at least outline a *part* of the intent of the Legislature in enacting Section 3114(2). The Court observed, without any substantive discussion or application:

This Court has explained that the purpose of the priority rule provided under 500.3114(2) is to account for predictability and accountability for commercial entities:

The exception[] in [MCL 500.3114(2)] ... relate[s] to “commercial” situations. It was apparently the intent of the

Legislature to place the burden of providing no fault benefits on insurers of these motor vehicles, rather than on the insurers of the injured individual. This scheme allows for predictability; coverage in the “commercial” setting will not depend on whether the injured individual is covered under another policy. A company issuing insurance covering a motor vehicle to be used in a (2) ... situation will know in advance the scope of the risk it is insuring. **The benefits will be paid without requiring a suit to determine which of the two insurance companies will pay what is admittedly due by one of them.**”

(96a) (citing *Besic v Citizens Ins Co*, 290 Mich App 19, 31-32; \_\_\_ NW2d \_\_\_ (2010), quoting, *State Farm Mut Auto Ins Co v Sentry Ins*, 91 Mich App 109, 114-115; 283 NW2d 661 (1979)).

Indeed, this was the only suggestion in the Court’s opinion that the Court was engaging in statutory interpretation whatever.

Yet, after identifying this purpose (to the conspicuous exclusion of any discussion regarding the “business household” analysis that prior panels had identified), the Court of Appeals went on to apply the so-called “primary purpose/incidental nature” test in such a way that lawsuits and discovery would be the only practical means for making priority determinations.

Imagine an environment where: before a priority determination can be made on a claim involving a passenger injured in a commercially owned vehicle, detailed information must be requested and obtained from a corporate entity with which State Farm likely has no affiliation – information including corporate tax returns, financial statements, mileage and depreciation data, as well as reliable information about the (subjective) “intended” uses to which a particular vehicle in the corporation’s fleet is put. Then, after having obtained that information, a statistical analysis would need to be done to determine whether the “transportation of passengers” was: (1) either the sole purpose for that particular vehicle, or that transportation of passengers was otherwise “enough” of the purpose of that particular vehicle to be able to say with confidence

that it was “primarily” what the company subjectively “intended” to use that vehicle for; (2) that *these particular passengers* both: paid for the transportation *and* that they paid to be transported *in this particular vehicle*, and (3) that transporting passengers in this particular vehicle, as used in the context of this accident, *actually turned a profit* for the company in its overall business. Imagine an environment where only after all of this information and analysis has been completed, could a Claims Representative or anyone else make a determination as to whether the commercial priority provision, MCL 500.3114(2), could apply to make the insurer of the corporate vehicle higher in priority for the payment of PIP benefits. (Of course, all of this would generally need to be determined within 30 days, or else the insurer may be liable for no-fault penalties like 12% interest and attorney fees). Then consider how likely it would be that the insurer of the corporate vehicle would simply *accept* the determination, acknowledge its priority status, and assume all claims handling responsibility.

Correlatively, consider the other side of this world – the underwriting side – where underwriters would have to gather and analyze all of this same information on each of the corporate entities who want to purchase no-fault insurance from State Farm, before State Farm’s risk could be adequately evaluated. Agents and underwriters would need to have detailed information – up front – not only regarding what the vehicle is designed and equipped to do, but also determine with clairvoyant precision all of the particular “intended” uses the Company contemplated, such that a determination could be made as to whether the vehicle was either solely or primarily intended to transport passengers for hire. And even more: the agents and underwriters would have to obtain and review the corporate books to determine whether the company actually derived any appreciable profit from transporting passengers – and not just any passengers, but *paying fares*, all before the appropriate rates could be determined for the vehicle.

Well, this is precisely the environment that exists under the analysis put forth by the Court of Appeals in this case. State Farm submits that this is a far cry from what the Legislature had in mind when it enacted Section 3114(2).

The world State Farm and Farmers are advocating is more consistent with what the Legislature intended when it enacted Section 3114(2). The Legislature envisioned an environment where adjusters can simply look at why the passengers were in the vehicle and whether they were being transported to further the general purposes of the business, in order to decide whether the passengers had – at the time of this particular accident – become part of the “business household.” This would not generally require any statistical analysis, evaluation of profit margins, or the subjective “intent” of the corporate owner, which would almost always be self-serving. Moreover, it would be an environment where lawsuits would be much less a necessity to resolve priority issues. This world would be both more efficient for insurers in terms of underwriting and handling claims, as well as result in a greater and more “equitable balancing” of the priority rules, such that the insurers of business vehicles would have primary priority status in a much more proportionate number of situations. This, in State Farm’s view - based on all of the legislative history and a common sense view of the statutory scheme - is much closer to what the Legislature envisioned when it enacted Section 3114(2).

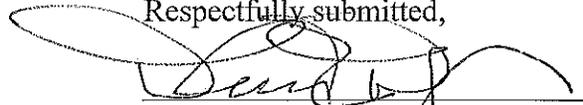
Ultimately, this Appellant submits that one of three things should be concluded; either: (1) the “primary purpose/incidental nature” test was flawed to begin with; (2) the test was developed to analyze a materially different type of factual scenario; or (3) the Court of Appeals *in this case* applied the test in such a way that it completely frustrated the Legislature’s intent.

**RELIEF REQUESTED**

For all of the foregoing reasons, Plaintiff-Appellant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, respectfully requests that this Honorable Court REVERSE the Court of Appeals' Judgment and reinstate the rulings of the Circuit Court.

Dated: July 17, 2012

Respectfully submitted,



Devin R. Day (P60298)

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Grand Rapids, Michigan 49503

(616) 451-8111

## TABLE OF EXHIBITS:

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| Journal of the Senate, Wednesday, June 2, 1971<br>(Introduction of SB 782)  | Exhibit "A" |
| Department of Commerce Analysis of HB 4734, 4735, 4736 and 4737<br>(Includes 2 <sup>nd</sup> Substitute for HB 4734)  | Exhibit "B" |
| House Substitute for SB 782   | Exhibit "C" |
| House of Representatives - First Analysis for HB 4622   | Exhibit "D" |
| House of Representatives - First Analysis for HB 6448   | Exhibit "E" |
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| House of Representatives - First Analysis for HB 5623   | Exhibit "G" |
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# EXHIBIT "A"

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Journal of the Senate, Wednesday, June 2, 1971  
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# JOURNAL OF THE SENATE

NUMBER SIXTY-NINE.

Senate Chamber, Lansing, Wednesday, June 2, 1971.

10:00 a.m.

The Senate was called to order by the President.

Rev. Charles D. Grauer of the Central United Methodist Church, Lansing, offered the following prayer:

O God, our Heavenly Father, most merciful and gracious, we invoke Your blessing and ask for Your presence here with those who undertake the work of our state government.

As our hearts rise in prayer, each of us may perhaps know you by a different name, and affirm You by a different revelation, still we ask You to unite us in one common spirit.

By Your guidance and direction let us put the courage to stand for what we believe before blind adherence to convention; let us put principle before reputation; let us put conscience before our own self seeking; let us put compassion before impersonal response; let us put imagination before routine; let us put the attainment of noble ends before present expediency; let us put truth before hypocrisy; that we may put Your people, Lord, before all else.

Father, be present and sustain these legislators: Let their courage not be dismayed by those who would disorderly demonstrate, let their purpose not be hampered by those who would destroy all government, let their personal integrity not be assaulted by those who would mock and revile, but truly guide them, that in unity of spirit they may know they are writing their finest chapter yet!

Be here in this council and with the deliberations today, Father, we pray, that in all things, and in all ways through public service and personal example we may truly become servants of Your intended will and purpose. Amen.

The roll of the Senate was called by the Secretary.

Present: Senators Ballenger, Bishop, Bouwsma, Brown, Bursley, Byker, Cartwright, Cooper, Davis, DeGrow, DeMaso, Faust, Faxon, Gray, Hart, Lane, Lodge, Mack, McCauley, McCollough, Novak, O'Brien, Plawecki, Pursell, Rockwell, Rozycki, Toepp, VanderLaan, Youngblood and Zaagman—30, a quorum.

Senator Davis moved that Senator Stamm be excused temporarily from today's session.

The motion prevailed.

Senator Youngblood moved that all absent Senators be excused from today's session.

The motion prevailed.

Absent with leave: Senators Bowman, Fitzgerald, Fleming, Pittenger, Richardson, Stamm, Young and Zollar—8.

Senator Bowman entered the Senate Chamber, the time being 10:08 a.m.

Messages from the House.

House Bill No. 4636, entitled

A bill to amend section 2 of Act No. 12 of the Public Acts of the First Extra Session of 1942, entitled "An act to authorize the acceptance and purchase of federal equipment, supplies, materials and funds," as added by Act No. 14 of the Public Acts of the First Extra Session of 1950, being section 3.542 of the Compiled Laws of 1948.

The House of Representatives had passed the bill and had ordered that it be given immediate effect.

The bill was read a first and second time by title and referred to the Committee on Education.

Senators Fitzgerald and Zollar entered the Senate Chamber, the time being 10:10 a.m.

Introduction of Bills.

Senator Gray introduced

Senate Joint Resolution N, entitled

A joint resolution proposing an amendment to section 4 of article 9 of the state constitution to exempt the homestead of a person which is zoned residential from taxation.

The joint resolution was read a first and second time by title and referred to the Committee on Taxation and Veterans' Affairs.

Senators Zollar and VanderLaan introduced

Senate Bill No. 778, entitled

A bill to amend sections 440, 441, 443, 444, 445 and 448 of Act No. 218 of the Public Acts of 1950, entitled "The insurance code of 1950," sections 440 and 441 as amended by Act No. 221 of the Public Acts of 1966, sections 443 and 448 as amended by Act No. 37 of the Public Acts of 1959 and sections 444 and 445 as amended by Act No. 111 of the Public Acts of 1967, being sections 500.440, 500.441, 500.443, 500.444, 500.445 and 500.448 of the Compiled Laws of 1948.

The bill was read a first and second time by title and referred to the Committee on Commerce.

Senators Toepp, Lane, Youngblood, Fitzgerald, Zollar, VanderLaan, Ballenger, McCauley, Mack, Pursell and O'Brien introduced

Senate Bill No. 779 entitled

A bill to amend section 479 of Act No. 328 of the Public Acts of 1931, entitled "The Michigan penal code," being section 750.479 of the Compiled Laws of 1948.

The bill was read a first and second time by title and referred to the Committee on Judiciary.

Senator Davis introduced

Senate Bill No. 780, entitled

A bill to amend Act No. 203 of the Public Acts of 1965, entitled "Michigan law enforcement officers' training council act of 1965," as amended, being sections 28.601 to 28.616 of the Compiled Laws of 1948, by adding section 9a.

The bill was read a first and second time by title and referred to the Committee on State Affairs.

Senator Davis introduced

Senate Bill No. 781, entitled

A bill to amend section 2529 of Act No. 236 of the Public Acts of 1961, entitled "Revised judiciary act of 1961," as amended by Act No. 248 of the Public Acts of 1970, being section 600.2529 of the Compiled Laws of 1948.

The bill was read a first and second time by title and referred to the Committee on Judiciary.

Senators Lodge, Bouwsma, Novak and VanderLaan introduced

Senate Bill No. 782, entitled

A bill to provide for prompt and equitable compensation for persons for accidental bodily injury and property damage arising from the ownership, operation, mainte-

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# EXHIBIT "B"

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Department of Commerce Analysis of HB 4734, 4735, 5736 and 4737

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2<sup>nd</sup> Substitute for HB 4734

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STATE OF MICHIGAN



MICHIGAN INSURANCE BUREAU  
111 N. HOSMER STREET  
LANSING, MICHIGAN 48913

RUSSELL E. VAN HOOSER  
COMMISSIONER OF INSURANCE

WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF COMMERCE

RICHARD E. WHITMER, Director

June 4, 1971

TO: Governor William G. Milliken  
FROM: Department of Commerce  
SUBJECT: Analysis of House Bills 4734, 4735, 4736 and 4737

1. What is the purpose of this bill?

House Bill 4734 would require every auto liability insurance policy to contain certain minimum coverages for medical expenses and wage loss, payable to the insured without regard to fault. Such benefits will be deducted from any judgments awarded to the same person, but the insurer which pays the benefits will be entitled to reimbursement from the insurer of the negligent party. Any disputes between the insurers over reimbursement must be settled by arbitration.

House Bill 4735 would limit the damages recoverable for pain and suffering for nonserious injuries arising out of an auto accident to 100% of medical expenses, excluding diagnostic X-rays.

House Bill 4736 would require arbitration of auto accident negligence actions that are not brought to trial within two years after the action is started, and to provide for arbitration in other circumstances.

House Bill 4737 would limit contingent fees for auto accident litigation to 25% of the recovery, unless a higher fee is approved by the court. It would also reduce awards for loss of earnings by subtracting the amount of income taxes that would have been payable on the lost earnings.

2. (a) Was the bill introduced at the agency's request?

The bill was not introduced at the request of this agency.

(b) Does it have the agency's support?

This Department supports House Bills 4734 and 4735 with the amendments suggested in item 6 below. This Department also supports Section 2946 in House Bill 4737 relating to a subtraction for income taxes in an award for loss of earnings. This Department neither supports nor opposes House Bill 4736 and Section 919 in House Bill 4737. This Department also supports several competing proposals which would reform auto liability insurance in various other similar ways.



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3. Are there revenue or budgetary implications in the bill--

(a) To the Department?

There are no revenue or budgetary implications to this Department.

(b) To the State?

The bills would probably reduce the premiums for auto liability insurance, and in turn, somewhat reduce the premium tax revenue. They would reduce the case load for the judicial system of the State.

4. What other principal departments might the bill affect?

It would affect the judicial system of the State and the Motor Vehicle Accident Claims Fund of the Department of State.

5. What, in summary form, are the arguments for and against the bill?

The bills provide medical expenses up to \$2,000 and wage loss up to \$6,000 promptly and without regard to fault. This will improve the compensation of persons with minor and moderate injuries, but fails to provide adequate compensation for the seriously injured, who need it the most and who are the most undercompensated under the present system. The only death benefit is \$1,000 for funeral expenses. No provision is made for rehabilitation expenses, which is one of the areas where the present system is in greatest need of improvement. The suggested amendments would broaden the benefits to include medical rehabilitation expense and more adequate benefits for the seriously injured and for death cases.

The bills reduce the nuisance value of small claims by limiting damages for pain and suffering for nonserious injuries to 100% of medical expenses, excluding diagnostic X-rays. Under the present system, damages for pain and suffering often run from 2 to 4 times the medical expenses and wage loss. Limiting pain and suffering benefits for nonserious injuries will reduce the tendency to overcompensate small claims to avoid litigation expenses, and this in turn, will reduce the cost of auto insurance. However, by relating damages for pain and suffering to medical expenses, the bills encourage over-utilization of medical services, especially since compensation for the medical expenses themselves is assured without regard to fault. The suggested amendments will entirely eliminate damages for pain and suffering for nonserious injuries; this will further reduce the cost of auto insurance and will remove the incentives for over-utilization of medical services.

House Bill 4737 eliminates the recovery of wage loss in excess of the net wages after income taxes. Tort recoveries are not taxable income whereas wages are. This eliminates one area of overcompensation under the present system, and by doing so, will reduce the cost of auto insurance.

The bills eliminate the duplication and overlap in most cases between auto medical payments insurance and auto liability insurance by requiring a deduction from tort recoveries for the medical and wage loss benefits received by the injured person from his own auto insurance. However, the bills tend to increase the duplication and overlap between auto insurance and other insurance programs, sick leave programs and social security by depriving the insured of his present options to tailor his auto medical payments coverages and his personal accident insurance to coordinate them with other benefit programs which the insured may have through his employer or his union and through social security and Medicare. The suggested amendments eliminate the duplication and overlap between auto insurance and social security and restore the options to the consumer to coordinate his auto insurance with other insurance he may have. The elimination of duplication reduces the cost of insurance, the incentives to over-utilize medical services and the incentives to malingering. The options to coordinate benefits between auto insurance and other insurance permit the consumer to control his costs of insurance.

The bills require full coverage of small claims. Small claims often involve a disproportionate amount of administrative expense. The suggested amendments permit the use of deductibles within reasonable limits.

The bills will reduce the amount of litigation over auto accident cases by limiting damages for pain and suffering by reducing tort recoveries by the amount of auto no-fault benefits received by the injured, by requiring a subtraction for income taxes from lost wages, by limiting contingent fees to 25%, by requiring arbitration between insurers, and by requiring arbitration in court cases that haven't reached trial in two years. Virtually no auto accident case in Wayne County reaches trial in two years. The suggested amendments would further reduce litigation by entirely eliminating damages for pain and suffering in nonserious cases and by increasing the amount of auto no-fault benefits which would be deducted from tort recoveries.

In House Bill 4735, the limitation on damages recoverable for pain and suffering will apply to all motor vehicles and will reduce premium costs for all vehicles. Nonprivate passenger vehicles may obtain the exemption by electing the no-fault coverage; but the no-fault coverage won't cost anything for a public or commercial vehicle because the no-fault coverage only applies to the named insured, members of his family residing in the same household, and guest passengers. Public and commercial vehicles have no guest passengers,

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and they would have a named insured who would never suffer bodily injury or have any relatives. The occupants of public and commercial vehicles would usually receive no-fault benefits; but unless the vehicle owner was at fault, the no-fault benefits would be paid under policies issued on private passenger vehicles. Consequently, House Bills 4734 and 4735 together will reduce costs relatively more for public and commercial vehicles than for private passenger vehicles. The suggested amendments would apply the no-fault coverage to all vehicles and all passengers and will reduce costs for private passenger vehicles and will distribute costs between private passenger and other vehicles more equitable and more nearly the same as under the present system.

The bills do not require motorists to buy insurance. They merely require any auto liability insurance that is purchased to include specified minimum benefits. While this improves the compensation of those who buy insurance, it creates no additional incentives to buy insurance. At present about 10% to 12% of the motoring public is uninsured. Uninsured motorists not only increase the cost of insurance for insured motorists, but also are likely to become a burden on their families or on society if seriously injured. The suggested amendments would create additional incentives to buy insurance and would reduce the cost of insurance for insured motorists by reducing the amount of any tort recovery by an uninsured motorist by the amount of no-fault benefits he would have received if he had purchased insurance.

The bills preserve the deterrent effects of the fault system in virtually every potential accident because they would retain liability for damage to automobiles and other property. They would eliminate the question of fault only for bodily injuries but would retain the deterrent to carelessness based on a person's natural regard for his own safety and life. It would also retain the deterrent effect of legal liability for property damage caused to another. Most accidents involve only property damage and would, therefore, be unaffected by the proposed bills.

6. Does the Department suggest amendments? If so, what and why?

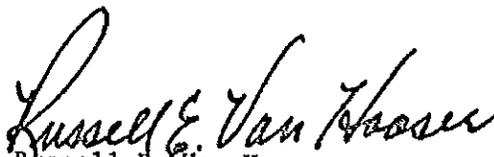
The Department suggests the substitution of the attached bill for House Bills 4734, 4735 and Sec. 2946 of House Bill 4737. The attached bill shows additional material in capital letters and deletions by a line drawn through language that appears in the bills as introduced. The reasons for these suggested amendments are given in item 5 above.

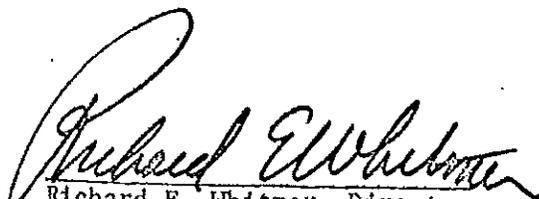
June 4, 1971

7. Any other background information, including references to the bill's origin, prior introductions and date of same, and the particular situation it is designed to remedy, should be included. For any bill having close similarity to a bill introduced at the 1969-70 legislative session, please indicate the bill number(s).

These bills are similar in purpose to Senate Bills 4, 6, 520, 695, and 782, and House Bills 4824 and 4847.

See also the attached discussion of auto insurance reform legislation.

  
Russell E. Van Hooser  
Commissioner of Insurance

  
Richard E. Whitmer, Director  
Department of Commerce

Attach.

SECOND  
SUBSTITUTE FOR

HOUSE BILL NO. 4734

A bill to amend the title of Act No. 218 of the Public Acts  
of 1956, entitled  
"The insurance code of 1956,"  
as amended, being sections 500.100 to 500.8302 of the Compiled  
Laws of 1948; and to add section 2404 and chapter 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Section 1. The title of Act No. 218 of the Public Acts  
2 of 1956, as amended, being sections 500.100 to 500.8302 of  
3 the Compiled Laws of 1948, is amended and section 2404 and  
4 chapter 31 are added to read as follows:

## 1 TITLE

2 An act to revise, consolidate and classify the laws  
3 relating to the insurance and surety business; to regulate  
4 the incorporation or formation of domestic insurance and  
5 surety companies and associations and the admission of  
6 foreign and alien companies and associations; to provide  
7 their rights, powers and immunities and to prescribe the  
8 conditions on which companies and associations organized,  
9 existing, or authorized under this act may exercise their  
10 powers; to provide the rights, powers and immunities and to  
11 prescribe the conditions on which other persons, firms,  
12 corporations and associations engaged in an insurance or  
13 surety business may exercise their powers; to provide for  
14 the imposition of a privilege fee on domestic insurance  
15 companies and associations, and the state accident fund;

1 to provide for the imposition of a tax on the business of  
2 foreign and alien companies and associations; to provide  
3 for the imposition of a tax on the business of surplus line  
4 agents; to provide for the departmental supervision and  
5 regulation of the insurance and surety business within this  
6 state; TO REQUIRE SECURITY FOR CERTAIN INSURANCE COVERAGES IN  
7 CONNECTION WITH THE REGISTRATION AND OPERATION OF MOTOR  
8 VEHICLES; AND to provide penalties for the violation of  
9 this act.

