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HOUSE BILL 323

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Larry A. Larranaga

AN ACT

RELATING TO INSURANCE; ENACTING THE PERSONAL CHOICE AUTO
INSURANCE ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 26 of this act may be cited as the "Personal Choice
Auto Insurance Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS-- PURPOSES
OF ACT. --

A. The legislature finds that under former law,
New Mexico motorists were required to purchase liability
insurance primarily for the benefit of others. To protect
themselves and their family members from other motorists who
chose not to comply with the law, motorists had to purchase

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1 additional insurance coverage. Motorists who did not purchase
2 liability insurance required by law were nonetheless permitted
3 to make liability claims against motorists who had purchased
4 liability insurance. That system for compensating injured
5 motorists was inefficient and overcompensated persons with
6 non-serious injuries. The costs of compensating injured
7 persons were compounded by extraordinary litigation and claim-
8 processing costs that were ultimately borne by insurance
9 consumers and taxpayers of New Mexico.

10 B. The purposes of the Personal Choice Auto
11 Insurance Act are to:

12 (1) give owners of motor vehicles the option
13 to reduce insurance costs by choosing how they will satisfy
14 the requirements of the Mandatory Financial Responsibility
15 Act. Under the Personal Choice Auto Insurance Act, motorists
16 may choose to:

17 (a) forgo their right to sue for
18 noneconomic and compensated economic damages arising out of a
19 motor vehicle accident, except in certain circumstances, by
20 purchasing a personal compensation policy; or

21 (b) retain the right to recover for
22 damages under tort principles by rejecting purchase of a
23 personal compensation policy as provided in the Personal
24 Choice Auto Insurance Act;

25 (2) require insurers to make certain optional

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1 coverages available at additional cost to motorists who choose
2 to purchase a personal compensation policy;

3 (3) encourage motorists to comply with
4 Mandatory Financial Responsibility Act requirements by
5 limiting uninsured motorists' rights to recover for loss;

6 (4) speed the administration of justice, ease
7 the burden of litigation on New Mexico courts, decrease the
8 expenses associated with litigation and create a system of
9 arbitration of claims for personal compensation benefits; and

10 (5) correct imbalances and abuses in the
11 operation of the motor vehicle accident insurance system,
12 encourage prompt medical treatment and rehabilitation, provide
13 offsets to avoid duplicate recovery and require medical
14 examinations.

15 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
16 Personal Choice Auto Insurance Act:

17 A. "accidental bodily injury" means bodily injury,
18 sickness, disease or death arising out of a motor vehicle
19 accident when the motor vehicle accident is unintended by the
20 injured person;

21 B. "cause of action for injury" means a claim for
22 accidental bodily injury caused by the negligence or
23 intentional misconduct of another person, including a claim by
24 a person other than the injured person based on the injury of
25 the injured person, including loss of consortium,

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1 companionship or another derivative claim;

2 C. "dependent" means a person related to another
3 person by blood, affinity or adoption who resides in the same
4 household with the other person and receives financial or
5 services support from the other person;

6 D. "driving under the influence of intoxicating
7 liquor or drugs" means a person has been convicted pursuant to
8 Section 66-8-102 NMSA 1978;

9 E. "economic loss" means pecuniary loss and
10 monetary expense incurred by or on behalf of an injured person
11 as the result of an accidental bodily injury;

12 F. "injured person" means an individual who
13 sustains accidental bodily injury, or the personal
14 representative of that individuals' s estate;

15 G. "insurer" means an insurer or qualified self-
16 insurer providing coverage on motor vehicles pursuant to the
17 provisions of the Personal Choice Auto Insurance Act;

18 H. "intentional misconduct" means conduct by a
19 person who:

20 (1) acts or fails to act for the purpose of
21 causing bodily injury except when the act or omission is for
22 the purpose of averting bodily harm to the person acting or to
23 another; or

24 (2) knows or reasonably should have known
25 that bodily injury is substantially certain to result from

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1 his conduct;

2 I. "loss of income from work" means:

3 (1) if the injured person was employed or
4 self-employed at any time during the year preceding an
5 accident, eighty percent of the average weekly amount the
6 injured person would have earned, or could have reasonably
7 expected to earn but for the accidental bodily injury, through
8 employment in his usual occupation or profession, reduced by
9 either:

10 (a) eighty percent of the average
11 weekly amount received from substitute employment or self-
12 employment; or

13 (b) the average weekly amount of income
14 the injured person would have earned in available appropriate
15 substitute employment that the person was capable of
16 performing but unreasonably failed to undertake; or

17 (2) if the injured person was unemployed, the
18 amount of unemployment compensation benefits the injured
19 person would have been eligible to receive but for the
20 accidental bodily injury, except that "loss of income from
21 work" does not include any loss of income after an injured
22 person's death;

23 J. "medical expenses" means reasonable expenses
24 incurred by or on behalf of an injured person for necessary
25 medical, chiropractic, surgical, dental, ambulance, hospital,

1 medical rehabilitation, physical therapy and professional
2 nursing services and drugs, medically necessary equipment
3 designed primarily for a medical purpose, eyeglasses, hearing
4 aids and prosthetic devices, but "medical expenses" does not
5 include:

6 (1) that portion of the charge for a room in
7 a hospital, clinic, convalescent or nursing home, extended
8 care facility or similar facility in excess of the reasonable
9 and customary charge for semi-private accommodations unless
10 otherwise medically necessary;

11 (2) that portion of a charge or fee for
12 treatments, services, products or procedures that are
13 experimental in nature, for research not primarily designed to
14 serve a medical purpose or not commonly and customarily
15 recognized throughout the medical profession or, in the case
16 of chiropractic care, not commonly and customarily recognized
17 throughout the chiropractic profession in the United States as
18 appropriate for treatment of accidental bodily injury; or

19 (3) that portion of a charge for services,
20 products or facilities by a health care provider in excess of
21 the provider's reasonable and customary charge for like
22 services, products or facilities;

23 K. "motor vehicle" means a self-propelled vehicle
24 of a kind required to be registered pursuant to New Mexico law
25 for use on public streets and highways, other than a vehicle

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1 with three or fewer load-bearing wheels;

2 L. "motor vehicle insurance policy" means that
3 term as defined in Section 59A-7-7.1 NMSA 1978;

4 M