10 SEC. 2404. A RATING PLAN OR INDIVIDUAL RATE ACTION  
11 RELATED TO FIRST-PARTY BODILY INJURY AUTOMOBILE INSURANCE  
12 SHALL NOT BE BASED ON EXTENT OR FREQUENCY OF LOSSES INCURRED  
13 BY AN INSURED INDIVIDUAL OR FAMILY.

14 CHAPTER 31

15 SEC. 3101. THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED

1 AS THE "UNIFORM MOTOR VEHICLE ACCIDENT REPARATIONS ACT".

2 SEC. 3102. THE WORDS AND PHRASES DEFINED IN THIS CHAPTER

3 SHALL HAVE THE MEANINGS RESPECTIVELY ASCRIBED TO THEM FOR

4 THE PURPOSES OF THIS CHAPTER ONLY.

5 SEC. 3103. (1) "ADDED REPARATION BENEFITS" MEANS THE

6 BENEFITS PROVIDED BY ADDED REPARATION INSURANCE PURSUANT

7 TO SECTION 3129.

8 (2) "ALLOWABLE EXPENSE" MEANS REASONABLE CHARGES

9 INCURRED FOR REASONABLY NEEDED PRODUCTS, SERVICES AND

10 ACCOMMODATIONS, INCLUDING THOSE FOR REHABILITATION, RE-

11 HABILITATIVE OCCUPATIONAL TRAINING AND REMEDIAL TREATMENT

12 AND CARE.

13 (3) "BASIC REPARATION BENEFITS" MEANS THE BENEFITS

14 PROVIDED BY BASIC REPARATION INSURANCE PURSUANT TO SECTION

15 3111.

1           (4) "BASIC REPARATION INSURED" MEANS A PERSON NAMED  
2 AS AN INSURED UNDER THE POLICY AND A PERSON WHO RESIDES IN  
3 THE SAME HOUSEHOLD OR IS A MINOR IN THE CUSTODY OF OR A  
4 RELATIVE OF THE PERSON NAMED AS INSURED UNDER THE POLICY.  
5 FOR PURPOSES OF THIS SUBSECTION, A PERSON RESIDES IN THE  
6 SAME HOUSEHOLD IF HE USUALLY MAKES HIS HOME IN THE SAME  
7 FAMILY UNIT ALTHOUGH HE TEMPORARILY LIVES ELSEWHERE.

8           SEC. 3104. (1). "HIGHWAY" MEANS THE ENTIRE WIDTH  
9 BETWEEN THE BOUNDARY LINES OF EVERY WAY WHICH IS PUBLICLY  
10 MAINTAINED AND ANY PART THEREOF IS OPEN TO THE USE OF THE  
11 PUBLIC FOR PURPOSES OF VEHICULAR TRAVEL.

12           (2) "INJURY" MEANS BODILY HARM, SICKNESS OR DISEASE,  
13 INCLUDING DEATH RESULTING THEREFROM.

14           (3) "LOSS" MEANS ACCRUED ECONOMIC DETRIMENT CONSISTING  
15 ONLY OF ALLOWABLE EXPENSE, WORK LOSS, REPLACEMENT SERVICES

1 LOSS,

2 NONECONOMIC

3 DETRIMENT IS NOT LOSS. ECONOMIC DETRIMENT, SUCH AS LOSS  
4 OF INCOME, IS LOSS ALTHOUGH ARISING FROM THE INTERFERENCE  
5 WITH WORK CAUSED BY PAIN AND SUFFERING OR PHYSICAL IMPAIR-  
6 MENT.

7 (4) "MAINTENANCE OR USE OF A MOTOR VEHICLE" MEANS  
8 MAINTENANCE OR USE OF A MOTOR VEHICLE AS A VEHICLE, IN-  
9 CLUDING, INCIDENT TO ITS MAINTENANCE OR USE AS A  
10 VEHICLE, OCCUPYING, ENTERING INTO AND ALIGHTING FROM AND  
11 LOADING AND UNLOADING IT. IT INCLUDES CONDUCT WITHIN THE  
12 COURSE OF A BUSINESS OF REPAIRING, SERVICING OR OTHERWISE  
13 MAINTAINING A MOTOR VEHICLE ONLY IF THE CONDUCT OCCURS  
14 OFF THE BUSINESS PREMISES.

15 (5) "MOTOR VEHICLE" MEANS A VEHICLE WHICH HAS 2 OR

1 MORE WHEELS AND IS REQUIRED TO BE REGISTERED UNDER ACT  
2 NO. 300 OF THE PUBLIC ACTS OF 1949, AS AMENDED, BEING SECTIONS  
3 257.1 TO 257.923 OF THE COMPILED LAWS OF 1948, OR IS A  
4 VEHICLE, INCLUDING A TRAILER, WHICH HAS 2 OR MORE WHEELS  
5 DESIGNED FOR OPERATION UPON A HIGHWAY BY OTHER THAN MUSCULAR  
6 POWER, EXCEPT A VEHICLE USED EXCLUSIVELY UPON STATIONARY  
7 RAILS OR TRACKS.

8 SEC. 3105. (1) "NONECONOMIC DETRIMENT" MEANS PAIN,  
9 SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT AND OTHER  
10 NONPECUNIARY DAMAGE RECOVERABLE UNDER THE TORT LAW OF THIS  
11 STATE.

12 (2) "OWNER" MEANS A PERSON OTHER THAN A LIENHOLDER  
13 OR SECURED PARTY HAVING THE PROPERTY INTEREST IN OR TITLE TO  
14 A MOTOR VEHICLE INCLUDING A PERSON ENTITLED TO THE USE AND  
15 POSSESSION OF A MOTOR VEHICLE SUBJECT TO A SECURITY

1 INTEREST HELD BY ANOTHER PERSON BUT EXCLUDING A LESSEE

2 UNDER A LEASE NOT INTENDED AS SECURITY.

3 (3) "REPLACEMENT SERVICES LOSS" MEANS EXPENSES

4 REASONABLY INCURRED IN OBTAINING ORDINARY AND NECESSARY

5 SERVICES IN LIEU OF THOSE THAT THE INJURED PERSON WOULD

6 HAVE PERFORMED, NOT FOR INCOME BUT FOR THE BENEFIT OF

7 HIMSELF OR HIS FAMILY, HAD HE NOT BEEN INJURED.

8 SEC. 3106. (1) "TRUCK" MEANS A MOTOR VEHICLE DESIGNED

9 OR USED PRIMARILY FOR THE TRANSPORTATION OF PROPERTY ON

10 A HIGHWAY, A TRAILER SO DESIGNED OR USED AND A MOTOR VEHICLE

11 DESIGNED OR USED PRIMARILY FOR THE DRAWING OF THE TRAILER,

12 AND WHICH SEPARATELY OR IN OPERATING COMBINATION HAS A GROSS

13 UNLADEN WEIGHT IN EXCESS OF 5,000 POUNDS.

14 (2) "WORK LOSS" MEANS THE LOSS OF EARNING CAPACITY

15 SUSTAINED BY THE INJURED PERSON AS A RESULT OF THE INJURY.

1 AND EXPENSES REASONABLY INCURRED BY THE INJURED PERSON IN  
2 OBTAINING SERVICES IN LIEU OF THOSE THAT HE WOULD HAVE  
3 PERFORMED FOR INCOME.

4 SEC. 3111. THE BASIC REPARATION INSURER OR SELF-  
5 INSURER IS LIABLE TO PAY BENEFITS NOT EXCEEDING \$2,500.00  
6 FOR ANY ONE INJURY UNDER THE CONDITIONS STATED IN THIS  
7 CHAPTER, REIMBURSING PERSONS FOR LOSS SUFFERED THROUGH  
8 INJURY ARISING OUT OF THE OWNERSHIP, MAINTENANCE OR USE OF  
9 A MOTOR VEHICLE.

10 SEC. 3112. BASIS REPARATION INSURERS AND SELF-  
11 INSURERS SHALL PROVIDE COVERAGE, AS REQUIRED BY THIS  
12 CHAPTER:

13 (A) FOR INJURY ARISING FROM ACCIDENTS WHICH OCCUR  
14 IN THIS STATE.

15 (B) FOR INJURY, WITHOUT REGARD TO WHERE THE ACCIDENT

1 OCCURS TO A BASIC REPARATION INSURED, AND TO AN OCCUPANT,  
2 INCLUDING THE DRIVER, OF THE INSURED MOTOR VEHICLE.

3 SEC. 3114. (1) IN CASE OF INJURY TO AN OCCUPANT,  
4 INCLUDING THE DRIVER, OF A MOTOR VEHICLE WHILE IT IS  
5 BEING USED IN THE BUSINESS OF TRANSPORTING PERSONS OR  
6 PROPERTY, THE BASIC REPARATION SECURITY APPLICABLE IS  
7 THE SECURITY COVERING THE VEHICLE.

8 (2) IN CASE OF INJURY TO AN EMPLOYEE DRIVING OR  
9 OCCUPYING A MOTOR VEHICLE FURNISHED BY HIS EMPLOYER, THE  
10 BASIC REPARATION SECURITY APPLICABLE IS THE SECURITY  
11 COVERING THE VEHICLE.

12 (3) IN ALL OTHER CASES, THE FOLLOWING IN ORDER  
13 OF PRIORITY APPLY:

14 (A) THE BASIC REPARATION SECURITY APPLICABLE TO  
15 INJURY TO A BASIC REPARATION INSURED IS SECURITY UNDER

1 WHICH THE INJURED PERSON IS A BASIC REPARATION INSURED.

2 (B) THE BASIC REPARATION SECURITY APPLICABLE TO AN  
3 INJURY TO AN OCCUPANT, INCLUDING THE DRIVER, OF AN  
4 INVOLVED VEHICLE WHO IS NOT A BASIC REPARATION INSURED IS  
5 THE SECURITY COVERING THAT VEHICLE, OR IF NONE, THE POLICY  
6 UNDER WHICH THE DRIVER IS A BASIC REPARATION INSURED.

7 (C) A CLAIM OF A PERSON NOT OTHERWISE COVERED WHO  
8 IS NOT AN OCCUPANT OF AN INVOLVED MOTOR VEHICLE MAY BE  
9 MADE AGAINST THE INSURER OF AN INVOLVED VEHICLE, OR IF AN  
10 INVOLVED VEHICLE IS NOT COVERED BY SECURITY AGAINST THE  
11 BASIC REPARATION INSURER OR SELF-INSURER OF THE DRIVER OF  
12 THAT VEHICLE. IF AN INJURY IS CAUSED BY COLLISION, AN  
13 UNOCCUPIED PARKED VEHICLE MAY NOT BE FOUND TO BE AN  
14 INVOLVED VEHICLE UNLESS IT WAS PARKED SO AS TO CAUSE  
15 UNREASONABLE RISK OF INJURY. THE INSURER AGAINST WHICH A

1 CLAIM IS ASSERTED UNDER THIS SUBSECTION SHALL PROCESS AND  
2 PAY THE CLAIM AS IF WHOLLY RESPONSIBLE, BUT HEREAFTER  
3 ENTITLED TO RECOVER PRO RATA CONTRIBUTION FROM ANY OTHER  
4 INSURER AGAINST WHOM A CLAIM MAY BE MADE UNDER THIS SUB-  
5 SECTION FOR THE BASIC REPARATION BENEFITS PAID AND THE  
6 COSTS OF PROCESSING THE CLAIM.

7 SEC. 3117. A REPARATIONS INSURER OR SELF-INSURER  
8 DOES NOT HAVE, AND MAY NOT DIRECTLY OR INDIRECTLY CONTRACT  
9 FOR, ANY RIGHT OF SUBROGATION.

10 SEC. 3118. (1) THE OWNER OF A MOTOR VEHICLE  
11 REGISTERED OR OPERATED IN THIS STATE SHALL PROVIDE AND  
12 CONTINUOUSLY MAINTAIN SECURITY PURSUANT TO SUBSECTION (2)  
13 OR SUBSECTION (3) FOR PAYMENT OF TORT JUDGMENTS AND BASIC  
14 REPARATION BENEFITS IN ACCORDANCE WITH THIS CHAPTER ARISING  
15 FROM OWNERSHIP, MAINTENANCE OR USE OF THE VEHICLE.

1 "INSURANCE COVERING THE VEHICLE" IS THE INSURANCE OR  
2 OTHER SECURITY SO MAINTAINED AND THE VEHICLE FOR WHICH THE  
3 SECURITY IS SO MAINTAINED IS THE "INSURED VEHICLE".

4 (2) SECURITY FOR THE PAYMENT OF TORT JUDGMENTS AND  
5 BASIC REPARATION BENEFITS MAY BE PROVIDED BY A POLICY OF  
6 INSURANCE COMPLYING WITH THIS CHAPTER ISSUED BY OR ON  
7 BEHALF OF AN INSURER AUTHORIZED TO TRANSACT BUSINESS IN  
8 THIS STATE OR, IF THE VEHICLE IS REGISTERED IN ANOTHER  
9 STATE, BY A POLICY OF INSURANCE ISSUED BY OR ON BEHALF OF  
10 AN INSURER AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE  
11 OR THE STATE IN WHICH THE VEHICLE IS REGISTERED.

12 (3) SUBJECT TO APPROVAL OF THE SECRETARY OF STATE,  
13 SECURITY FOR THE PAYMENT OF TORT JUDGMENTS AND BASIC  
14 REPARATION BENEFITS MAY BE PROVIDED BY SELF-INSURANCE BY  
15 FILING WITH THE SECRETARY OF STATE IN SATISFACTORY FORM;

1           (A) A CONTINUING UNDERTAKING BY THE OWNER OR OTHER  
2 APPROPRIATE PERSON TO BE LIABLE FOR THE PAYMENT OF TORT  
3 JUDGMENTS AND BASIC REPARATION BENEFITS AND TO PERFORM ALL  
4 OTHER OBLIGATIONS IMPOSED BY THIS CHAPTER ON INSURERS.

5           (B) EVIDENCE THAT APPROPRIATE PROVISION EXISTS FOR  
6 THE PROMPT AND EFFICIENT ADMINISTRATION OF ALL CLAIMS,  
7 BENEFITS AND OBLIGATIONS PROVIDED BY THIS CHAPTER.

8           (C) EVIDENCE THAT RELIABLE FINANCIAL ARRANGEMENTS,  
9 DEPOSITS OR COMMITMENTS EXIST PROVIDING ASSURANCE FOR  
10 PAYMENT OF TORT JUDGMENTS AND BASIC REPARATION BENEFITS  
11 AND ALL OTHER OBLIGATIONS IMPOSED BY THIS CHAPTER SUB-  
12 STANTIALLY EQUIVALENT TO THOSE AFFORDED BY A POLICY OF  
13 INSURANCE THAT WOULD COMPLY WITH THIS CHAPTER. A PERSON  
14 WHO PROVIDES SECURITY UNDER THIS SUBSECTION IS A "SELF-  
15 INSURER".

1 (4) A MOTOR VEHICLE MAY NOT BE REGISTERED IN THIS  
2 STATE UNLESS EVIDENCE SATISFACTORY TO THE SECRETARY OF  
3 STATE IS FURNISHED THAT SECURITY IS PROVIDED AS REQUIRED  
4 BY THIS SECTION.

5 SEC. 3121. THE SECRETARY OF STATE MAY PRESCRIBE  
6 FORMS AND PROCEDURES NECESSARY TO IMPLEMENT AND PROVIDE  
7 EFFECTIVE ADMINISTRATION OF THE PROVISIONS ON EVIDENCE OF  
8 SECURITY.

9 SEC. 3123. (1) AN INSURANCE POLICY WHICH PURPORTS  
10 TO PROVIDE COVERAGE FOR BASIC REPARATION BENEFITS OR IS  
11 SOLD WITH THE REPRESENTATION THAT IT FULFILLS THE REQUIRE-  
12 MENT OF SECURITY PURSUANT TO SECTION 3118 IS DEEMED TO  
13 INCLUDE ALL COVERAGES REQUIRED BY THIS CHAPTER.

14 (2) NOTWITHSTANDING ANY CONTRARY PROVISION IN IT,  
15 EVERY POLICY OR CONTRACT OR LIABILITY INSURANCE, WHEREVER

1 ISSUED, COVERING THE OWNERSHIP, MAINTENANCE OR USE OF A  
2 MOTOR VEHICLE INCLUDES BASIC REPARATION BENEFITS COVERAGES  
3 IN ACCORDANCE WITH THIS CHAPTER WHILE THE VEHICLE IS  
4 MAINTAINED OR USED IN THIS STATE.

5 (3) AN INSURER AUTHORIZED TO TRANSACT OR TRANSACTING  
6 BUSINESS IN THIS STATE SHALL NOT EXCLUDE THE BASIC REPARATION  
7 BENEFITS COVERAGES REQUIRED BY THIS CHAPTER IN ANY POLICY  
8 OR CONTRACT OR LIABILITY INSURANCE, WHEREVER ISSUED,  
9 COVERING THE OWNERSHIP, MAINTENANCE OR USE OF A MOTOR VEHICLE  
10 WHILE THE VEHICLE IS MAINTAINED OR USED IN THIS STATE.

11 SEC. 3124. THE REQUIREMENT OF SECURITY FOR PAYMENT OF  
12 TORT JUDGMENTS IS MET BY LIMITS OF LIABILITY COMPLYING  
13 WITH SECTION 3009.

14 SEC. 3128. (1) AT APPROPRIATELY REDUCED PREMIUM  
15 RATES, BASIC REPARATION INSURERS MAY OFFER THE FOLLOWING

1 DEDUCTIBLE AND EXCLUSION, APPLYING ONLY AGAINST BENEFITS  
2 OTHERWISE PAYABLE TO BASIC REPARATION INSUREDS UNDER THE  
3 POLICY:

4 (A) A DEDUCTIBLE OF A SPECIFIED DOLLAR AMOUNT WHICH  
5 DOES NOT EXCEED \$300.00 PER ACCIDENT OR AN EXCLUSION FROM  
6 BASIC REPARATION BENEFITS OF 10% OF BENEFITS OTHERWISE  
7 PAYABLE FOR WORK LOSS.

8 (B) OTHER REASONABLE DEDUCTIBLES AND EXCLUSIONS TO  
9 BASIC REPARATION BENEFITS SUBJECT TO THE PRIOR APPROVAL OF  
10 THE COMMISSIONER, WHICH DEDUCTIBLE AND EXCLUSIONS SHALL BE  
11 REASONABLY RELATED TO OTHER HEALTH AND ACCIDENT INSURANCE  
12 COVERAGE ON THE INSURED.

13 SEC. 3129. BASIC REPARATION INSURERS MAY OFFER  
14 EXTENDED REPARATION COVERAGES PROVIDING ADDITIONAL BENEFITS  
15 AS COMPENSATION FOR INJURY OR HARM ARISING FROM THE REPAIRSHIP,

1 MAINTENANCE OR USE OF A MOTOR VEHICLE. THE COMMISSIONER  
2 MAY PROMULGATE RULES REQUIRING THAT SPECIFIC ADDED  
3 REPARATION COVERAGES BE OFFERED BY INSURERS WRITING BASIC  
4 REPARATION INSURANCE.

5 SEC. 3131. (1) A PERSON ENTITLED TO BASIC REPARATION  
6 BENEFITS BECAUSE OF INJURY COVERED BY THIS CHAPTER MAY  
7 OBTAIN BASIC REPARATION BENEFITS THROUGH THE ASSIGNED  
8 CLAIMS PLAN PURSUANT TO SECTIONS 3133, 3134, AND 3135 IF:

9 (A) BASIC REPARATION INSURANCE OR SELF-INSURANCE IS  
10 NOT APPLICABLE TO THE INJURY.

11 (B) BASIC REPARATION INSURANCE OR SELF-INSURANCE IS  
12 NOT APPLICABLE TO THE INJURY BECAUSE THE INJURED PERSON  
13 CONVERTED A MOTOR VEHICLE AND THE INJURED PERSON IS UNDER  
14 15 YEARS OF AGE.

15 (C) BASIC REPARATION INSURANCE OR SELF-INSURANCE

1 APPLICABLE TO THE INJURY CANNOT BE IDENTIFIED.

2 (D) BASIC REPARATION INSURANCE OR SELF-INSURANCE  
3 APPLICABLE TO THE INJURY, BECAUSE OF FINANCIAL INABILITY  
4 OF AN INSURER OR SELF-INSURER TO FULFILL ITS OBLIGATION,  
5 IS INADEQUATE TO PROVIDE THE CONTRACTED-FOR BENEFITS.

6 (E) A CLAIM FOR BASIC REPARATION BENEFITS IS RE-  
7 JECTED BY AN INSURER OR SELF-INSURER ON THE GROUND THAT  
8 ANOTHER INSURER, SELF-INSURER OR THE ASSIGNED CLAIMS PLAN  
9 AFFORDS THE APPLICABLE COVERAGE.

10 (2) IF A CLAIM QUALIFIES FOR ASSIGNMENT UNDER  
11 SUBDIVISIONS (C), (D) OR (E) OF SUBSECTION (1), THE  
12 ASSIGNED CLAIMS BUREAU OR ANY INSURER OR SELF-INSURER TO  
13 WHOM THE CLAIM IS ASSIGNED, SHALL BE SUBROGATED TO ALL OF  
14 THE RIGHTS OF THE CLAIMANT AGAINST ANY INSURER OR SELF-  
15 INSURER, OR SUCCESSOR IN INTEREST THERETO, LEGALLY OBLI-

1 GATED TO PROVIDE REPARATIONS BENEFITS TO THE CLAIMANT, FOR  
2 REPARATION BENEFITS PROVIDED BY THE ASSIGNMENT.

3 SEC. 3133. THE SECRETARY OF STATE SHALL ORGANIZE AND  
4 MAINTAIN AN ASSIGNED CLAIMS BUREAU AND PLAN. A SELF-INSURER  
5 AND INSURER WRITING BASIC REPARATION INSURANCE IN THIS STATE  
6 SHALL PARTICIPATE IN THE ASSIGNED CLAIMS BUREAU AND THE  
7 ASSIGNED CLAIMS PLAN. COSTS INCURRED SHALL BE ALLOCATED  
8 FAIRLY AMONG INSURERS AND SELF-INSURERS.

9 SEC. 3134. A PERSON AUTHORIZED TO OBTAIN BASIC  
10 REPARATION BENEFITS THROUGH THE ASSIGNED CLAIMS PLAN SHALL  
11 NOTIFY THE BUREAU OF HIS CLAIM WITHIN THE TIME THAT WOULD  
12 HAVE BEEN ALLOWED FOR FILING AN ACTION FOR BASIC REPARATION  
13 BENEFITS HAD THERE BEEN IN EFFECT IDENTIFIABLE COVERAG...  
14 APPLICABLE TO THE CLAIM. ... TIMELY ACTION FOR BASIC  
15 REPARATION BENEFITS IS COMMENCED AGAINST AN INSURER OR

1 SELF-INSURER WHICH BECAUSE OF FINANCIAL INABILITY IS UNABLE  
2 TO FULFILL ITS OBLIGATIONS, A CLAIM THROUGH THE ASSIGNED  
3 CLAIMS PLAN MAY BE MADE WITHIN A REASONABLE TIME AFTER  
4 DISCOVERY OF THE FINANCIAL INABILITY. AN ACTION BY THE  
5 CLAIMANT ON AN ASSIGNED CLAIM MAY NOT BE COMMENCED LATER  
6 THAN 60 DAYS AFTER RECEIPT OF NOTICE OF THE ASSIGNMENT OR  
7 THE LAST DATE ON WHICH THE ACTION COULD OTHERWISE HAVE BEEN  
8 COMMENCED, WHICHEVER IS LATER.

9 SEC. 3135. THE ASSIGNED CLAIMS BUREAU SHALL PROMPTLY  
10 ASSIGN THE CLAIM AND NOTIFY THE CLAIMANT OF THE IDENTITY  
11 AND ADDRESS OF THE PERSON TO WHOM THE CLAIM IS ASSIGNED.  
12 A CLAIM SHALL BE ASSIGNED IN A WAY TO MINIMIZE INCONVENIENCE  
13 TO CLAIMANTS. THE PERSON TO WHOM A CLAIM IS ASSIGNED  
14 THEREAFTER SHALL HAVE RIGHTS AND OBLIGATIONS AS IF IT HAD  
15 ISSUED A POLICY OF BASIC REPARATION INSURANCE COMPLYING

1 WITH THIS CHAPTER APPLICABLE TO THE INJURY, OR IN CASE OF  
2 FINANCIAL INABILITY OF AN INSURER OR SELF-INSURER TO  
3 PERFORM ITS OBLIGATIONS, AS IF IT HAD ISSUED THE POLICY  
4 OR HAD UNDERTAKEN THE SELF-INSURANCE.

5 SEC. 3136. EXCEPT AS PROVIDED IN SECTION 3131, A  
6 PERSON WHO CONVERTS A MOTOR VEHICLE IS DISQUALIFIED FROM  
7 BASIC OR ADDED REPARATION BENEFITS, INCLUDING BENEFITS  
8 OTHERWISE DUE HIM AS A SURVIVOR, FROM ANY SOURCE OTHER  
9 THAN AN INSURANCE POLICY UNDER WHICH THE CONVERTER IS A  
10 BASIC OR ADDED REPARATION INSURED, FOR INJURIES ARISING  
11 FROM THE MAINTENANCE OR USE OF THE CONVERTED VEHICLE.  
12 FOR THE PURPOSE OF THIS SECTION, A PERSON IS NOT A CON-  
13 VERTER IF HE USES THE MOTOR VEHICLE WITH A GOOD FAITH BELIEF  
14 THAT HE IS LEGALLY ENTITLED TO USE IT.

15 SEC. 3137. A PERSON INTENTIONALLY CAUSING OR ATTEMPTING

1 TO CAUSE INJURY TO HIMSELF OR ANOTHER IS DISQUALIFIED FROM  
2 BASIC OR ADDED REPARATION BENEFITS FOR INJURY ARISING FROM  
3 HIS ACTS, INCLUDING BENEFITS OTHERWISE DUE HIM AS A SUR-  
4 VIVOR. A PERSON INTENTIONALLY CAUSES OR ATTEMPTS TO CAUSE  
5 INJURY IF HE ACTS OR FAILS TO ACT FOR THE PURPOSE OF CAUSING  
6 INJURY OR WITH KNOWLEDGE THAT INJURY IS SUBSTANTIALLY  
7 CERTAIN TO FOLLOW. A PERSON DOES NOT INTENTIONALLY CAUSE  
8 OR ATTEMPT TO CAUSE INJURY MERELY BECAUSE HIS ACT OR FAILURE  
9 TO ACT IS INTENTIONAL OR DONE WITH HIS REALIZATION THAT IT  
10 CREATES A GRAVE RISK OF CAUSING INJURY. NOR DOES A PERSON  
11 INTENTIONALLY CAUSE OR ATTEMPT TO CAUSE INJURY IF THE ACT  
12 OR OMISSION CAUSING THE INJURY IS FOR THE PURPOSE OF AVERTING  
13 BODILY HARM TO HIMSELF OR ANOTHER PERSON.

14 SEC. 3138. (1) BASIC AND ADDED REPARATION BENEFITS  
15 ARE PAYABLE MONTHLY AS LOSS ACCRUES. LOSS ACCRUES NOT WHEN

1 INJURY OCCURS, BUT AS WORK LOSS, REPLACEMENT SERVICES LOSS,

2  
3 OR ALLOWABLE EXPENSE IS INCURRED. BENEFITS ARE

4 OVERDUE IF NOT PAID WITHIN 30 DAYS AFTER THE INSURER

5 RECEIVES REASONABLE PROOF OF THE FACT AND AMOUNT OF LOSS

6 REALIZED. AN INSURER MAY ACCUMULATE CLAIMS FOR PERIODS

7 NOT EXCEEDING 30 DAYS, AND BENEFITS ARE NOT OVERDUE IF

8 PAID WITHIN 15 DAYS AFTER THE PERIOD OF ACCUMULATION. IF

9 REASONABLE PROOF IS SUPPLIED AS TO ONLY PART OF A CLAIM,

10 AND THE PART TOTALS \$100.00 OR MORE, THE PART IS OVERDUE

11 IF NOT PAID WITHIN THE TIME PROVIDED BY THIS SECTION.

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(3) OVERDUE PAYMENTS BEAR SIMPLE INTEREST AT THE  
RATE OF 3% PER MONTH.

SEC. 3139. (1) IF OVERDUE BENEFITS ARE RECOVERED  
IN AN ACTION AGAINST THE INSURER OR PAID BY THE INSURER  
AFTER RECEIPT OF NOTICE OF THE ATTORNEY'S REPRESENTATION,  
IN ADDITION TO OTHER BENEFITS, THE INSURER SHALL PAY A  
REASONABLE ATTORNEY'S FEE FOR ADVISING AND REPRESENTING A  
CLAIMANT ON A CLAIM OR ACTION FOR BASIC REPARATION BENEFITS.  
NO PART OF THE FEE FOR REPRESENTING THE CLAIMANT IN

1 CONNECTICUT WITH THESE BENEFITS IS A CHARGE AGAINST BENEFITS  
2 OTHERWISE DUE THE CLAIMANT BUT PART OR ALL OF THE FEE SHALL  
3 BE CHARGED AGAINST THE BENEFITS OTHERWISE DUE THE CLAIMANT  
4 IF HIS CLAIM WAS IN ANY WAY FRAUDULENT OR SO EXCESSIVE  
5 AS TO HAVE NO REASONABLE FOUNDATION.

6 (2) IN ANY ACTION BROUGHT AGAINST THE INSURED BY  
7 THE INSURER, THE COURT MAY AWARD THE INSURED A REASONABLE  
8 ATTORNEY'S FEE FOR DEFENDING THE ACTION.

9 SEC. 3141. AN INSURER OR SELF-INSURER SHALL BE ALLOWED  
10 A REASONABLE ATTORNEY'S FEE FOR DEFENDING A CLAIM THAT IS  
11 FRAUDULENT OR SO EXCESSIVE AS TO HAVE NO REASONABLE  
12 FOUNDATION. THE COURT MAY ORDER THAT THIS FEE BE TREATED AS  
13 AN OFFSET TO BENEFITS DUE OR WHICH THEREAFTER ACCRUE, AND  
14 THE INSURER OR SELF-INSURER MAY RECOVER JUDGMENT AGAINST THE  
15 CLAIMANT FOR ANY PART OF THE FEE NOT OFFSET OR OTHERWISE PAID.

1           SEC. 3145. AN ASSIGNMENT OR AGREEMENT TO ASSIGN ANY  
2           RIGHT TO BENEFITS UNDER THIS CHAPTER FOR LOSSES ACCRUING  
3           IN THE FUTURE IS UNENFORCEABLE EXCEPT:

4           (A) AN ASSIGNMENT OF RIGHTS TO BENEFITS FOR WORK  
5           LOSS TO SECURE PAYMENT OF ALIMONY, MAINTENANCE OF CHILD  
6           SUPPORT.

7           (B) AN ASSIGNMENT OF RIGHTS TO BENEFITS FOR ALLOWABLE  
8           EXPENSE TO THE EXTENT THE BENEFITS REIMBURSE THE ASSIGNOR  
9           FOR THE COST OF PRODUCTS, SERVICES OR ACCOMMODATIONS  
10          PROVIDED OR TO BE PROVIDED BY THE ASSIGNEE.

11          SEC. 3148. (1) UPON REQUEST OF A BASIC OR ADDED  
12          REPARATION CLAIMANT OR INSURER, INFORMATION RELEVANT TO A  
13          CLAIM FOR BASIC OR ADDED REPARATION BENEFITS SHALL BE DIS-  
14          CLOSED AS FOLLOWS:

15          (A) AN EMPLOYER SHALL FURNISH A STATEMENT OF THE WORK

1 RECORD AND EARNINGS OF AN EMPLOYEE UPON WHOSE INJURY THE  
2 CLAIM IS BASED. THE STATEMENT SHALL COVER THE PERIOD  
3 SPECIFIED BY THE CLAIMANT OR INSURER MAKING THE REQUEST AND  
4 MAY INCLUDE A REASONABLE PERIOD BEFORE AND THE ENTIRE PERIOD  
5 AFTER THE INJURY.

6 (B) A PERSON UPON WHOSE INJURY A CLAIM IS BASED, SHALL  
7 DELIVER TO THE INSURER THE NAMES AND ADDRESSES OF PHYSICIANS  
8 AND MEDICAL CARE FACILITIES RENDERING DIAGNOSES OR TREATMENT  
9 IN REGARD TO THE INJURY OR TO A RELEVANT PAST INJURY, AND SHALL  
10 AUTHORIZE THE INSURER TO INSPECT AND COPY RECORDS OF  
11 PHYSICIANS, HOSPITALS, CLINICS OR OTHER MEDICAL FACILITIES  
12 RELEVANT TO THE CLAIM.

13 (C) A PHYSICIAN, HOSPITAL, CLINIC OR OTHER MEDICAL  
14 FACILITY FURNISHING EXAMINATIONS, SERVICES OR ACCOMMODATIONS  
15 TO AN INJURED PERSON IN CONNECTION WITH A CONDITION ALLEGED

1 TO BE CONNECTED WITH AN INJURY UPON WHICH A CLAIM IS BASED,  
2 UPON AUTHORIZATION OF THE INJURED PERSON SHALL FURNISH A  
3 WRITTEN REPORT OF THE HISTORY, CONDITION, DIAGNOSES,  
4 MEDICAL TESTS, TREATMENT AND DATES AND COST OF TREATMENT  
5 OF THE INJURED PERSON, AND PERMIT INSPECTION AND COPYING  
6 OF ALL RECORDS AND REPORTS AS TO THE HISTORY, CONDITION,  
7 TREATMENT AND DATES AND COST OF TREATMENT.

8 (2) ANY PERSON OTHER THAN THE CLAIMANT PROVIDING  
9 INFORMATION UNDER THIS SECTION MAY CHARGE THE PERSON  
10 REQUESTING THE INFORMATION A REASONABLE AMOUNT FOR THE  
11 COST OF PROVIDING IT.

12 (3) IN CASE OF DISPUTE AS TO THE RIGHT OF A CLAIMANT  
13 OR INSURER TO DISCOVER INFORMATION REQUIRED TO BE DISCLOSED,  
14 THE CLAIMANT OR INSURER MAY PETITION THE CIRCUIT COURT FOR  
15 AN ORDER FOR DISCOVERY INCLUDING THE RIGHT TO TAKE DEPOSITIONS

1 OR ORAL DEPOSITIONS. THE ORDER MAY BE MADE ONLY FOR GOOD  
2 CASES SHOWN AND UPON NOTICE TO ALL PERSONS HAVING AN  
3 INTEREST, AND IT SHALL SPECIFY THE TIME, PLACE, MANNER,  
4 CONDITIONS AND SCOPE OF THE DISCOVERY. IN ORDER TO PROTECT  
5 AGAINST ANNOYANCE, EMBARRASSMENT OR OPPRESSION, THE COURT  
6 MAY ENTER AN ORDER REFUSING DISCOVERY OR SPECIFYING  
7 CONDITIONS OF DISCOVERY AND ORDER PAYMENT OF COSTS AND  
8 EXPENSES OF THE PROCEEDING, INCLUDING REASONABLE ATTORNEY'S  
9 FEES.

10 SEC. 3151. AN OWNER OF A MOTOR VEHICLE FOR WHICH A  
11 REQUIREMENT OF SECURITY PURSUANT TO SECTION 3118 IS IMPOSED  
12 FOR ITS REGISTRATION OR OPERATION WITHIN THIS STATE WHO  
13 OPERATES THE VEHICLE OR PERMITS IT TO BE OPERATED IN THIS  
14 STATE WITHOUT HAVING IN FULL FORCE AND EFFECT SECURITY  
15 COMPLIING WITH THE TERMS OF THIS ACT IS GUILTY OF A MIS-

1 MISDEMEANOR AND UPON CONVICTION MAY BE FINED NOT MORE THAN

2 \$300.00 OR BE IMPRISONED FOR NOT MORE THAN 90 DAYS, OR

3 BOTH. ANY OTHER PERSON WHO OPERATES A MOTOR VEHICLE IN

4 THIS STATE KNOWING THAT TORT LIABILITY OR BASIC REPAIRATION

5 BENEFITS INSURANCE COVERAGE IS NOT IN FULL FORCE AND

6 EFFECT IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION MAY

7 BE FINED NOT MORE THAN \$300.00 OR BE IMPRISONED FOR NOT

8 MORE THAN 90 DAYS, OR BOTH.

9 Section 2. This act shall take effect April 1, 1973..

1214\* '71 - Sub. (E-2)

BILL NO. \_\_\_\_\_

\_\_\_\_\_, INTRODUCED BY \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

A bill to amend Act No. 342 of the Public Acts of 1966, entitled "Cancellation of Automobile Liability Policies", as amended, being sections 500.3204 to 500.3262 of the Compiled Laws of 1948, by amending its title, section 3204, and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Section 1. Act No. 342 of the Public Acts of 1966,  
2           as amended, being sections 500.3204 to 500.3262 of the  
3           Compiled Laws of 1948, is amended by changing its title  
4           to read as follows:

5           CHAPTER 32. ISSUANCE, CANCELLATION AND RENEWAL  
6           OF AUTOMOBILE LIABILITY POLICIES.

7           Section 2. Act No. 342 of the Public Acts of 1966,  
8           as amended, being sections 500.3204 to 500.3262 of the  
9           Compiled Laws of 1948, is amended by changing section 3204  
10          to read as follows:

11          Sec. 3204. (1) NO INSURER LICENSED TO WRITE  
12          AUTOMOBILE LIABILITY INSURANCE IN MICHIGAN SHALL:

1 REFUSE TO ISSUE A POLICY OF AUTOMOBILE LIABILITY IN-  
2 SURANCE; CANCEL A POLICY OF AUTOMOBILE LIABILITY IN-  
3 SURANCE; OR REFUSE TO RENEW A POLICY OF AUTOMOBILE  
4 LIABILITY INSURANCE; UNLESS ONE OR MORE OF THE FOLLOWING  
5 CONDITIONS EXIST:

6 (A) THE NAMED INSURED OR PRINCIPAL OPERATOR  
7 HAS HAD HIS OPERATOR'S LICENSE SUSPENDED  
8 OR REVOKED, AND THE SUSPENSION OR RE-  
9 VOCATION HAS BECOME FINAL; OR

10 (B) THE NAMED INSURED REFUSES, AFTER REASONABLE  
11 DEMAND THEREFOR, TO PAY THE PREMIUM FOR THE  
12 POLICY.

13 (2) NO CANCELLATION OR REFUSAL TO RENEW SHALL BE  
14 EFFECTIVE UNLESS WRITTEN NOTICE THEREOF IS MAILED BY  
15 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE NAMED  
16 INSURED AT THE LAST ADDRESS KNOWN TO THE INSURER EITHER  
17 THROUGH ITS RECORDS, THE RECORDS OF THE AGENT WHO WROTE  
18 THE POLICY, OR AS SUPPLIED BY THE INSURED.

19 Section 3. Sections 3208, 3212, 3220, 3224, and  
20 3262 being sections 500.3208, 500.3212, 500.3220, 500.3224,  
21 and 500.3262 of the Compiled Laws of 1948 are repealed.

# EXHIBIT "C"

## TABLE OF CONTENTS:

House Substitute for SB 782

Ex/C-1

HOUSE SUBSTITUTE FOR  
**SENATE BILL No. 782**

A bill to amend the title of Act No. 218 of the Public Acts  
of 1956, entitled

"The Insurance code of 1956,"

as amended, being sections 500.100 to 500.8302 of the Compiled  
Laws of 1948; and to add section 2404 and chapter 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title of Act No. 218 of the Public Acts  
2 of 1956, as amended, being sections 500.100 to 500.8302 of  
3 the Compiled Laws of 1948, is amended and section 2404 and  
4 chapter 31 are added to read as follows:

## TITLE

1  
2 An act to revise, consolidate and classify the laws of  
3 ~~the state of Michigan~~ relating to the insurance and surety  
4 business; to regulate the incorporation or formation of  
5 domestic insurance and surety companies and associations  
6 and the admission of foreign and alien companies and  
7 associations; to provide their rights, powers and immunities  
8 and to prescribe the conditions on which companies and  
9 associations organized, existing, or authorized under this  
10 act may exercise their powers; to provide the rights,  
11 powers and immunities and to prescribe the conditions on  
12 which other persons, firms, corporations and associations  
13 engaged in an insurance or surety business may exercise  
14 their powers; to provide for the imposition of a privilege  
15 fee on domestic insurance companies and associations, and  
16 the state accident fund; to provide for the imposition of a  
17 tax on the business of foreign and alien companies and  
18 associations; to provide for the imposition of a tax on the  
19 business of surplus line agents; to provide for the depart-  
20 mental supervision and regulation of the insurance and  
21 surety business within this state; TO LIMIT TORT LIABILITY;  
22 TO REQUIRE SECURITY FOR CERTAIN INSURANCE COVERAGES IN  
23 CONNECTION WITH THE REGISTRATION AND OPERATION OF MOTOR  
24 VEHICLES; AND to provide penalties for the violation of

1 this act, and to repeal certain acts.  
1a SEC. 2404. A MERIT RATING OR SURCHARGE PLAN OR INDIVIDUAL  
2 RATE ACTION RELATED TO FIRST-PARTY BODILY INJURY AUTOMOBILE  
2a INSURANCE SHALL NOT BE BASED ON EXTENT OR FREQUENCY OF  
3 LOSSES INCURRED BY AN INSURED INDIVIDUAL OR FAMILY.

3a CHAPTER 31

4 SEC. 3101. THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED  
4a AS THE "LODGE, MCNEELY, HEINZE UNIFORM MOTOR VEHICLE ACCIDENT  
5 REPARATIONS ACT".

5a SEC. 3102. THE WORDS AND PHRASES DEFINED IN THIS CHAPTER  
6 SHALL HAVE THE MEANINGS RESPECTIVELY ASCRIBED TO THEM FOR

7 THE PURPOSES OF THIS CHAPTER ONLY.

8 SEC. 3103. (1) "ADDED REPARATION BENEFITS" MEANS THE  
9 BENEFITS PROVIDED BY ADDED REPARATION INSURANCE PURSUANT  
10 TO SECTION 3129.

11 (2) "ALLOWABLE EXPENSE" MEANS REASONABLE CHARGES  
12 INCURRED FOR REASONABLY NEEDED PRODUCTS, SERVICES AND  
13 ACCOMMODATIONS, INCLUDING THOSE FOR REHABILITATION, RE-  
14 HABILITATIVE OCCUPATIONAL TRAINING AND REMEDIAL TREATMENT  
15 AND CARE. ALLOWABLE EXPENSE DOES NOT INCLUDE THAT PORTION  
16 OF A CHARGE FOR A ROOM IN A HOSPITAL, CLINIC, CONVALESCENT  
17 OR NURSING HOME OR ANY OTHER INSTITUTION ENGAGED IN PRO-  
18 VIDING NURSING CARE AND RELATED SERVICES, IN EXCESS OF A  
19 REASONABLE AND CUSTOMARY CHARGE FOR SEMIPRIVATE ACCOMMO-  
20 DATIONS, UNLESS INTENSIVE CARE IS MEDICALLY REQUIRED.

21 (3) "BASIC REPARATION BENEFITS" MEANS THE BENEFITS

1 PROVIDED BY BASIC REPARATION INSURANCE PURSUANT TO SECTION  
2 3111.

3 (4) "BASIC REPARATION INSURED" MEANS A PERSON NAMED  
4 AS AN INSURED UNDER THE POLICY AND A PERSON WHO RESIDES IN  
5 THE SAME HOUSEHOLD <sup>WHO</sup> OR IS A MINOR IN THE CUSTODY OF OR A  
6 RELATIVE OF THE PERSON NAMED AS INSURED UNDER THE POLICY.

7 FOR PURPOSES OF THIS SUBSECTION, A PERSON RESIDES IN THE  
8 SAME HOUSEHOLD IF HE USUALLY MAKES HIS HOME IN THE SAME  
9 FAMILY UNIT ALTHOUGH HE TEMPORARILY LIVES ELSEWHERE.

10 SEC. 3104. (1) "HIGHWAY" MEANS THE ENTIRE WIDTH  
11 BETWEEN THE BOUNDARY LINES OF EVERY WAY WHICH IS PUBLICLY  
12 MAINTAINED <sup>WHEN</sup> AND ANY PART THEREOF IS OPEN TO THE USE OF THE  
13 PUBLIC FOR PURPOSES OF VEHICULAR TRAVEL.

14 (2) "INJURY" MEANS BODILY HARM, SICKNESS OR DISEASE,  
15 INCLUDING DEATH RESULTING THEREFROM.

16 (3) "LOSS" MEANS ACCRUED ECONOMIC DETRIMENT CONSISTING  
17 ONLY OF ALLOWABLE EXPENSE, WORK LOSS, REPLACEMENT SERVICES  
18 LOSS, AND IF INJURY CAUSES DEATH, SURVIVOR'S ECONOMIC LOSS  
19 AND SURVIVOR'S REPLACEMENT SERVICES LOSS. NONECONOMIC  
20 DETRIMENT IS NOT LOSS. ECONOMIC DETRIMENT, SUCH AS LOSS  
21 OF INCOME, IS LOSS ALTHOUGH ARISING FROM THE INTERFERENCE  
22 WITH WORK CAUSED BY PAIN AND SUFFERING OR PHYSICAL IMPAIR-  
23 MENT.

24 (4) "MAINTENANCE OR USE OF A MOTOR VEHICLE" MEANS

1 MAINTENANCE OR USE OF A MOTOR VEHICLE AS A VEHICLE, IN-  
 2 CLUDING, INCIDENT TO ITS MAINTENANCE OR USE AS A  
 3 VEHICLE, OCCUPYING, ENTERING INTO AND ALIGHTING FROM AND  
 4 LOADING AND UNLOADING IT. IT INCLUDES CONDUCT WITHIN THE  
 5 COURSE OF A BUSINESS OF REPAIRING, SERVICING OR OTHERWISE  
 6 MAINTAINING A MOTOR VEHICLE ONLY IF THE CONDUCT OCCURS  
 7 OFF THE BUSINESS PREMISES.

8 (5) "MOTOR VEHICLE" MEANS A VEHICLE WHICH HAS MORE  
 9 THAN 3 WHEELS AND IS REQUIRED TO BE REGISTERED UNDER ACT  
 10 NO. 300 OF THE PUBLIC ACTS OF 1949, AS AMENDED, BEING SECTIONS  
 11 257.1 TO 257.923 OF THE COMPILED LAWS OF 1948, OR IS A  
 12 VEHICLE, INCLUDING A TRAILER, WHICH HAS MORE THAN 3 WHEELS  
 13 DESIGNED FOR OPERATION UPON A HIGHWAY BY OTHER THAN MUSCULAR  
 14 POWER, EXCEPT A VEHICLE USED EXCLUSIVELY UPON STATIONARY  
 15 RAILS OR TRACKS.

16 SEC. 3105. (1) "NET LOSS" MEANS LOSS LESS THOSE  
 17 BENEFITS OR ADVANTAGES FROM SOURCES OTHER THAN BASIC AND  
 18 ADDED REPARATION INSURANCE WHICH ARE REQUIRED TO BE SUB-  
 19 TRACTED FROM LOSS IN CALCULATING NET LOSS PURSUANT TO  
 20 SECTION 3125.

21 (2) "NONECONOMIC DETRIMENT" MEANS PAIN, SUFFERING,  
 22 INCONVENIENCE, PHYSICAL IMPAIRMENT AND OTHER NONPECUNIARY  
 23 DAMAGE RECOVERABLE UNDER THE TORT LAW OF THIS STATE.

24 (3) "OWNER" MEANS A PERSON OTHER THAN A LIENHOLDER

1 OR SECURED PARTY HAVING THE PROPERTY IN OR TITLE TO A  
2 MOTOR VEHICLE INCLUDING A PERSON ENTITLED TO THE USE AND  
3 POSSESSION OF A MOTOR VEHICLE SUBJECT TO A SECURITY  
4 INTEREST HELD BY ANOTHER PERSON BUT EXCLUDING A LESSEE  
5 UNDER A LEASE NOT INTENDED AS SECURITY.

6 (4) "REPLACEMENT SERVICES LOSS" MEANS EXPENSES  
7 REASONABLY INCURRED IN OBTAINING ORDINARY AND NECESSARY  
8 SERVICES IN LIEU OF THOSE THAT THE INJURED PERSON WOULD  
9 HAVE PERFORMED, NOT FOR INCOME BUT FOR THE BENEFIT OF  
0 HIMSELF OR HIS FAMILY, HAD HE NOT BEEN INJURED.

11 SEC. 3106. (1) "SURVIVOR" MEANS A PERSON WHO IS  
12 ENTITLED TO RECEIVE BENEFITS PURSUANT TO SECTION 2922 OF  
13 ACT NO. 236 OF THE PUBLIC ACTS OF 1961, AS AMENDED, BEING  
14 SECTION 600.2922 OF THE COMPILED LAWS OF 1948, BY REASON  
5 OF THE DEATH OF ANOTHER PERSON.

16 (2) "SURVIVOR'S ECONOMIC LOSS" MEANS AFTER DECEDENT'S  
7 DEATH LOSS OF CONTRIBUTIONS OF THINGS OF ECONOMIC VALUE,  
8 NOT INCLUDING SERVICES TO HIS SURVIVORS, THAT HIS SURVIVORS  
9 WOULD HAVE RECEIVED FROM THE DECEDENT HAD HE NOT SUFFERED  
0 THE INJURY CAUSING DEATH, LESS EXPENSES OF THE SURVIVORS  
11 AVOIDED BY REASON OF DECEDENT'S DEATH.

12 (3) "SURVIVOR'S REPLACEMENT SERVICES LOSS" MEANS  
13 EXPENSES REASONABLY INCURRED BY SURVIVORS AFTER DECEDENT'S  
14 DEATH IN OBTAINING ORDINARY AND NECESSARY SERVICES IN LIEU

1 OF THOSE THAT DECEDENT WOULD HAVE PERFORMED FOR THEIR BENEFIT  
 2 HAD HE NOT SUFFERED THE INJURY CAUSING DEATH, LESS EXPENSES  
 3 OF THE SURVIVORS AVOIDED BY REASON OF THE DECEDENT'S DEATH  
 4 AND WHICH WERE NOT SUBTRACTED IN CALCULATING SURVIVOR'S  
 5 ECONOMIC LOSS.

6 (4) "TRUCK" MEANS A MOTOR VEHICLE DESIGNED OR USED  
 7 PRIMARILY FOR THE TRANSPORTATION OF PROPERTY ON A HIGHWAY,  
 8 A TRAILER SO DESIGNED OR USED AND A MOTOR VEHICLE DESIGNED  
 9 OR USED PRIMARILY FOR THE DRAWING OF THE TRAILER, AND WHICH  
 10 SEPARATELY OR IN OPERATING COMBINATION HAS A GROSS UNLADEN  
 11 WEIGHT IN EXCESS OF 5,000 POUNDS.

12 (5) "WORK LOSS" MEANS LOSS OF INCOME FROM  
 12a IMPAIRMENT OF EARNING CAPACITY OR WORK THE  
 13 INJURED PERSON WOULD HAVE PERFORMED HAD HE NOT BEEN INJURED,  
 14 AND EXPENSES REASONABLY INCURRED BY THE INJURED PERSON IN  
 15 OBTAINING SERVICES IN LIEU OF THOSE THAT HE WOULD HAVE  
 16 PERFORMED FOR INCOME, REDUCED BY ANY INCOME FROM SUBSTITUTE  
 17 WORK ACTUALLY PERFORMED BY THE INJURED PERSON OR BY INCOME  
 18 THE INJURED PERSON WOULD HAVE EARNED IN AVAILABLE APPROPRIATE  
 18a SUBSTITUTE WORK WHICH HE WAS CAPABLE OF PERFORMING  
 19 BUT UNREASONABLY FAILED TO UNDERTAKE.

20 SEC. 3111. THE BASIC REPARATION INSURER OR SELF-  
 21 INSURER IS LIABLE TO PAY BENEFITS UNDER THE CONDITIONS  
 22 STATED IN THIS CHAPTER, REIMBURSING PERSONS FOR NET LOSS  
 23 SUFFERED THROUGH INJURY ARISING OUT OF THE OWNERSHIP,  
 24 MAINTENANCE OR USE OF A MOTOR VEHICLE.

1 SEC. 3112. BASIC REPARATION INSURERS AND SELF-  
2 INSURERS SHALL PROVIDE COVERAGE, AS REQUIRED BY THIS  
3 CHAPTER:

4 (A) FOR INJURY ARISING FROM ACCIDENTS WHICH OCCUR  
5 IN THIS STATE.

6 (B) FOR INJURY, WITHOUT REGARD TO WHERE THE ACCIDENT  
7 OCCURS TO A BASIC REPARATION INSURED, AND TO AN OCCUPANT,  
8 INCLUDING THE DRIVER, OF THE INSURED MOTOR VEHICLE.

9 SEC. 3113. (1) IN CASE OF INJURY TO AN OCCUPANT,  
10 INCLUDING THE DRIVER, OF A MOTOR VEHICLE WHILE IT IS  
11 BEING USED IN THE BUSINESS OF TRANSPORTING PERSONS OR  
12 PROPERTY, THE BASIC REPARATION SECURITY APPLICABLE IS  
13 THE SECURITY COVERING THE VEHICLE.

14 (2) IN CASE OF INJURY TO AN EMPLOYEE DRIVING OR  
15 OCCUPYING A MOTOR VEHICLE FURNISHED BY HIS EMPLOYER, THE  
16 BASIC REPARATION SECURITY APPLICABLE IS THE SECURITY  
17 COVERING THE VEHICLE.

18 (3) IN ALL OTHER CASES, THE FOLLOWING IN ORDER  
19 OF PRIORITY APPLY:

20 (A) THE BASIC REPARATION SECURITY APPLICABLE TO  
21 INJURY...TO A BASIC REPARATION INSURED IS <sup>THE</sup> SECURITY UNDER  
22 WHICH THE INJURED PERSON IS A BASIC REPARATION INSURED,

23 (B) THE BASIC REPARATION SECURITY APPLICABLE TO AN  
24 INJURY TO AN OCCUPANT, INCLUDING THE DRIVER, OF AN

AS DEFINED IN  
SDBM/DF  
SEC 3113.

1 INVOLVED VEHICLE WHO IS NOT A BASIC REPARATION INSURED IS  
2 THE SECURITY COVERING THAT VEHICLE, OR IF NONE, THE POLICY  
3 UNDER WHICH THE DRIVER IS A BASIC REPARATION INSURED.

4 (C) A CLAIM OF A PERSON NOT OTHERWISE COVERED WHO  
5 IS NOT AN OCCUPANT OF AN INVOLVED MOTOR VEHICLE MAY BE  
6 MADE AGAINST THE INSURER OF AN INVOLVED VEHICLE, OR IF AN  
7 INVOLVED VEHICLE IS NOT COVERED BY SECURITY AGAINST THE  
8 BASIC REPARATION INSURER OR SELF-INSURER OF THE DRIVER OF  
9 THAT VEHICLE. IF AN INJURY IS CAUSED BY COLLISION, AN  
10 UNOCCUPIED PARKED VEHICLE MAY NOT BE FOUND TO BE AN  
11 INVOLVED VEHICLE UNLESS IT WAS PARKED SO AS TO CAUSE  
12 UNREASONABLE RISK OF INJURY. THE INSURER AGAINST WHOM A  
13 CLAIM IS ASSERTED UNDER THIS SUBSECTION SHALL PROCESS AND  
14 PAY THE CLAIM AS IF WHOLLY RESPONSIBLE, BUT IS THEREAFTER  
15 ENTITLED TO RECOVER PRO RATA CONTRIBUTION FROM ANY OTHER  
16 INSURER AGAINST WHOM A CLAIM MAY BE MADE UNDER THIS SUB-  
17 SECTION FOR THE BASIC REPARATION BENEFITS PAID AND THE  
18 COSTS OF PROCESSING THE CLAIM.

19 SEC. 3114. (1) NOTWITHSTANDING ANY OTHER PROVISION  
20 OF LAW, TORT LIABILITY ARISING FROM THE OWNERSHIP, MAIN-  
21 TENANCE OR USE OF A MOTOR VEHICLE WITHIN THIS STATE IS  
22 ABOLISHED EXCEPT AS TO DAMAGES FOR:

23 (A) PHYSICAL DAMAGE TO PROPERTY.

1 (B) INTENTIONALLY CAUSED HARM TO PERSON OR PROPERTY.

2 (C) NONECONOMIC DETRIMENT AS RESTRICTED BY THE  
3 PROVISIONS ON LIMITED TORT LIABILITY FOR NONECONOMIC  
4 DETRIMENT PURSUANT TO SECTION 3115.

4a (D) EXCESS OF ALLOWABLE EXPENSE,  
5 EXCESS WORK LOSS, REPLACEMENT SERVICES LOSS,  
6 SURVIVOR'S ECONOMIC LOSS AND SURVIVOR'S REPLACEMENT  
7 SERVICES LOSS AS RESTRICTED BY THE PROVISIONS ON LIMITED  
8 TORT LIABILITY FOR LOSS PURSUANT TO SECTION 3116.

9 (E) INJURY ARISING FROM MAINTENANCE OF A VEHICLE  
10 WITHIN THE COURSE OF A BUSINESS OF REPAIRING, SERVICING OR  
11 OTHERWISE MAINTAINING MOTOR VEHICLES.

12 (2) FOR PURPOSES OF SUBDIVISION (B) OF SUBSECTION (1),  
13 HARM IS NOT CAUSED INTENTIONALLY MERELY BECAUSE AN ACT OR  
14 OMISSION IS INTENTIONAL OR DONE WITH THE REALIZATION THAT  
15 IT CREATES A GRAVE RISK OF CAUSING HARM.

16 SEC. 3115. A PERSON REMAINS SUBJECT TO TORT LIABILITY  
17 FOR NONECONOMIC DETRIMENT CAUSED BY HIS OWNERSHIP,  
18 MAINTENANCE OR USE OF A MOTOR VEHICLE ONLY IF THE INJURED  
19 PERSON DIES OR SUSTAINS SERIOUS IMPAIRMENT OF BODY  
20 FUNCTION OR PERMANENT SERIOUS DISFIGUREMENT.

1           SEC. 3116. A PERSON REMAINS SUBJECT  
 2 TO TORT LIABILITY FOR WORK LOSS,  
 3 REPLACEMENT SERVICES LOSS, SURVIVOR'S ECONOMIC LOSS AND  
 4 SURVIVOR'S REPLACEMENT SERVICES LOSS THEREAFTER OCCURRING  
 5 AND NOT RECOVERABLE BY REASON OF THE LIMITATIONS CONTAINED  
 6 IN SECTION 3127.

7           SEC. 3117. (1) EXCEPT AS PROVIDED IN THIS SECTION, A  
 8 REPARATIONS INSURER OR SELF-INSURER DOES NOT HAVE, AND MAY  
 9 NOT DIRECTLY OR INDIRECTLY CONTRACT FOR, ANY RIGHT OF SUB-  
 10 ROGATION TO OR RIGHT OF REIMBURSEMENT FROM THE PROCEEDS  
 11 OF ANY CAUSE OF ACTION OF A RECIPIENT OF BASIC OR ADDED  
 12 REPARATION BENEFITS RETAINED AND PROVIDED BY SECTIONS  
 13 3115 AND 3116.

14           (2) WHEN A PERSON WHO RECEIVES OR IS ENTITLED TO  
 15 RECEIVE BASIC OR ADDED REPARATION BENEFITS FOR AN INJURY  
 16 OR FOR PHYSICAL DAMAGE TO PROPERTY HAS A CAUSE OF ACTION ?  
 17 AGAINST ANY OTHER PERSON FOR BREACH OF AN OBLIGATION OR  
 18 DUTY CAUSING THE INJURY OR PHYSICAL DAMAGE, THE REPARATIONS ?  
 19 INSURER OR SELF-INSURER IS SUBROGATED TO THE RIGHTS OF THE  
 20 CLAIMANT AND IS A REAL PARTY IN INTEREST IN THE CAUSE OF  
 21 ACTION TO THE EXTENT THAT ELEMENTS OF DAMAGES COMPENSATED  
 21a FOR BY BASIC OR ADDED REPARATION INSURANCE ARE RECOVERABLE  
 22 AND THE INSURER OR SELF-INSURER HAS PAID OR BECOME OBLIGATED  
 22a TO PAY ACCRUED AND FUTURE BASIC AND ADDED REPARATION BENEFITS.  
 23 ANY AMOUNT PAID TO AN INSURER UNDER THIS SECTION SHALL BE  
 23a REDUCED BY A PROPORTIONATE SHARE OF THE REASONABLE ATTORNEY  
 24 FEES INCURRED IN ORDER TO OBTAIN THE RECOVERY.

1 THE PERSON SUFFERING THE INJURY OR PHYSICAL DAMAGE IS A  
2 REAL PARTY IN INTEREST AS TO ALL OTHER ELEMENTS OF RE-  
3 COVERABLE DAMAGES.

4 (3) IF A REPARATIONS INSURER OR SELF-INSURER AND  
5 ANY PERSON SUFFERING INJURY OR PHYSICAL DAMAGES ARE REAL  
6 PARTIES IN INTEREST AS TO A CAUSE OF ACTION, AS PROVIDED  
7 IN SUBSECTION (2), THE INSURER OR SELF-INSURER MAY NOT  
8 COMMENCE AN ACTION THEREON UNTIL 6 MONTHS AFTER THE CAUSE  
9 OF ACTION ARISES AND ANOTHER REAL PARTY IN INTEREST HAS NOT  
10 COMMENCED AN ACTION THEREON NOR JOINED AS A PARTY PLAINTIFF  
11 IN THE ACTION. THE DEFENDANT MAY CAUSE A COPY OF THE  
12 COMPLAINT AND A NOTICE TO BE SERVED, IN ANY MANNER PROVIDED  
13 FOR PERSONAL SERVICE OF PROCESS OR AS PRESCRIBED BY THE  
14 COURT, UPON ANY OTHER REAL PARTY IN INTEREST, INFORMING  
15 HIM THAT HE HAS A RIGHT TO INTERVENE AS A PARTY PLAINTIFF  
16 IN THE ACTION, THAT HE HAS 20 DAYS AFTER THE SERVICE IN  
17 WHICH TO DO SO, AND THAT IF HE FAILS TO DO SO WITHIN THAT  
18 TIME HIS CAUSE OF ACTION IS BARRED.

19 SEC. 3118. (1) THE OWNER OF A MOTOR VEHICLE  
20 REGISTERED OR OPERATED IN THIS STATE SHALL PROVIDE AND  
21 CONTINUOUSLY MAINTAIN SECURITY PURSUANT TO SUBSECTION (2)...  
22 OR SUBSECTION (3) FOR PAYMENT OF TORT JUDGMENTS AND BASIC  
23 REPARATION BENEFITS IN ACCORDANCE WITH THIS CHAPTER ARISING  
24 FROM OWNERSHIP, MAINTENANCE OR USE OF THE VEHICLE.

1 "INSURANCE COVERING THE VEHICLE" IS THE INSURANCE OR  
2 OTHER SECURITY SO MAINTAINED AND THE VEHICLE FOR WHICH THE  
3 SECURITY IS SO MAINTAINED IS THE "INSURED VEHICLE".

4 (2) SECURITY FOR THE PAYMENT OF TORT JUDGMENTS AND  
5 BASIC REPARATION BENEFITS MAY BE PROVIDED BY A POLICY OF  
6 INSURANCE COMPLYING WITH THIS CHAPTER ISSUED BY OR ON  
7 BEHALF OF AN INSURER AUTHORIZED TO TRANSACT BUSINESS IN  
8 THIS STATE OR, IF THE VEHICLE IS REGISTERED IN ANOTHER  
9 STATE, BY A POLICY OF INSURANCE ISSUED BY OR ON BEHALF OF  
10 AN INSURER AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE  
11 OR THE STATE IN WHICH THE VEHICLE IS REGISTERED.

12 (3) SUBJECT TO APPROVAL OF THE SECRETARY OF STATE,  
13 SECURITY FOR THE PAYMENT OF TORT JUDGMENTS AND BASIC  
14 REPARATION BENEFITS MAY BE PROVIDED BY SELF-INSURANCE BY  
15 FILING WITH THE SECRETARY OF STATE IN SATISFACTORY FORM:

16 (A) A CONTINUING UNDERTAKING BY THE OWNER OR OTHER  
17 APPROPRIATE PERSON TO BE LIABLE FOR THE PAYMENT OF TORT  
18 JUDGMENTS AND BASIC REPARATION BENEFITS AND TO PERFORM ALL  
19 OTHER OBLIGATIONS IMPOSED BY THIS CHAPTER ON INSURERS.

20 (B) EVIDENCE THAT APPROPRIATE PROVISION EXISTS FOR  
21 THE PROMPT AND EFFICIENT ADMINISTRATION OF ALL CLAIMS,  
22 BENEFITS AND OBLIGATIONS PROVIDED BY THIS CHAPTER.

23 (C) EVIDENCE THAT RELIABLE FINANCIAL ARRANGEMENTS,  
24 DEPOSITS OR COMMITMENTS EXIST PROVIDING ASSURANCE FOR

1 PAYMENT OF TORT JUDGMENTS AND BASIC REPARATION BENEFITS  
2 AND ALL OTHER OBLIGATIONS IMPOSED BY THIS CHAPTER SUB-  
3 STANTIALLY EQUIVALENT TO THOSE AFFORDED BY A POLICY OF  
4 INSURANCE THAT WOULD COMPLY WITH THIS CHAPTER. A PERSON  
5 WHO PROVIDES SECURITY UNDER THIS SUBSECTION IS A "SELF-  
6 INSURER".

7 (4) A MOTOR VEHICLE MAY NOT BE REGISTERED IN THIS  
8 STATE UNLESS EVIDENCE SATISFACTORY TO THE SECRETARY OF  
9 STATE IS FURNISHED THAT SECURITY IS PROVIDED AS REQUIRED  
10 BY THIS SECTION.

11 SEC. 3121. THE SECRETARY OF STATE MAY PRESCRIBE  
12 FORMS AND PROCEDURES NECESSARY TO IMPLEMENT AND PROVIDE  
13 EFFECTIVE ADMINISTRATION OF THE PROVISIONS ON EVIDENCE OF  
14 SECURITY.

15 SEC. 3123. (1) AN INSURANCE POLICY WHICH PURPORTS  
16 TO PROVIDE COVERAGE FOR BASIC REPARATION BENEFITS OR IS  
17 SOLD WITH THE REPRESENTATION THAT IT FULFILLS THE REQUIRE-  
18 MENT OF "SECURITY" PURSUANT TO SECTION 3118 IS DEEMED TO  
19 INCLUDE ALL COVERAGES REQUIRED BY THIS CHAPTER.

20 (2) NOTWITHSTANDING ANY CONTRARY PROVISION IN IT,  
21 EVERY POLICY OR CONTRACT OF LIABILITY INSURANCE, WHEREVER  
22 ISSUED, COVERING THE OWNERSHIP, MAINTENANCE OR USE OF A  
23 MOTOR VEHICLE INCLUDES BASIC REPARATION BENEFITS COVERAGES  
24 IN ACCORDANCE WITH THIS CHAPTER WHILE THE VEHICLE IS

1 MAINTAINED OR USED IN THIS STATE.

2 (3) AN INSURER AUTHORIZED TO TRANSACT OR TRANSACTING  
3 BUSINESS IN THIS STATE SHALL NOT EXCLUDE THE BASIC REPARATION  
4 BENEFITS COVERAGES REQUIRED BY THIS CHAPTER IN ANY POLICY  
5 OR CONTRACT OF LIABILITY INSURANCE, WHEREVER ISSUED,  
6 COVERING THE OWNERSHIP, MAINTENANCE OR USE OF A MOTOR VEHICLE  
7 WHILE THE VEHICLE IS MAINTAINED OR USED IN THIS STATE.

8 SEC. 3124. THE REQUIREMENT OF SECURITY FOR PAYMENT OF  
9 TORT JUDGMENTS IS MET BY LIMITS OF LIABILITY COMPLYING  
10 WITH SECTION 3009.

11 SEC. 3125. (1) IN CALCULATING NET LOSS, ALL BENEFITS  
12 PROVIDED OR REQUIRED TO BE PROVIDED BECAUSE OF THE INJURY  
13 UNDER THE LAWS OF ANY STATE OR THE FEDERAL GOVERNMENT,  
14 OTHER THAN THIS CHAPTER, ARE SUBTRACTED.

15 (2) IF A BENEFIT RECEIVED TO COMPENSATE FOR LOSS OF  
16 INCOME BECAUSE OF INJURY, WHETHER FROM BASIC REPARATION  
16a BENEFITS OR FROM ANY SOURCES OF SUBTRACTABLE BENEFITS, IS  
17 NOT TAXABLE INCOME, THE VALUE OF THE INCOME TAX ADVANTAGE  
17a IS SUBTRACTED IN CALCULATING NET LOSS. SUBTRACTION SHALL  
18 NOT EXCEED 15% OF THE LOSS OF INCOME AND IT SHALL BE IN A  
18a LESSER AMOUNT ONLY IF THE CLAIMANT FURNISHES TO THE INSURER  
19 REASONABLE PROOF OF A LOWER VALUE OF THESE INCOME TAX  
19a ADVANTAGES.

20 SEC. 3126. (1) ALLOWABLE EXPENSES SHALL NOT EXCEED  
20a \$60,000.00 FOR INJURY TO ANY ONE PERSON IN ANY ONE ACCIDENT.

21 (2) ALLOWABLE EXPENSES FOR REHABILITATION AND REHABILI-  
21a TATIVE OCCUPATIONAL TRAINING SHALL NOT EXCEED \$25,000.00 FOR  
22 ANY ONE PERSON FOR ANY ONE ACCIDENT.

22a (3) ALLOWABLE EXPENSES FOR ALL TYPES OF CHARGES IN ANY  
23 WAY RELATED TO FUNERAL AND BURIAL SHALL NOT EXCEED \$1,500.00  
23a FOR ANY ONE PERSON.

24 SEC. 3127. (1) BASIC REPARATION BENEFITS ATTRIBUTABLE

1 TO INJURY TO 1 PERSON FOR WORK LOSS AND SURVIVOR'S  
2 ECONOMIC LOSS SHALL BE  
3 LIMITED TO AND SHALL  
4 NOT EXCEED \$200.00 PER WEEK FOR A PERIOD OF 156 WEEKS,  
5 UNLESS EARNINGS OR WORK ARE SEASONAL OR IRREGULAR, IN  
6 WHICH CASE THE LIMITATION SHALL BE EQUITABLY ADJUSTED OR  
7 APPORTIONED ON AN ANNUAL BASIS. THE LIMITATION SHALL BE  
8 ADJUSTED ANNUALLY TO REFLECT CHANGES IN THE COST OF LIVING  
9 UNDER RULES PROMULGATED BY THE COMMISSIONER. A CHANGE IN  
10 THE LIMITATION SHALL APPLY ONLY TO BENEFITS ARISING OUT  
11 OF INJURIES FOR WHICH THE DATE OF INJURY IS SUBSEQUENT TO  
12 THE DATE OF CHANGE IN THE LIMITATION.

13 (2) BASIC REPARATION BENEFITS FOR REPLACEMENT  
14 SERVICES LOSS AND SURVIVOR'S REPLACEMENT SERVICES LOSS  
15 SHALL BE LIMITED TO AND SHALL NOT EXCEED  
16 \$20.00 PER DAY FOR A PERIOD OF NOT MORE THAN 1,095  
17 DAYS.

18 SEC. 3-128. (1) AT APPROPRIATELY REDUCED PREMIUM  
19 RATES, BASIC REPARATION INSURERS MAY OFFER THE FOLLOWING  
20 DEDUCTIBLES AND EXCLUSIONS, APPLYING ONLY AGAINST BENEFITS  
21 OTHERWISE PAYABLE TO BASIC REPARATION INSURED UNDER THE  
22 POLICY, AND IN CASE OF DEATH OF A BASIC REPARATION INSURED  
23 TO HIS SURVIVORS:

24 (A) A DEDUCTIBLE OF A SPECIFIED DOLLAR AMOUNT WHICH

1 DOES NOT EXCEED \$300.00 PER ACCIDENT OR AN EXCLUSION FROM  
 1a BASIC REPARATION BENEFITS OF 10% OF BENEFITS OTHERWISE  
 2 PAYABLE FOR WORK LOSS AND SURVIVOR'S ECONOMIC LOSS.  
 2a (B) OTHER REASONABLE DEDUCTIBLES AND EXCLUSIONS TO  
 3 BASIC REPARATION BENEFITS SUBJECT TO THE PRIOR APPROVAL OF  
 3a THE COMMISSIONER, WHICH DEDUCTIBLES AND EXCLUSIONS SHALL BE  
 4 REASONABLY RELATED TO OTHER HEALTH AND ACCIDENT BENEFIT  
 4a COVERAGE ON THE INSURED.

5 SEC. 3129. BASIC REPARATION INSURERS MAY OFFER ADDED  
 6 REPARATION COVERAGES PROVIDING OTHER BENEFITS AS COMPENSA-  
 7 TION FOR INJURY OR HARM ARISING FROM THE OWNERSHIP,  
 8 MAINTENANCE OR USE OF A MOTOR VEHICLE, INCLUDING LOSS  
 9 EXCLUDED BY LIMITS ON HOSPITAL CHARGES AND FUNERAL AND  
 10 BURIAL EXPENSES, LOSS EXCLUDED BY LIMITS ON WORK LOSS,  
 11 REPLACEMENT SERVICES LOSS, SURVIVOR'S ECONOMIC LOSS AND  
 12 SURVIVOR'S REPLACEMENT SERVICES LOSS, BENEFITS FOR  
 13 PHYSICAL DAMAGE TO PROPERTY, AND BENEFITS FOR NONECONOMIC  
 14 DETRIMENT. THE COMMISSIONER MAY PROMULGATE RULES REQUIRING  
 15 THAT SPECIFIC ADDED REPARATION COVERAGES BE OFFERED BY  
 16 INSURERS WRITING BASIC REPARATION INSURANCE.

17 SEC. 3131. (1) A PERSON ENTITLED TO BASIC REPARATION  
 18 BENEFITS BECAUSE OF INJURY COVERED BY THIS CHAPTER MAY...  
 19 OBTAIN BASIC REPARATION BENEFITS THROUGH THE ASSIGNED  
 20 CLAIMS PLAN PURSUANT TO SECTIONS 3133, 3134 AND 3135 IF:  
 21 (A) BASIC REPARATION INSURANCE OR SELF-INSURANCE IS  
 22 NOT APPLICABLE TO THE INJURY.  
 23 (B) BASIC REPARATION INSURANCE OR SELF-INSURANCE IS  
 24 NOT APPLICABLE TO THE INJURY BECAUSE THE INJURED PERSON

1 CONVERTED A MOTOR VEHICLE AND THE INJURED PERSON IS UNDER  
2 15 YEARS OF AGE.

3 (C) BASIC REPARATION INSURANCE OR SELF-INSURANCE  
4 APPLICABLE TO THE INJURY CANNOT BE IDENTIFIED.

5 (D) BASIC REPARATION INSURANCE OR SELF-INSURANCE  
6 APPLICABLE TO THE INJURY, BECAUSE OF FINANCIAL INABILITY  
7 OF AN INSURER OR SELF-INSURER TO FULFILL ITS OBLIGATION,  
8 IS INADEQUATE TO PROVIDE THE CONTRACTED-FOR BENEFITS.

9 (E) A CLAIM FOR BASIC REPARATION BENEFITS IS RE-  
10 JECTED BY AN INSURER OR SELF-INSURER ON THE GROUND THAT  
11 ANOTHER INSURER, SELF-INSURER OR THE ASSIGNED CLAIMS PLAN  
12 AFFORDS THE APPLICABLE COVERAGE.

13 (2) IF A CLAIM QUALIFIES FOR ASSIGNMENT UNDER  
14 SUBDIVISIONS (C), (D) OR (E) OF SUBSECTION (1), THE  
15 ASSIGNED CLAIMS BUREAU OR ANY INSURER OR SELF-INSURER TO  
16 WHOM THE CLAIM IS ASSIGNED, SHALL BE SUBROGATED TO ALL OF  
17 THE RIGHTS OF THE CLAIMANT AGAINST ANY INSURER OR SELF-  
18 INSURER, OR SUCCESSOR IN INTEREST THERETO, LEGALLY OBLI-  
19 GATED TO PROVIDE REPARATIONS BENEFITS TO THE CLAIMANT, FOR  
20 REPARATION BENEFITS PROVIDED BY THE ASSIGNMENT.

1           SEC. 3133. THE SECRETARY OF STATE SHALL ORGANIZE AND  
2           MAINTAIN AN ASSIGNED CLAIMS BUREAU AND PLAN. A SELF-INSURER  
3           AND INSURER WRITING BASIC REPARATION INSURANCE IN THIS STATE  
4           SHALL PARTICIPATE IN THE ASSIGNED CLAIMS BUREAU AND THE  
5           ASSIGNED CLAIMS PLAN. COSTS INCURRED SHALL BE ALLOCATED  
6           FAIRLY AMONG INSURERS AND SELF-INSURERS.

7           SEC. 3134. A PERSON AUTHORIZED TO OBTAIN BASIC  
8           REPARATION BENEFITS THROUGH THE ASSIGNED CLAIMS PLAN SHALL  
9           NOTIFY THE BUREAU OF HIS CLAIM WITHIN THE TIME THAT WOULD  
10          HAVE BEEN ALLOWED FOR FILING AN ACTION FOR BASIC REPARATION  
11          BENEFITS HAD THERE BEEN IN EFFECT IDENTIFIABLE COVERAGE  
12          APPLICABLE TO THE CLAIM. IF TIMELY ACTION FOR BASIC  
13          REPARATION BENEFITS IS COMMENCED AGAINST AN INSURER OR  
14          SELF-INSURER WHICH BECAUSE OF FINANCIAL INABILITY IS UNABLE  
15          TO FULFILL ITS OBLIGATIONS, A CLAIM THROUGH THE ASSIGNED  
16          CLAIMS PLAN MAY BE MADE WITHIN A REASONABLE TIME AFTER  
17          DISCOVERY OF THE FINANCIAL INABILITY. AN ACTION BY THE  
18          CLAIMANT ON AN ASSIGNED CLAIM MAY NOT BE COMMENCED LATER  
19          THAN 60 DAYS AFTER RECEIPT OF NOTICE OF THE ASSIGNMENT OR  
20          THE LAST DATE ON WHICH THE ACTION COULD OTHERWISE HAVE BEEN  
21          COMMENCED, WHICHEVER IS LATER.

22          SEC. 3135. THE ASSIGNED CLAIMS BUREAU SHALL PROMPTLY  
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1 ASSIGN THE CLAIM AND NOTIFY THE CLAIMANT OF THE IDENTITY  
2 AND ADDRESS OF THE PERSON TO WHOM THE CLAIM IS ASSIGNED.  
3 A CLAIM SHALL BE ASSIGNED IN A WAY TO MINIMIZE INCONVENIENCE  
4 TO CLAIMANTS. THE PERSON TO WHOM A CLAIM IS ASSIGNED  
5 THEREAFTER SHALL HAVE RIGHTS AND OBLIGATIONS AS IF IT HAD  
6 ISSUED A POLICY OF BASIC REPARATION INSURANCE COMPLYING  
7 WITH THIS CHAPTER APPLICABLE TO THE INJURY, OR IN CASE OF  
8 FINANCIAL INABILITY OF AN INSURER OR SELF-INSURER TO  
9 PERFORM ITS OBLIGATIONS, AS IF IT HAD ISSUED THE POLICY  
10 OR HAD UNDERTAKEN THE SELF-INSURANCE.

11 SEC. 3136. EXCEPT AS PROVIDED IN SECTION 3131, A  
12 PERSON WHO CONVERTS A MOTOR VEHICLE IS DISQUALIFIED FROM  
13 BASIC OR ADDED REPARATION BENEFITS, INCLUDING BENEFITS  
14 OTHERWISE DUE HIM AS A SURVIVOR, FROM ANY SOURCE OTHER  
15 THAN AN INSURANCE POLICY UNDER WHICH THE CONVERTER IS A  
16 BASIC OR ADDED REPARATION INSURED, FOR INJURIES ARISING  
17 FROM THE MAINTENANCE OR USE OF THE CONVERTED VEHICLE.

18 FOR THE PURPOSE OF THIS SECTION, A PERSON IS NOT A CON-  
19 VERTER IF HE USES THE MOTOR VEHICLE WITH A GOOD FAITH BELIEF  
20 THAT HE IS LEGALLY ENTITLED TO USE IT.

21 SEC. 3137. A PERSON INTENTIONALLY CAUSING OR ATTEMPTING

1 TO CAUSE INJURY TO HIMSELF OR ANOTHER IS DISQUALIFIED FROM  
2 BASIC OR ADDED REPARATION BENEFITS FOR INJURY ARISING FROM  
3 HIS ACTS, INCLUDING BENEFITS OTHERWISE DUE HIM AS A SUR-  
4 VIVOR. A  
5 PERSON INTENTIONALLY CAUSES OR ATTEMPTS TO CAUSE INJURY  
6 IF HE ACTS OR FAILS TO ACT FOR THE PURPOSE OF CAUSING  
7 INJURY OR WITH KNOWLEDGE THAT INJURY IS SUBSTANTIALLY  
8 CERTAIN TO FOLLOW. A PERSON DOES NOT INTENTIONALLY CAUSE  
9 OR ATTEMPT TO CAUSE INJURY MERELY BECAUSE HIS ACT OR FAILURE  
10 TO ACT IS INTENTIONAL OR DONE WITH HIS REALIZATION THAT IT  
11 CREATES A GRAVE RISK OF CAUSING INJURY. NOR DOES A PERSON  
12 INTENTIONALLY CAUSE OR ATTEMPT TO CAUSE INJURY IF THE ACT  
13 OR OMISSION CAUSING THE INJURY IS FOR THE PURPOSE OF AVERTING  
14 BODILY HARM TO HIMSELF OR ANOTHER PERSON.

15 SEC. 3138. (1) BASIC AND ADDED REPARATION BENEFITS  
16 ARE PAYABLE MONTHLY AS LOSS ACCRUES. LOSS ACCRUES NOT WHEN  
17 INJURY OCCURS, BUT AS WORK LOSS, REPLACEMENT SERVICES LOSS,  
18 SURVIVOR'S ECONOMIC LOSS, SURVIVOR'S REPLACEMENT SERVICES  
19 LOSS OR ALLOWABLE EXPENSE IS INCURRED. BENEFITS ARE  
20 OVERDUE IF NOT PAID WITHIN 30 DAYS AFTER THE INSURER  
21 RECEIVES REASONABLE PROOF OF THE FACT AND AMOUNT OF LOSS.

1. REALIZED. AN INSURER MAY ACCUMULATE CLAIMS FOR PERIODS  
2 NOT EXCEEDING 30 DAYS, AND BENEFITS ARE NOT OVERDUE IF  
3 PAID WITHIN 15 DAYS AFTER THE PERIOD OF ACCUMULATION. IF  
4 REASONABLE PROOF IS SUPPLIED AS TO ONLY PART OF A CLAIM,  
5 AND THE PART TOTALS \$100.00 OR MORE, THE PART IS OVERDUE  
6 IF NOT PAID WITHIN THE TIME PROVIDED BY THIS SECTION.  
7 ALLOWABLE EXPENSES MAY BE PAID BY THE INSURER DIRECTLY  
8 TO PERSONS SUPPLYING PRODUCTS, SERVICES OR ACCOMMODATIONS  
9 TO THE CLAIMANT.

10 (2) A CLAIM FOR WORK LOSS ALLOWABLE EXPENSE OR  
10a SURVIVOR'S ECONOMIC  
11 LOSS SHALL BE PAID AS PROVIDED BY THIS SECTION WITHOUT  
12 DEDUCTION FOR SUBTRACTABLE BENEFITS IF THE SUBTRACTABLE  
13 BENEFITS ARE NOT PAID TO THE CLAIMANT BEFORE BENEFITS  
14 ARE OVERDUE. THE INSURER IS ENTITLED TO REIMBURSEMENT  
15 FROM THE PERSON OBLIGATED TO MAKE THE PAYMENTS OR FROM  
16 THE CLAIMANT WHO ACTUALLY RECEIVES THE PAYMENTS.

17 (3) OVERDUE PAYMENTS BEAR SIMPLE INTEREST AT THE  
18 RATE OF 18% PER ANNUM.

19 SEC. 3139. (1) IF OVERDUE BENEFITS ARE RECOVERED  
20 IN AN ACTION AGAINST THE INSURER OR PAID BY THE INSURER  
21 AFTER RECEIPT OF NOTICE OF THE ATTORNEY'S REPRESENTATION,  
22 IN ADDITION TO OTHER BENEFITS, THE INSURER SHALL PAY A  
23 REASONABLE ATTORNEY'S FEE FOR ADVISING AND REPRESENTING A  
24 CLAIMANT ON A CLAIM OR ACTION FOR BASIC REPARATION BENEFITS.

1 NO PART OF THE FEE FOR REPRESENTING THE CLAIMANT IN  
2 CONNECTION WITH THESE BENEFITS IS A CHARGE AGAINST BENEFITS  
3 OTHERWISE DUE THE CLAIMANT BUT PART OR ALL OF THE FEE SHALL  
4 BE CHARGED AGAINST THE BENEFITS OTHERWISE DUE THE CLAIMANT  
5 IF HIS CLAIM WAS IN ANY WAY FRAUDULENT OR SO EXCESSIVE  
6 AS TO HAVE NO REASONABLE FOUNDATION.

7 (2) IN ANY ACTION BROUGHT AGAINST THE INSURED BY  
8 THE INSURER, THE COURT MAY AWARD THE INSURED A REASONABLE  
9 ATTORNEY'S FEE FOR DEFENDING THE ACTION.

10 SEC. 3141. AN INSURER OR SELF-INSURER SHALL BE ALLOWED  
11 A REASONABLE ATTORNEY'S FEE FOR DEFENDING A CLAIM THAT IS  
12 FRAUDULENT OR SO EXCESSIVE AS TO HAVE NO REASONABLE  
13 FOUNDATION. THIS FEE MAY BE TREATED AS AN OFFSET TO  
14 BENEFITS DUE OR WHICH THEREAFTER ACCRUE, AND THE INSURER  
15 OR SELF-INSURER MAY RECOVER JUDGMENT AGAINST THE CLAIMANT  
16 FOR ANY PART OF THE FEE NOT OFFSET OR OTHERWISE PAID.

17 SEC. 3144. (1) IF BASIC OR ADDED REPARATION BENEFITS  
18 ARE NOT PAID FOR LOSS ARISING OTHERWISE THAN FROM DEATH, AN  
19 ACTION FOR THESE BENEFITS MAY NOT BE COMMENCED LATER THAN  
20 2 YEARS AFTER THE INJURED PERSON SUFFERS THE LOSS AND KNOWS,  
21 OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD KNOW THAT  
22 THE LOSS WAS CAUSED BY THE ACCIDENT, OR WITHIN 4 YEARS  
23 AFTER THE ACCIDENT, WHICHEVER IS EARLIER. IF BASIC OR  
24 ADDED REPARATION BENEFITS ARE PAID FOR LOSS ARISING OTHER-

1 WISE THAN FROM DEATH, AN ACTION FOR RECOVERY OF FURTHER  
2 BENEFITS, OTHER THAN SURVIVOR'S BENEFITS, BY THE SAME OR  
3 ANOTHER CLAIMANT, MAY NOT BE COMMENCED LATER THAN 2 YEARS  
4 AFTER THE LAST PAYMENT OF BENEFITS.

5 (2) IF BASIC OR ADDED REPARATION BENEFITS ARE NOT  
6 PAID TO THE DECEDENT OR HIS SURVIVORS, AN ACTION FOR  
7 SURVIVOR'S BENEFITS MAY NOT BE COMMENCED LATER THAN 1  
8 YEAR AFTER THE DEATH OR 4 YEARS AFTER THE ACCIDENT FROM  
9 WHICH DEATH ARISES, WHICHEVER IS EARLIER. IF SURVIVOR'S  
10 BENEFITS ARE PAID TO ANY SURVIVOR, AN ACTION FOR RECOVERY  
11 OF FURTHER SURVIVOR'S BENEFITS BY THE SAME OR ANOTHER  
12 CLAIMANT MAY NOT BE COMMENCED LATER THAN 2 YEARS AFTER THE  
13 LAST PAYMENT OF BENEFITS. IF BASIC OR ADDED REPARATION  
14 BENEFITS ARE PAID FOR LOSS SUFFERED BY AN INJURED PERSON  
15 BEFORE HIS DEATH ARISING FROM THE INJURY, AN ACTION FOR  
16 RECOVERY OF SURVIVOR'S BENEFITS MAY BE COMMENCED NOT LATER  
17 THAN 1 YEAR AFTER THE DEATH OR 4 YEARS AFTER THE LAST  
18 PAYMENT OF BENEFITS, WHICHEVER IS EARLIER.

19 (3) IF TIMELY ACTION FOR BASIC REPARATION BENEFITS IS  
20 COMMENCED AGAINST AN INSURER OR SELF-INSURER AND BENEFITS  
21 ARE DENIED BECAUSE OF A DETERMINATION THAT THE INSURER'S  
22 OR SELF-INSURER'S COVERAGE IS NOT APPLICABLE TO THE  
23 CLAIMANT UNDER THE PROVISIONS ON PRIORITY OF APPLICABILITY  
24 OF BASIC REPARATION SECURITY PURSUANT TO SECTION 3114, AN

1 ACTION AGAINST THE NEXT APPLICABLE INSURER OR SELF-INSURER  
2 OR ASSIGNED CLAIMS PLAN MAY BE COMMENCED NOT LATER THAN 60  
3 DAYS AFTER THE DETERMINATION BECOMES FINAL OR THE LAST DATE  
4 ON WHICH THE ACTION COULD OTHERWISE BE COMMENCED, WHICHEVER  
5 IS LATER.

6 SEC. 3145. AN ASSIGNMENT OR AGREEMENT TO ASSIGN ANY  
7 RIGHT TO BENEFITS UNDER THIS CHAPTER FOR LOSSES ACCRUING  
8 IN THE FUTURE IS UNENFORCEABLE EXCEPT:

9 (A) AN ASSIGNMENT OF RIGHTS TO BENEFITS FOR WORK  
10 LOSS TO SECURE PAYMENT OF ALIMONY, MAINTENANCE OR CHILD  
11 SUPPORT.

12 (B) AN ASSIGNMENT OF RIGHTS TO BENEFITS FOR ALLOWABLE  
13 EXPENSE TO THE EXTENT THE BENEFITS REIMBURSE THE ASSIGNOR  
14 FOR THE COST OF PRODUCTS, SERVICES OR ACCOMMODATIONS  
15 PROVIDED OR TO BE PROVIDED BY THE ASSIGNEE.

16 SEC. 3147. (1) IF THE MENTAL OR PHYSICAL CONDITION  
17 OF A PERSON IS MATERIAL TO ANY CLAIM FOR PAST OR FUTURE  
18 BASIC OR ADDED REPARATION BENEFITS, THE BASIC OR ADDED  
19 REPARATION INSURER MAY PETITION THE CIRCUIT COURT FOR AN  
20 ORDER DIRECTING THE PERSON TO SUBMIT TO A MENTAL OR  
21 PHYSICAL EXAMINATION BY A PHYSICIAN. THE ORDER MAY BE MADE  
22 FOR GOOD CAUSE SHOWN AND UPON NOTICE TO THE PERSON TO BE  
23 EXAMINED AND TO ALL PERSONS HAVING AN INTEREST. THE  
24 ORDER SHALL SPECIFY THE TIME, PLACE, MANNER, CONDITIONS

1 AND SCOPE OF THE EXAMINATION AND THE PHYSICIAN BY WHOM IT  
2 IS TO BE MADE.

3 (2) IF REQUESTED BY THE PERSON EXAMINED, THE BASIC  
4 OR ADDED REPARATION INSURER CAUSING A MENTAL OR PHYSICAL  
5 EXAMINATION TO BE MADE, SHALL DELIVER TO HIM A COPY OF A  
6 DETAILED WRITTEN REPORT OF THE EXAMINING PHYSICIAN SETTING  
7 OUT HIS FINDINGS, INCLUDING RESULTS OF ALL TESTS MADE,  
8 DIAGNOSES AND CONCLUSIONS, AND REPORTS OF EARLIER EXAMINA-  
9 TIONS OF THE SAME CONDITION. BY REQUESTING AND OBTAINING  
10 A REPORT OF THE EXAMINATION ORDERED, OR BY TAKING THE  
11 DEPOSITION OF THE PHYSICIAN, THE PERSON EXAMINED WAIVES  
12 ANY PRIVILEGE HE MAY HAVE IN RELATION TO THE CLAIM FOR  
13 BASIC OR ADDED REPARATION BENEFITS REGARDING THE TESTIMONY  
14 OF EVERY OTHER PERSON WHO EXAMINED OR MAY THEREAFTER  
15 EXAMINE HIM RESPECTING THE SAME CONDITION. THIS SUBSECTION  
16 APPLIES TO EXAMINATIONS MADE BY AGREEMENT OF THE PERSON  
17 EXAMINED AND THE INSURER, UNLESS THE AGREEMENT PROVIDES  
18 OTHERWISE. THIS SUBSECTION DOES NOT PRECLUDE DISCOVERY  
19 OF A REPORT OF AN EXAMINING PHYSICIAN OR TAKING A DEPOSI-  
20 TION OF THE PHYSICIAN IN ACCORDANCE WITH ANY RULE OF COURT  
21 OR OTHER PROVISION OF LAW.

22 (3) IF ANY PERSON REFUSES TO COMPLY WITH AN ORDER  
23 ENTERED PURSUANT TO THIS SECTION THE COURT MAY MAKE ANY  
24 JUST ORDER AS TO THE REFUSAL.

1           SEC. 3148. (1) UPON REQUEST OF A BASIC OR ADDED  
2 REPARATION CLAIMANT OR INSURER, INFORMATION RELEVANT TO A  
3 CLAIM FOR BASIC OR ADDED REPARATION BENEFITS SHALL BE DIS-  
4 CLOSED AS FOLLOWS:

5           (A) AN EMPLOYER SHALL FURNISH A STATEMENT OF THE WORK  
6 RECORD AND EARNINGS OF AN EMPLOYEE UPON WHOSE INJURY THE  
7 CLAIM IS BASED. THE STATEMENT SHALL COVER THE PERIOD  
8 SPECIFIED BY THE CLAIMANT OR INSURER MAKING THE REQUEST AND  
9 MAY INCLUDE A REASONABLE PERIOD BEFORE AND THE ENTIRE PERIOD  
10 AFTER THE INJURY.

11           (B) A PERSON UPON WHOSE INJURY A CLAIM IS BASED, SHALL  
12 DELIVER TO THE INSURER EVERY WRITTEN REPORT AVAILABLE TO  
13 HIM CONCERNING ANY MEDICAL TREATMENT OR EXAMINATION,  
14 PREVIOUSLY OR THEREAFTER MADE, RELEVANT TO THE CLAIM, THE  
15 NAMES AND ADDRESSES OF PHYSICIANS AND MEDICAL CARE FACILITIES  
16 RENDERING DIAGNOSES OR TREATMENT IN REGARD TO THE INJURY  
17 OR TO A RELEVANT PAST INJURY, AND SHALL AUTHORIZE THE  
18 INSURER TO INSPECT AND COPY RECORDS OF PHYSICIANS, HOSPITALS,  
19 CLINICS OR OTHER MEDICAL FACILITIES RELEVANT TO THE CLAIM.

20           (C) A PHYSICIAN, HOSPITAL, CLINIC OR OTHER MEDICAL  
21 FACILITY FURNISHING EXAMINATIONS, SERVICES OR ACCOMMODATIONS  
22 TO AN INJURED PERSON IN CONNECTION WITH A CONDITION ALLEGED  
23 TO BE CONNECTED WITH AN INJURY UPON WHICH A CLAIM IS BASED,  
24 UPON AUTHORIZATION OF THE INJURED PERSON SHALL FURNISH A

1 WRITTEN REPORT OF THE HISTORY, CONDITION, DIAGNOSES,  
2 MEDICAL TESTS, TREATMENT AND DATES AND COST OF TREATMENT  
3 OF THE INJURED PERSON, AND PERMIT INSPECTION AND COPYING  
4 OF ALL RECORDS AND REPORTS AS TO THE HISTORY, CONDITION,  
5 TREATMENT AND DATES AND COST OF TREATMENT.

6 (2) ANY PERSON OTHER THAN THE CLAIMANT PROVIDING  
7 INFORMATION UNDER THIS SECTION MAY CHARGE THE PERSON  
8 REQUESTING THE INFORMATION A REASONABLE AMOUNT FOR THE  
9 COST OF PROVIDING IT.

10 (3) IN CASE OF DISPUTE AS TO THE RIGHT OF A CLAIMANT  
11 OR INSURER TO DISCOVER INFORMATION REQUIRED TO BE DISCLOSED,  
12 THE CLAIMANT OR INSURER MAY PETITION THE CIRCUIT COURT FOR  
13 AN ORDER FOR DISCOVERY INCLUDING THE RIGHT TO TAKE WRITTEN  
14 OR ORAL DEPOSITIONS. THE ORDER MAY BE MADE ONLY FOR GOOD  
15 CAUSE SHOWN AND UPON NOTICE TO ALL PERSONS HAVING AN  
16 INTEREST, AND IT SHALL SPECIFY THE TIME, PLACE, MANNER,  
17 CONDITIONS AND SCOPE OF THE DISCOVERY. IN ORDER TO PROTECT  
18 AGAINST ANNOYANCE, EMBARRASSMENT OR OPPRESSION, THE COURT  
19 MAY ENTER AN ORDER REFUSING DISCOVERY OR SPECIFYING  
20 CONDITIONS OF DISCOVERY AND ORDER PAYMENT OF COSTS AND  
21 EXPENSES OF THE PROCEEDING, INCLUDING REASONABLE ATTORNEY'S  
22 FEES.

23 SEC. 3151. AN OWNER OF A MOTOR VEHICLE REQUIRED TO BE  
24 REGISTERED IN THIS STATE FOR WHICH A REQUIREMENT OF SECURITY  
24a PURSUANT TO SECTION 3118 IS IMPOSED  
2992.1Z1 - Sub. (H-1). \*\*

1 FOR ITS REGISTRATION OR OPERATION WITHIN THIS STATE WHO  
 2 OPERATES THE VEHICLE OR PERMITS IT TO BE OPERATED IN THIS  
 3 STATE WITHOUT HAVING IN FULL FORCE AND EFFECT SECURITY  
 4 COMPLYING WITH THE TERMS OF THIS ACT IS GUILTY OF A MIS-  
 5 DEMEANOR AND UPON CONVICTION MAY BE FINED NOT MORE THAN  
 6 \$300.00 OR BE IMPRISONED FOR NOT MORE THAN 90 DAYS, OR  
 6a BOTH. ANY OTHER PERSON WHO OPERATES IN THIS STATE A  
 7 MOTOR VEHICLE REQUIRED TO BE REGISTERED IN  
 8 THIS STATE KNOWING THAT TORT LIABILITY OR BASIC REPARATION  
 9 BENEFITS INSURANCE COVERAGE IS NOT IN FULL FORCE AND  
 10 EFFECT IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION MAY  
 11 BE FINED NOT MORE THAN \$300.00 OR BE IMPRISONED FOR NOT  
 12 MORE THAN 90 DAYS, OR BOTH.

13 SEC. 3152. THE INSURER OR SELF-INSURER WHICH PROVIDES  
 14 THE SECURITY REQUIRED BY SECTION 3118 FOR A TRUCK SHALL BE  
 15 LIABLE TO REIMBURSE THE INSURER OR SELF-INSURER OF ANY  
 16 OTHER KIND OF MOTOR VEHICLE FOR PAYMENTS FOR BASIC  
 17 REPARATION BENEFITS ARISING OUT OF INJURIES FOR WHICH THE  
 18 OWNER OR OPERATOR OF THE TRUCK WOULD HAVE BEEN LIABLE TO  
 19 PAY DAMAGES IN AN ACTION AT LAW BUT FOR SECTION 3114.

20 Section 2. Pursuant to section 8 of article 3 of the  
 21 state constitution, the legislature requests the opinion of  
 22 the supreme court as to the constitutionality of this  
 23 amendatory act.

24 Section 3. This amendatory act with the exception of

1 section 2 shall take effect on October 1, 1973 and shall  
2 apply only to motor vehicle accidents occurring on or after  
3 that date.

4 2992 '71 - Sub. (H-1)\*\*  
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# EXHIBIT "D"

## TABLE OF CONTENTS:

House of Representatives – First Analysis for HB 4622

Ex/D-1

## FIRST ANALYSIS

*HOUSE BILL 4622 (as originally introduced)**Sponsor: Rep. Dan Angel**The Apparent Problem to Which the Bill Addresses Itself:*

Under Michigan's no-fault insurance system, the primary liability for the payment of personal protection benefits to a person injured in an auto accident lies with the person's personal or family auto insurance policy. This is the case irrespective of whether the vehicle in which the person is injured is his or her own. There are, however, 2 cases in which the personal or family policy is not primarily liable for the payment of personal protection benefits: (a) when a person is injured in his or her employer's vehicle and the employer is a member of the injured person's family, and b) when a person is injured in a vehicle which is used in the business of transporting passengers. In these 2 cases, the primary liability lies with the insurer of the vehicle in which the person is injured.

This has caused certain problems for a number of Michigan's school districts. Since school buses were designated as common carriers (i.e., vehicles used in the business of transporting passengers) school districts have experienced a drastic increase in the costs of their insurance. As common carriers, school districts must purchase auto insurance for their buses which provides primary coverage and not merely excess coverage. This places an additional financial burden on our already hard pressed school districts.

*The Manner in Which the Bill Addresses Itself to the Problem:*

Under Michigan's present no-fault insurance system, a person injured while operating or riding as a passenger in a motor vehicle operated in the business of transporting passengers receives personal protection insurance benefits from the insurer of the motor vehicle. The bill would make these provisions of the Insurance Code inapplicable to passengers in a school bus, as defined by the Department of Education, providing transportation not prohibited by law, unless a student is not entitled to personal protection insurance benefits under any other policy.

*Fiscal Implications:*

According to the Department of Education, the bill does have some fiscal implications for the state since the state reimburses school districts for 75% of the costs of insurance for school buses. The cost for school fleet insurance in 1972-73, statewide, was \$1.3 million; in 1973-74 \$1.8 million; and 1974-75 costs are expected to exceed \$2 million. Since the bill would have the effect of lowering these insurance costs, some savings to the state can be expected.

*Analysis Section  
House of Representatives  
Committee: Insurance*

*Material in this analysis complete to 5-15-75.  
Additional information may follow.*

*Argument For:*

The bill would relieve school districts of the responsibility to provide primary coverage for school bus passengers. This would result in a substantial savings to the districts. For example, a random survey conducted by the Michigan Association of School Administrators revealed that school districts have experienced premium increases ranging between 40% and 135% over the last year. The financial plight of our school systems is already serious, and it would be of great help to them if they could realize savings in costs in this area.

*Argument For:*

The increases in insurance costs for school districts over the last 3 years is due primarily to school districts having been designated as common carriers under Michigan's no-fault system. Only a small portion of the increases can be attributed to school bus accidents and injuries.

*Argument Against:*

The cost of such insurance is not very great as a percentage of total school district expenditures. The savings would not, therefore, be very great.

*Argument Against:*

The current arrangement has important advantages which will be lost if the provisions of the bill are adopted. Most importantly, the current arrangement provides an incentive to school districts to hire competent bus drivers, mechanics, and other personnel. Under the present system, it is also in the district's interest to buy and operate safe and well-constructed buses. If the proposed change is adopted, there will be no such incentive, which could result in more accidents, injuries, and deaths.

*Positions:*

The Department of Commerce (Insurance Bureau) supports the bill. (4-8-75)

The Department of Education has taken no position on the bill as of this date. (4-11-75)

The Michigan Association of School Administrators supports the bill. (5-15-75)

The Michigan Association of School Boards supports the bill. (5-15-75)

The Michigan Association of Non-Public Schools

ANALYSIS - H.B. 4622 (5-15-75)

ANALYSIS - H.B. 4623 (7-25-75)\*

STATE OF MICHIGAN  
DEPARTMENT OF COMMERCE  
INSURANCE BUREAU  
LANSING, MICHIGAN  
MAY 15 1975

Ex/D-1

House Bill 4622

Sponsor: Rep. Dan Angel

Analysis Section  
House of Representatives  
Committee: Insurance

Material in this analysis complete to 3-27-75. Additional information may follow.

1. THE BILL AS ORIGINALLY INTRODUCED WOULD CHANGE THE PRESENT STATUTE IN THE FOLLOWING WAY:

Under Michigan's present no-fault insurance system, a person injured while operating or riding as a passenger in a motor vehicle operated in the business of transporting passengers receives personal protection insurance benefits from the insurer of the motor vehicle. The bill would make these provisions of the Insurance Code inapplicable to student passengers in a school bus providing transportation authorized by law, unless a student is not entitled to personal protection insurance benefits under any other policy.

Date of introduction: 3-18-75.

House Bill 4622 (3-27-75)

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# EXHIBIT "E"

## TABLE OF CONTENTS:

House of Representatives – First Analysis for HB 6448

Ex/E-1

## FIRST ANALYSIS



House  
Legislative  
Analysis  
Section

### *The Apparent Problem to Which the Bill Addresses Itself:*

Under Michigan's no-fault insurance system, the primary liability for the payment of personal protection benefits to a person injured in an auto accident lies with the person's personal or family auto insurer. This is the case irrespective of whether the vehicle in which the person is injured is owned by the injured person. There are, however, two cases in which the personal or family insurer is not primarily liable for the payment of personal protection benefits: a) when a person or a relative of such a person is injured in a vehicle owned or registered by the employer of such a person, and b) when a person is injured while a passenger or driver in a vehicle operated in the business of transporting passengers, except when the vehicle in question is a school bus. In these two cases, the insurer of the vehicle has primary liability.

Many persons feel, however, that the exception provided in the law for school buses should be expanded to include certain other forms of transportation, such as buses operated by common carriers, buses operated under a government-sponsored transportation program, and buses operated by or providing service to non-profit organizations. In each of these cases, it is claimed that the present situation, in which the insurer of the vehicle is primarily liable for the payment of personal protection benefits, places an enormous financial strain upon the operator of the vehicle (the company or organization), since the operator must purchase liability insurance. It has therefore been suggested that the insurers of bus operations such as those described above be relieved of primary liability for personal protection benefit payments, unless an injured person is not entitled to benefits under any other policy. In doing so, it is claimed, significant financial savings would be realized by the operators of such buses.

### *The Manner in Which the Bill Addresses Itself to the Problem:*

The bill would exempt certain bus operations from that provision of the no-fault statute which provides that the insurer of the vehicle in which a person is injured, rather than the person's personal or family auto insurer, be liable for personal protection benefit payments, if the vehicle is operated in the business of transporting passengers. The exempted bus operations would be:

- a) a bus operated by a common carrier certified by the Public Service Commission;

### *HOUSE BILL 6448 (with proposed House committee amendments)*

*Sponsor: Rep. James O'Neill*  
*Committee: Insurance*

*Material in this analysis complete to 9-27-76.*  
*Additional information may follow.*

- b) a bus operated under a government-sponsored transportation program; and
- c) a bus operated by or providing service to a non-profit organization.

The insurers of buses used in such operations would be primarily liable for benefit payments only when an injured person is not entitled to benefits under any other policy.

### *Background Information:*

The exemption granted to school buses was enacted by this legislature last year as House Bill 4622 (P.A. 137 of 1975).

### *Fiscal Implications:*

The Insurance Bureau indicates that to the extent that the state sponsors transportation programs (if at all), the bill would result in some savings.

### *Argument For:*

The bus operations which would be exempted under the bill are all under a severe financial burden. Common carriers, including inter-city bus companies, must pay enormous insurance premiums at a time when many of them are under a serious competitive strain. Government sponsored programs, such as the Southeastern Michigan Transportation Authority (SEMTA) and the Capital Area Transportation Authority (CATA) are already receiving public subsidies and are subject to the same large insurance premium costs. Non-profit organizations of all kinds are traditionally short of funds and would benefit greatly from being relieved of the cost of large insurance premiums. In some cases, the relief granted by the bill could mean the survival of small common carriers and the reduction of subsidies paid to government-sponsored programs.

### *Argument For:*

The cost of insurance to such bus operations has increased drastically over the past several years. In one case, the premium for an inter-city carrier increased from \$77,000 in 1974 to \$206,000 in 1976.

### *Argument For:*

The bill would not leave any bus passenger unprotected. It would simply shift primary responsibility for personal protection benefits from the

ANALYSIS - H.B. 6448 (9-27-76)\*

Ex/E-1  
OVER

bus operator to the passenger's personal or family auto insurance, provided that the passenger has such insurance. If not, the passenger would be covered by the insurer of the bus operator.

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*Argument Against:*

The cost of providing protection to bus passengers will have to be paid by someone. If the premiums are not paid by the bus operators, the costs of providing protection to passengers in buses will have to be borne by the passengers (i.e., all purchasers of auto insurance). It is therefore quite likely that any decrease in premiums charged to bus operators will be offset by increased premiums charged to the public.

*Argument For:*

While the costs of providing protection may well be borne by all purchasers of auto insurance, the costs will be spread over so large a group of people that the amount may be considered negligible.

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*Argument Against:*

The current provision of the law has important advantages that will be lost if the bill is adopted. Most importantly, the current arrangement provides an incentive to bus operators to hire competent bus drivers, mechanics, and other personnel. Under the present system, it is also in the operator's interest to buy and operate safe and well-constructed buses. If the proposed change is adopted, there would be no such incentive.

*Positions:*

The Department of Commerce (Insurance Bureau) does not oppose the bill. (9-24-76)

The Department of State Highways and Transportation supports the bill. (9-24-76)

The Michigan Motorbus Association supports the bill. (9-23-76)

The Michigan Association of Insurance Companies supports the bill. (9-24-76)

The AFL-CIO supports the bill. (9-23-76)

House Bill 6448

Sponsor: Rep. James O'Neill

Analysis Section  
House of Representatives  
Committee: Insurance

Material in this analysis complete to 6-24-76. Additional information may follow.

THE BILL AS ORIGINALLY INTRODUCED WOULD CHANGE THE PRESENT STATUTE IN THE FOLLOWING WAY:

Under Chapter 31 of the Insurance Code (the "no-fault" statute), a person suffering accidental injury collects personal protection benefits from his or her own insurer, except (a) where a person is injured while an operator or passenger in a vehicle operated in the business of transporting passengers or (b) where an employee or a relative of the employee is injured while an occupant of a vehicle owned or registered by his/her employer. In these two cases, benefits are collected from the insurer of the vehicle. The exception provided in (a), however, does not apply to persons injured in a school bus providing lawful transportation, unless the injured person is not entitled to benefits under any other policy.

The bill would expand the cases to which the exception provided in (a) as described above would not apply (unless no other benefits are available) by adding the following two cases:

- (1) where a person is injured while a passenger in a bus operated by a common carrier of passengers certified by the Public Service Commission; and
- (2) where a person is injured as a passenger in a bus operating under a government-sponsored transportation program. Date of introduction: 6-16-76.

House Bill 6448 (6-24-76)

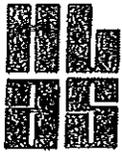
# EXHIBIT "F"

## TABLE OF CONTENTS:

House of Representatives – First Analysis for HB 4254

Ex/F-1

## FIRST ANALYSIS (3-24-77)\*



House  
Legislative  
Analysis  
Section

700 Davenport Building  
Phone: 373-6466

**THE APPARENT PROBLEM:**

The Insurance Code of 1956 was amended in 1969 to create the Automobile Insurance Placement Facility which provides insurance for high-risk drivers who are unable to obtain insurance through ordinary methods. The facility provides the normal range of insurance coverage for private passenger, non-fleet automobiles; in all other cases, it provides only the insurance required by law. The insurance available to taxicab fleets is thus limited to the legal requirement applying in a given locality. For example, in Detroit a city ordinance calls for taxicabs to have \$100,000 - \$300,000 residual liability insurance only, and thus is the only coverage provided by the facility for the taxi fleets. Some persons believe that the statutory provisions for the facility should be amended to provide a wider choice of insurance coverage.

**THE CONTENT OF THE BILL:**

The bill would enable the Commissioner of Insurance to determine what insurance the Automobile Insurance Placement Facility would provide to vehicles other than private passenger, non-fleet vehicles. After a public hearing, the commissioner could require insurance, for which a rate has been filed by an insurance rating organization and which is in effect, which he considers to be reasonable, necessary, and in the public interest. If necessary, such insurance coverage could be temporarily required, pending the public hearing.

**FISCAL IMPLICATIONS:**

The House Fiscal Agency has no information on the bill at this time.

**ARGUMENTS ADVANCED FOR AND AGAINST THE BILL:****For:**

The bill would provide taxi fleets with more comprehensive insurance protection and, as these fleets often operate in urban areas, this increased protection is important. The need is especially urgent in Detroit where, unless improved coverage becomes available soon, many taxi operators say that they may have to cease doing business.

HOUSE BILL 4254 (with proposed House  
committee amendment)  
Sponsor: Rep. George Cushingberry  
Committee: Insurance

Material in this analysis complete to 3-24-77.  
Additional information may follow.

**POSITIONS:**

The Insurance Bureau, within the Department of Commerce, supports the bill. (3-23-77)

The Michigan Association of Insurance Companies supports the bill. (3-23-77)

The City of Detroit supports the bill. (3-23-77)

The Metropolitan Taxicab Association supports the bill. (3-23-77)

ANALYSIS - H.B. 4254 (3-24-77)\*

## SECOND ANALYSIS (5-17-77)\*



House  
Legislative  
Analysis  
Section

700 Davenport Building  
Phone: 373-6466

**THE APPARENT PROBLEM:**

Taxicab fleets in the urban areas of the state have great difficulty purchasing insurance on the voluntary market and are often obliged to seek coverage from the Michigan Automobile Insurance Facility. This facility was created by a 1969 amendment to the Insurance Code of 1956 to provide insurance for high-risk drivers who are unable to obtain insurance through ordinary methods. The facility provides the normal range of insurance coverage for private passenger, non-fleet automobiles; in all other cases, it provides only the insurance required by law. The insurance available to taxicab fleets is thus limited to the legal requirement applying in a given locality. For example, in Detroit a city ordinance calls for taxicabs to have \$100,000 - \$300,000 residual liability insurance only, and thus is the only coverage provided by the facility for the taxi fleets.

Some persons believe that taxicab fleets should be made more attractive to insurers on the voluntary market and that the statutory provisions for the facility should be amended to provide a wider choice of insurance coverage.

**THE CONTENT OF THE BILL:**

The bill would enable the Commissioner of Insurance to determine what insurance the Automobile Insurance Placement Facility would provide to vehicles other than private passenger, non-fleet vehicles. After a public hearing, the commissioner could require insurance, for which a rate has been filed by an insurance rating organization and which is in effect, which he considers to be reasonable, necessary, and in the public interest. If necessary, such insurance coverage could be temporarily required, pending the public hearing.

The current law provides that the insurers of most types of buses do not bear primary liability for accidental bodily injury to operator or passengers. The insurer is required to provide coverage only if the injured persons cannot recover from any other policy. The bill would change the law to provide this same treatment for taxicabs.

**FISCAL IMPLICATIONS:**

The House Fiscal Agency states that there are no fiscal implications to the State of Michigan.

HOUSE BILL 4254 (as passed by the Senate)  
Sponsor: Rep. George Cushingberry  
House Committee: Insurance  
Senate Committee: Commerce

Material in this analysis complete to 5-17-77.  
Additional information may follow.

**ARGUMENTS ADVANCED FOR AND AGAINST THE BILL:****For:**

The bill would provide taxi fleets with more comprehensive insurance protection and, as these fleets often operate in urban areas, this increased protection is important. The need is especially urgent in Detroit where, unless improved coverage becomes available soon, many taxi operators say that they may have to cease doing business.

**For:**

It is only fair that taxicabs be treated like other vehicles carrying passengers for hire. If the insurers of taxicab fleets did not have primary liability for accidental bodily injury the ability of taxicab fleets to compete for insurance in the voluntary market would be enhanced.

**POSITIONS:**

The Insurance Bureau, within the Department of Commerce, has no objection to the bill. (5-16-77)

The Michigan Association of Insurance Companies supports the bill. (5-16-77)

The Metropolitan Taxicab Association supports the bill. (5-16-77)

The City of Detroit supported the bill as passed by the House. A current position is not available. (5-17-77)

ANALYSIS - H.B. 4254 (5-17-77)\*

ANALYSIS - H.B. 4254 (5-17-77)

# EXHIBIT “G”

## TABLE OF CONTENTS:

House of Representatives – First Analysis for HB 5623

Ex/G-1

## MOTORCYCLE INSURANCE



850 Roosevelt Building  
Phone: 517/373-6466

### THE APPARENT PROBLEM:

Motorcyclists have never had to carry the package of insurance coverages required of automobile owners under the No-Fault Insurance Act. In great part, this is because the cost of such coverage for motorcycles would be prohibitive, and so requiring it would lead to widespread flouting of the law and/or the end to the sale of motorcycles in the state. At present, owners and registrants of motorcycles are required only to carry liability insurance covering them against any physical injuries or property damage they cause to others. Motorcyclists need not purchase insurance to cover injuries they suffer in collisions with automobiles or with other motorcycles, trees or viaducts. There has been considerable controversy and confusion surrounding the role played by motorcycles in the no-fault system, and there have been conflicting court decisions over the question of who is responsible for paying benefits to motorcyclists who are injured in accidents involving other motor vehicles. Recently, the Michigan Supreme Court ruled that motorcyclists have virtually the same status under the No-Fault Act as bicyclists or pedestrians. A motorcyclist injured in a collision with an automobile, therefore, is entitled to collect personal injury benefits first from his or her own automobile policy and, if he or she does not have a no-fault policy, second from the policy of a family member in the same household. If there is not a no-fault policy in the household, then the motorcyclist is entitled to benefits from the insurance policy of the owner or operator of the automobile involved in the accident. Unless a policy has been specifically purchased to provide the coverage, a motorcyclist is not entitled to benefits for injuries suffered in an accident with another motorcycle or with a tree or viaduct.

The current status of motorcycles under no-fault gives rise to several problems. First and foremost is the fact that automobile owners who also own motorcycles—or who have motorcycles in their households—are vulnerable to surcharges on their no-fault policies because of the increased exposure to risk involved in owning a motorcycle. (Indeed, until the enactment recently of the Essential Insurance Act insurers were said to avoid covering car owners who also owned motorcycles.) Since in accidents motorcycles usually cause little damage to motor vehicles or harm to their occupants and since it is generally held that motorcycles are rarely at fault in collisions with other motor vehicles, motorcycle owners feel aggrieved by their openness to surcharges. Further, some motorcyclists have difficulty obtaining the kind of coverage they want and can afford to protect them against losses they may suffer as a result of collisions with other motorcycles or with stationary objects, such as trees and viaducts. Those with an interest in the issue—insurers, motorcyclists, and motorcycle dealers—say changes must be made in the No-Fault Act to deal with the unique needs of motorcycles. It is also essential, it is said, that data on motorcycle accident involvement be collected by insurance companies and compiled by the state over a period of time long enough to make the information useful in determining what the public

### HOUSE BILL 5623 Substitute H-2 First Analysis (7-1-80)

Sponsor: Rep. Matthew McNeely  
Committee: Insurance

policy of the state should be regarding the role of motorcycles in the no-fault system.

### THE CONTENT OF THE BILL:

The bill would amend the No-Fault Insurance Act in several ways. It would:

- Establish a new order of priority for the payment of personal protection insurance benefits to a person who suffers accidental bodily injury while a motorcycle operator or passenger. The injured person would receive benefits from insurers in the following order:
  - a) the insurer of the automobile (or truck or bus) owner or registrant involved in the accident;
  - b) the insurer of the automobile operator;
  - c) the insurer of the motorcycle owner or registrant; and,
  - d) the insurer of the operator of the motorcycle.

If two or more insurers were in the same order of priority for the payment of personal protection benefits, the insurer which paid the benefits would be entitled to partial recoupment from the other insurers in the same order of priority, plus some recoupment of the cost of processing the claim.

- Require insurers which sell third-party liability insurance policies to motorcyclists to offer coverage for first-party medical benefits payable in the event of a motorcycle accident (i.e., an accident in which no motor vehicle other than a motorcycle was involved). Coverage would have to be offered in \$5,000 increments. Deductibles, provisions for the coordination of benefits and for the subtraction of benefits guaranteed under state and federal laws would be permitted if rates were adjusted appropriately.
- Require companies which write third-party liability insurance of the kind motorcycles are required to carry to contribute to the Catastrophic Claims Association, the fund which protects insurers from extraordinarily large personal protection losses. (This means those policies will be surcharged to cover the cost of the contribution.)
- Require each insurer writing no-fault insurance and personal injury policies for motorcyclists to provide information to the insurance commissioner on the frequency and severity of motor vehicle accidents involving motorcycles for which motorcycle claims have been filed. The information would have to distinguish between personal protection insurance, property protection insurance, and residual liability coverage on an individual incident basis. After three years of compiling this information, the insurance commissioner would have to submit a report on the material and its significance.

To achieve its purposes, the bill adds to the No-Fault Act a definition of "motorcycle" and definitions which distinguish between a "motorcycle accident" and a "motor vehicle

Ex/G-1  
OVER

ANALYSIS - H.B. 5623 (7-1-80)\*

accident." The definition of motorcycle makes clear that motorcycles with sidecars are to be treated as motorcycles without sidecars are treated.

#### **FISCAL IMPLICATIONS:**

No information is available at present. (6-30-80)

#### **ARGUMENTS:**

##### **For:**

The bill is a reasonable attempt to rectify some of the inequities facing motorcyclists under the No-Fault Act. It recognizes that motorcycles are a unique category of vehicles and do not fit easily into the no-fault system, and it aims to spread the risk involved in operating motorcycles throughout the system rather than having motorcycle owners shoulder a disproportionate share of the burden. Most motorcycle owners also own automobiles on which they must carry no-fault coverages, and so they pay into the system as other vehicle owners do. Since motorcycles cause little damage to other motor vehicles or their occupants in accidents while suffering great harm themselves, and since it is generally conceded that motorcycles are rarely at fault in accidents with other vehicles, it is sensible public policy for the state to require the no-fault system as a whole to absorb the costs of damage to motorcycles and injuries to motorcyclists which result from motor vehicle accidents. To do otherwise would be to discourage the use of these energy-efficient vehicles, to harm motorcycle dealers, and to penalize motorcycle owners.

##### **For:**

The bill addresses the problem motorcyclists have with the availability of first-party personal injury insurance by requiring insurance companies which write third-party liability insurance for motorcyclists to offer the first-party coverage. Further, the companies must offer the coverage in \$5,000 increments, so that motorcyclists can choose the level of insurance they can afford. The decision whether to purchase personal injury insurance—for accidents involving other motorcycles, trees and viaducts—is left with the motorcyclists.

##### **For:**

The bill requires the collection and compilation of information on motorcycle accidents so that in future years the legislature will have some useful data to examine in determining the proper role of motorcycles in the no-fault system. The commissioner of insurance is required to report to the legislature after three years' worth of data has been collected.

##### **Against:**

Some persons believe there is little justification for treating motorcycles in a special way. They are motor vehicles operated on public thoroughfares which occasionally are involved in accidents, just as automobiles are. Yet, motorcyclists do not have to carry no-fault insurance even though they are entitled to no-fault benefits if they are involved in an accident with another motor vehicle. The bill would add to this advantage by stipulating that in a cycle-car collision, the motorcyclist would be able to take benefits first from the insurance policy carried by the owner or operator of the car. Some persons would consider this unjust.

##### **Response:**

It must be remembered that one of the purposes of the

no-fault system is to provide benefits to all people in the state who are involved in accidents with motor vehicles. This includes pedestrians and bicyclists, whether they own cars or come from homes where cars are owned or not. Motorcyclists are similar to pedestrians and, perhaps more obviously, bicycles in that they are likely to suffer immense harm in a collision with another motor vehicle while inflicting little damage themselves. They are different in that persons are susceptible to surcharges for owning a motorcycle but not for owning a bicycle or being on some occasions a pedestrian.

Part and parcel of the no-fault insurance system is doing away with the concept of tort liability. The system aims to limit considerably the number of instances where one party sues another for damages resulting from a motor vehicle accident. Since it is said that motorcycles are rarely at fault in collisions with other types of vehicles and since the damages a cyclist would suffer are considerable and those he or she would inflict negligible, the motorcyclist is put at a disadvantage under a no-fault system in a way that automobile owners are not.

#### **POSITIONS:**

The Insurance Bureau, within the Department of Commerce, supports the bill. (6-27-80)

The Detroit Federation of Motorcycle Clubs supports the bill. (7-2-80)

State Farm Insurance Company supports the bill. (6-27-80)

# EXHIBIT "H"

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# MOTORCYCLE INSURANCE



650 Roosevelt Building  
Phone: 517/373-6466

## THE APPARENT PROBLEM:

Motorcyclists have never had to carry the package of insurance coverages required of automobile owners under the No-Fault Insurance Act. In great part, this is because the cost of such coverage for motorcycles would be prohibitive, and so requiring it would lead to widespread flouting of the law and/or the end to the sale of motorcycles in the state. At present, owners and registrants of motorcycles are required only to carry liability insurance covering them against any physical injuries or property damage they cause to others. Motorcyclists need not purchase insurance to cover injuries they suffer in collisions with automobiles or with other motorcycles, trees or viaducts. There has been considerable controversy and confusion surrounding the role played by motorcycles in the no-fault system, and there have been conflicting court decisions over the question of who is responsible for paying benefits to motorcyclists who are injured in accidents involving other motor vehicles. Recently, the Michigan Supreme Court ruled that motorcyclists have virtually the same status under the No-Fault Act as bicyclists or pedestrians. A motorcyclist injured in a collision with an automobile, therefore, is entitled to collect personal injury benefits first from his or her own automobile policy and, if he or she does not have a no-fault policy, second from the policy of a family member in the same household. If there is not a no-fault policy in the household, then the motorcyclist is entitled to benefits from the insurance policy of the owner or operator of the automobile involved in the accident. Unless a policy has been specifically purchased to provide the coverage, a motorcyclist is not entitled to benefits for injuries suffered in an accident with another motorcycle or with a tree or viaduct.

The current status of motorcycles under no-fault gives rise to several problems. First and foremost is the fact that automobile owners who also own motorcycles—or who have motorcycles in their households—are vulnerable to surcharges on their no-fault policies because of the increased exposure to risk involved in owning a motorcycle. (Indeed, until the enactment recently of the Essential Insurance Act insurers were said to avoid covering car owners who also owned motorcycles.) Since in accidents motorcycles usually cause little damage to motor vehicles or harm to their occupants and since it is generally held that motorcycles are rarely at fault in collisions with other motor vehicles, motorcycle owners feel aggrieved by their openness to surcharges. Further, some motorcyclists have difficulty obtaining the kind of coverage they want and can afford to protect them against losses they may suffer as a result of collisions with other motorcycles or with stationary objects, such as trees and viaducts. Those with an interest in the issue—insurers, motorcyclists, and motorcycle dealers—say changes must be made in the No-Fault Act to deal with the unique needs of motorcycles. It is also essential, it is said, that data on motorcycle accident involvement be collected by insurance companies and compiled by the state over a period of time long enough to

HOUSE BILL 5623 as enrolled  
Second Analysis (4-23-81)

Sponsor: Rep. Matthew McNeely  
House Committee: Insurance  
Senate Committee: Commerce

make the information useful in determining what the public policy of the state should be regarding the role of motorcycles in the no-fault system.

## THE CONTENT OF THE BILL:

The bill would amend the No-Fault Insurance Act in several ways. It would:

- Establish a new order of priority for the payment of personal protection insurance benefits to a person who suffers accidental bodily injury while a motorcycle operator or passenger. The injured person would receive benefits from insurers in the following order:
  - a) the insurer of the automobile (or truck or bus) owner or registrant involved in the accident;
  - b) the insurer of the automobile operator;
  - c) the motor vehicle insurer of the motorcycle owner or registrant; and,
  - d) the motor vehicle insurer of the operator of the motorcycle.

If two or more insurers were in the same order of priority for the payment of personal protection benefits, the insurer which paid the benefits would be entitled to partial recoupment from the other insurers in the same order of priority, plus some recoupment of the cost of processing the claim.

- Require insurers which sell third-party liability insurance policies to motorcyclists to offer coverage for first-party medical benefits payable in the event of a motorcycle accident (i.e., an accident in which no motor vehicle other than a motorcycle was involved). Coverage would have to be offered in \$5,000 increments. Deductibles, provisions for the coordination of benefits and for the subtraction of benefits guaranteed under state and federal laws would be permitted if rates were adjusted appropriately.
- Require companies which write third-party liability insurance of the kind motorcycles are required to carry to contribute to the Catastrophic Claims Association, the fund which protects insurers from extraordinarily large personal protection losses. (This means those policies will be surcharged to cover the cost of the contribution.)
- Require each insurer writing personal injury policies for motorcyclists to provide information to the insurance commissioner on the frequency and severity of motorcycle accidents for which claims have been filed. After three years of compiling this information, the insurance commissioner would have to submit a report on the material and its significance.

To achieve its purposes, the bill adds to the No-Fault Act a definition of "motorcycle" and definitions which distinguish between a "motorcycle accident" and a "motor vehicle accident." The definition of motorcycle makes clear that

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OVER

ANALYSIS - H.B. 5623 (4-23-81)\*

motorcycles with sidecars are to be treated as motorcycles without sidecars are treated.

**FISCAL IMPLICATIONS:**

No information is available at present. (6-30-80)

**ARGUMENTS:**

**For:**

The bill is a reasonable attempt to rectify some of the inequities facing motorcyclists under the No-Fault Act. It recognizes that motorcycles are a unique category of vehicles and do not fit easily into the no-fault system, and it aims to spread the risk involved in operating motorcycles throughout the system rather than having motorcycle owners shoulder a disproportionate share of the burden. Most motorcycle owners also own automobiles on which they must carry no-fault coverages, and so they pay into the system as other vehicle owners do. Since motorcycles cause little damage to other motor vehicles or their occupants in accidents while suffering great harm themselves, and since it is generally conceded that motorcycles are rarely at fault in accidents with other vehicles, it is sensible public policy for the state to require the no-fault system as a whole to absorb the costs of damage to motorcycles and injuries to motorcyclists which result from motor vehicle accidents. To do otherwise would be to discourage the use of these energy-efficient vehicles, to harm motorcycle dealers, and to penalize motorcycle owners.

**For:**

The bill addresses the problem motorcyclists have with the availability of first-party personal injury insurance by requiring insurance companies which write third-party liability insurance for motorcyclists to offer the first-party coverage. Further, the companies must offer the coverage in \$5,000 increments, so that motorcyclists can choose the level of insurance they can afford. The decision whether to purchase personal injury insurance—for accidents involving other motorcycles, trees and viaducts—is left with the motorcyclists.

**Against:**

Some persons believe there is little justification for treating motorcycles in a special way. They are motor vehicles operated on public thoroughfares which occasionally are involved in accidents, just as automobiles are. Yet, motorcyclists do not have to carry no-fault insurance even though they are entitled to no-fault benefits if they are involved in an accident with another motor vehicle. The bill would add to this advantage by stipulating that in a cycle-car collision, the motorcyclist would be able to take benefits first from the insurance policy carried by the owner or operator of the car. Some persons would consider this unjust.

**Response:**

It must be remembered that one of the purposes of the no-fault system is to provide benefits to all people in the state who are involved in accidents with motor vehicles. This includes pedestrians and bicyclists, whether they own cars or come from homes where cars are owned or not. Motorcyclists are similar to pedestrians and, perhaps more obviously, bicyclists in that they are likely to suffer immense harm in a collision with another motor vehicle while inflicting little damage themselves. They are different in that persons are susceptible to surcharges for owning a motorcycle but not for owning a bicycle or being on some occasions a pedestrian.

Part and parcel of the no-fault insurance system is doing away with the concept of tort liability. The system aims to limit considerably the number of instances where one party sues another for damages resulting from a motor vehicle accident. Since it is said that motorcycles are rarely at fault in collisions with other types of vehicles and since the damages a cyclist would suffer are considerable and those he or she would inflict negligible, the motorcyclist is put at a disadvantage under a no-fault system in a way that automobile owners are not.

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# EXHIBIT "I"

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**SAS**

SENATE ANALYSIS SECTION

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House Bill 5623 (Substitute H-2 with Commerce committee amendments)  
 Sponsor: Representative Matthew McNeely  
 House Committee: Insurance  
 Senate Committee: Commerce

RATIONALE:

Motorcyclists have never had to carry the package of insurance coverages required of automobile owners under the No-Fault Insurance Act. In great part, this is because the cost of such coverage for motorcycles would be prohibitive, and so requiring it would lead to widespread flouting of the law and/or the end to the sale of motorcycles in the state. At present, owners and registrants of motorcycles are required only to carry liability insurance covering them against any physical injuries or property damage they cause to others. Motorcyclists need not purchase insurance to cover injuries they suffer in collisions with automobiles or with other motorcycles, trees, or viaducts. There has been considerable controversy and confusion surrounding the role played by motorcycles in the no-fault system, and there have been conflicting court decisions over the question of who is responsible for paying benefits to motorcyclists who are injured in accidents involving other motor vehicles. Recently, the Michigan Supreme Court ruled that motorcyclists have virtually the same status under the No-Fault Act as bicyclists or pedestrians. A motorcyclist injured in a collision with an automobile, therefore, is entitled to collect personal injury benefits first from his or her own automobile policy and, if he or she does not have a no-fault policy, second from the policy of a family member in the same household. If there is not a no-fault policy in the household, then the motorcyclist is entitled to benefits from the insurance policy of the owner or operator of the automobile involved in the accident. Unless a policy has been specifically purchased to provide the coverage, a motorcyclist is not entitled to benefits for injuries suffered in an accident with another motorcycle or with a tree or viaduct.

The current status of motorcycles under no-fault gives rise to several problems. First and foremost is the fact that automobile owners who also own motorcycles—or who have motorcycles in their households—are vulnerable to surcharges in their no-fault policies because of the increased exposure to risk involved in owning a motorcycle. (Indeed, until the enactment recently of the Essential Insurance Act insurers were said to avoid covering car owners who also owned motorcycles.) Since in accidents motorcycles usually cause little damage to motor vehicles or harm to their occupants and since it is generally held that motorcycles are rarely at fault in collisions with other motor vehicles, motorcycle owners feel aggrieved by their openness to surcharges. Further, some motorcycles have difficulty obtaining the kind of coverage they want and can afford to protect them against losses they may suffer as a result

of collisions with other motorcycles or with stationary objects, such as trees and viaducts. Those with an interest in the issue—insurers, motorcyclists, and motorcycle dealers--say changes must be made in the No-Fault Act to deal with the unique needs of motorcyclists. It is also essential, it is said, that data on motorcycle accident involvement be collected by insurance companies and compiled by the state over a period of time long enough to make the information useful in determining what the public policy of the state should be regarding the role of motorcycles in the no-fault system.

CONTENT:

The bill would amend the No-Fault Insurance Act in several ways. It would:

-- Establish a new order of priority for the payment of personal protection insurance benefits to a person who suffers accidental bodily injury while a motorcycle operator or passenger. The injured person would receive benefits from insurers in the following order:

- a) the insurer of the automobile (or truck or bus owner or registrant involved in the accident;
- b) the insurer of the automobile operator;
- c) the insurer of the motorcycle owner or registrant;

and

- d) the insurer of the operator of the motorcycle.

If two or more insurers were in the same order of priority for the payment of personal protection benefits, the insurer which paid the benefits would be entitled to partial recoupment from the other insurers in the same order of priority, plus some recoupment of the cost of processing the claim.

- After May 1, 1981, require insurers which sell third-party liability insurance policies to motorcyclists to offer coverage for first-party medical benefits only payable in the event of a motorcycle accident (i.e., an accident in which no motor vehicle other than a motorcycle was involved). Coverage would have to be offered in \$5,000 increments. Deductibles, provisions for the coordination of benefits and for the subtraction of benefits guaranteed under state and federal laws would be permitted if rates were adjusted appropriately.
- Require companies which write third-party liability insurance of the kind motorcycles are required to carry to contribute to the Catastrophic Claims Association, the fund which protects insurers from extraordinarily large personal protection losses. (This means those policies will be surcharged to cover the cost of the contribution.)
- After May 1, 1981, require each insurer writing no-fault insurance and personal injury policies for motorcyclists to provide information to the insurance commissioner on the frequency and severity of motorcycle accidents for which

H.B. 5623 (11/25/80)

motorcycle claims have been filed. The information would have to distinguish between claims for liability and first-party medical benefits on an individual incident basis. After three years of compiling this information, the insurance commissioner would have to submit a report on the material and its significance.

To achieve its purposes, the bill adds to the No-Fault Act a definition of "motorcycle" and definitions which distinguish between a "motorcycle accident" and a "motor vehicle accident". The definition of motorcycle makes clear that motorcycles with sidecars are to be treated as motorcycles without sidecars are treated.

SENATE COMMITTEE ACTION:

The Senate Commerce committee adopted three amendments to:

- 1) delete the requirement that insurers writing no-fault insurance and personal injury policies for motorcyclists provide information to the insurance commissioner on the frequency and severity of motor vehicle accidents (including cars, motorcycles, trucks, etc.) involving motorcycles for which motorcycle claims have been filed.

In support of deleting this provision, it was argued that those insurance companies which do not currently distinguish between claims filed on motor vehicles and motorcycles involved in the same accident could not afford to make the costly revisions to their data processing programs and claims procedures in order to separate the claims and supply the necessary information. Supporters of the provision claim that it is imperative that this information be gathered to provide the legislature and the insurance bureau with more accurate data to use in determining the proper role of motorcycles in the no-fault system. Currently, there is not enough information available to determine what types of problems motorcyclists and insurance companies have in acquiring and providing motorcycle coverage, how widespread the problems are, and what and how costly the alternatives are for providing coverage. Although the bill requires the insurers to provide the insurance commissioner with statistics on the motorcycle accidents (involving only motorcycles) for which claims are filed, these statistics are not sufficient for a complete analysis of motorcycle accidents.

- 2) give insurers until May 1, 1981 before having to comply with the requirements to offer coverage for first-party medical benefits and to provide information to the insurance commissioner on motorcycle accidents for which claims have been filed. This would allow the insurers time in which to change their forms and procedures and establish new rate tables, which must be approved by the commissioner.
- 3) to insert the word "only" in the provision that "each insurer...which affords coverage for a motorcycle...shall offer,

to an owner or registrant of a motorcycle, security for payment of first party medical benefits only, in increments...". Some people were concerned that because the bill amends the no-fault act the provision could be interpreted to mean the insurers were required to offer the broad personal injury benefits that are provided under no-fault rather than just the first-party medical benefits.

#### FISCAL INFORMATION:

The Senate Fiscal Agency reports that there are no fiscal implications. (11/24/80)

#### ARGUMENTS:

##### Supporting Argument:

The bill is a reasonable attempt to rectify some of the inequities facing motorcyclists under the No-Fault Act. It recognizes that motorcycles are a unique category of vehicles and do not fit easily into the no-fault system, and it aims to spread the risk involved in operating motorcycles throughout the system rather than having motorcycle owners shoulder a disproportionate share of the burden. Most motorcycle owners also own automobiles on which they must carry no-fault coverages, and so they pay into the system as other vehicle owners do. Since motorcycles cause little damage to other motor vehicles or their occupants in accidents while suffering great harm themselves, and since it is generally conceded that motorcycles are rarely at fault in accidents with other vehicles, it is sensible public policy for the state to require the no-fault system as a whole to absorb the costs of damage to motorcycles and injuries to motorcyclists which result from motor vehicle accidents. To do otherwise would be to discourage the use of these energy-efficient vehicles, to hamper motorcycle dealers, and to penalize motorcycle owners.

##### Supporting Argument:

The bill addresses the problem motorcyclists have with the availability of first-party personal injury insurance by requiring insurance companies which write third-party liability insurance for motorcyclists to offer the first-party coverage. Further, the companies must offer the coverage in \$5,000 increments, so that motorcyclists can choose the level of insurance they can afford. The decision whether to purchase personal injury insurance--for accidents involving other motorcycles, trees and viaducts--is left with the motorcyclists.

##### Opposing Argument:

Some persons believe there is little justification for treating motorcycles in a special way. They are motor vehicles operated on public thoroughfares which occasionally are involved in accidents, just as automobiles are. Yet, motorcyclists do not have to carry no-fault insurance even though they are entitled to no-fault benefits if they are involved in an accident with another motor vehicle. The bill would add to this advantage by stipulating that in a cycle-car collision, the motorcyclist would be able to take benefits first from the insurance policy carried by the owner or operator of the car. Some persons would consider this unjust.

Response: It must be remembered that one of the purposes of the no-fault system is to provide benefits to all people in the state who are involved in accidents with motor vehicles. This includes pedestrians and bicyclists, whether they own cars or come from homes where cars are owned or not. Motorcyclists are similar to pedestrians and, perhaps more obviously, bicycles in that they are likely to suffer immense harm in a collision with another motor vehicle while inflicting little damage themselves. They are different in that persons are susceptible to surcharges for owning a motorcycle but not for owning a bicycle or being on some occasions a pedestrian.

Part and parcel of the no-fault insurance system is doing away with the concept of tort liability. The system aims to limit considerably the number of instances where one party sues another for damages resulting from a motor vehicle accident. Since it is said that motorcycles are rarely at fault in collisions with other types of vehicles and since the damages a cyclist would suffer are considerable and those he or she would inflict negligible, the motorcyclist is put at a disadvantage under a no-fault system in a way that automobile owners are not.

POSITIONS:

Allstate Insurance Company supports the bill as amended. (11/21/80)

Automobile Club of Michigan supports the bill as amended. (11/21/80)

State Farm Insurance Company supports the bill as amended. (11/21/80)

H.B. 5623 (11/25/80)

# EXHIBIT “J”

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Senate Analysis for SB 837

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SENATE ANALYSIS SECTION

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SENATE BILL 837 (as reported without amendment)  
Sponsor: Senator Connie Binsfeld  
Committee: Commerce

**RATIONALE**

The no-fault insurance provisions of the Insurance Code stipulate that a person suffering accidental injury while an operator or passenger of a motor vehicle operated in the business of transporting passengers is to receive the personal protection insurance benefits to which he or she is entitled from the vehicle's insurers. This provision, however, does not apply to passengers in certain vehicles, unless the passengers are not entitled to personal protection insurance benefits under any other policy. Those vehicles are:

- a school bus, as defined by the Department of Education, that is providing transportation not prohibited by law.
- a bus operated by a common carrier of passengers certified by the Public Service Commission.
- a bus operating under a government-sponsored transportation program.
- a bus operated by or providing service to a non-profit organization.
- a taxicab insured as prescribed in the code.

Without this exemption, it has been reported, the cost of providing insurance for this type of transportation would be prohibitive. A few operations which are not included in the exemption have been identified as falling into the same category as those now exempted: liveries for canoes or other watercraft, bicycles, and horses. Some of these liveries use buses to transport their customers from the point at which they finish their canoeing, boating, bicycling or horsing around, back to their own cars. It is felt that these small businesses, which in some cases contribute significantly to Michigan's vital tourist industry, need and deserve to be included in the exemption.

**CONTENT**

The bill would amend the Insurance Code to add buses operated by a livery of canoes or other watercraft, bicycles, or horses to the list of vehicles exempted under certain conditions from the no-fault insurance provisions, if the buses were used only to transport passengers "to or from a destination point".

MCL Reference: 500.3114

**FISCAL INFORMATION**

There is no fiscal information available at this time.  
(9-19-84)

**ARGUMENTS**

**Supporting Argument**

The cost of insurance for a limited "mini-mass" transportation service such as that provided by some recreational liveries can be prohibitive. In recognition of this, the bill would include such liveries among the current exemptions. This is a logical extension of the present exemptions, and would not undermine the ability of any

passengers to be compensated for injuries, since the general exemption applies only to situations in which injured passengers have some other applicable insurance protection.

**POSITIONS**

The Insurance Commissioner supports the bill. (9-19-84)

S.B. 837 (9-20-84)

# EXHIBIT "K"

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*State Farm Mutual Insurance Company v Progressive Michigan Insurance Company*, unpublished per curiam decision of the Court of Appeals, decided September 29, 2005 (Docket No.: 262833)

**Ex/K-1**

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STATE FARM MUTUAL INSURANCE  
COMPANY,

Plaintiff-Appellee,

v

PROGRESSIVE MICHIGAN INSURANCE  
COMPANY,

Defendant-Appellant.

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UNPUBLISHED  
September 29, 2005

No. 262833  
Oakland Circuit Court  
LC No. 2004-059962-NF

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order granting summary disposition in favor of plaintiff on the ground that defendant had a higher priority to pay benefits under the Michigan no-fault statute. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Michael J's Adult Day Care owned a van that was insured by defendant. That van was equipped to transport one wheelchair-bound passenger and five or six other passengers. Michael J's was primarily a provider of adult day care to make respite available to family caregivers. As a part of its business it would drive clients to and from their home to Michael J's and it would also use the van if it took the clients on field trips.

Michael J's had some clients that were referred to it by the Area Agency on Aging. To get such referrals, Michael J's had to meet requirements set forth by the Area Agency on Aging. Among other things, those requirements included that Michael J's either had to provide transportation or it had to make arrangements for transportation. Michael J's was also required to have one million dollars in insurance liability coverage on the van that it used for such transportation.

On September 26, 2002, a wheelchair-bound passenger in the Michael J's van was injured when she somehow slumped out of her wheelchair. That passenger resided with her daughter who had no-fault insurance coverage through plaintiff. Plaintiff initially paid the benefits under the no-fault act and then submitted the expenses to defendant for reimbursement

claiming that defendant held a higher priority under the no-fault statute to pay for such benefits. This lawsuit ensued after defendant denied reimbursement.

The trial court heard defendant's motion for summary disposition and determined that defendant was in a higher priority for payment under the statute. The trial court therefore denied defendant's motion and granted summary disposition in favor of plaintiff.

This case involves a priority dispute between two insurance companies under Michigan's no-fault act. MCL 500.3101 *et seq.* Resolution of the issue requires interpretation and application of MCL 500.3114(2). Interpretation and application of a statute is a question of law that is reviewed de novo. *Farmers Ins Exch v AAA of Michigan*, 256 Mich App 691, 694; 671 NW2d 89 (2003).

MCL 500.3114(2) provides that "[a] person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle." That subsection of the statute goes on to list six exceptions to that rule, but it is agreed that none of those exceptions are applicable here.

The dispositive question is whether the van owned by Michael J's Adult Day Care, in which the passenger was injured, was "a motor vehicle operated in the business of transporting passengers." The statutory phrase in question—"a motor vehicle operated in the business of transporting passengers"—must be construed under the rules of statutory interpretation because it does not have a clear and unambiguous meaning. *Farmers Ins Exch, supra* at 697. The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Id.* at 695.

Throughout the no-fault act the Legislature generally intended that a person's personal insurer, which is the insurance company that provides no-fault insurance to the household, is primarily liable. *Id.* at 695-696. The Legislature recognized, however, that always following such a general intent would have resulted in insurers of business vehicles rarely being first in priority for payment. *Id.* at 697-698. Consequently, the Legislature "created what amounts to a business household in §3114(2) and (3), so that responsibility for providing benefits would be spread equitably among all insurers of motor vehicles." *Id.* at 698, quoting *Michigan Mut Ins Co v Farm Bureau Ins Group*, 183 Mich App 626, 634; 455 NW2d 352 (1990).

The exceptions to the rule of MCL 500.3114(2), that the insurer of the vehicle would be primarily liable, also reveal the legislative intent.

It was apparently the intent of the Legislature to place the burden of providing no-fault benefits on the insurers of these motor vehicles, rather than on the insurers of the injured individual. This scheme allows for predictability; coverage in the "commercial" setting will not depend on whether the injured individual is covered under another policy. A company issuing insurance covering a motor vehicle to be used in a (2) or (3) situation will know in advance the scope of the risk it is insuring. [*Farmers Ins Exchange, supra* at 698, quoting *State Farm Mut Automobile Ins Co v Sentry Ins*, 91 Mich App 109, 114; 283 NW2d 661 (1979).]

The *Farmers* Court held “that a primary purpose/incidental nature test is to be applied to determine whether at the time of an accident a motor vehicle was operated in the business of transporting passengers pursuant to subsection 3114(2).” *Id.* at 701. In this Court’s actual application of that test it used a two-part analysis. The first part was whether the vehicle was transporting passengers in a manner incidental to the vehicle’s primary use. *Id.* The second part of the analysis was whether the transportation of the passengers was an incidental or small part of the actual business in question. *Id.* at 701-702. In *Farmers*, this Court decided that a daycare provider was not operating her vehicle in the business of transporting passenger when (1) she used her personal automobile to transport children to and from school three to five times a week; and (2) that transportation made up an incidental or small part of her day-care business. *Id.*

In the present case Michael J’s Adult Day Care owned a van specifically equipped to handle transportation of wheelchair-bound and other passengers. Michael J’s purchased the van for that specific and primary purpose, and defendant provided insurance to the commercial entity for that vehicle. While transporting passengers was not the primary purpose of Michael J’s Adult Day Care, it was a significant enough component for Michael J’s to provide the transportation in a specially equipped vehicle, owned and operated by the business and insured according to the commercial requirements established by the Area Agency on Aging that referred clients to the business.

Based on the legislative intent that MCL 500.3114(2) creates a “business household,” and applies to commercial situations, along with the fact that the transportation component of Michael J’s business was important enough for the business to purchase a vehicle that was used primarily for and insured specifically for transporting Michael J’s clients, we hold that MCL 500.3114(2) applies in this situation and defendant has a higher priority to pay Michigan no-fault benefits.

We affirm.

/s/ Richard A. Bandstra  
/s/ Janet T. Neff  
/s/ Pat M. Donofrio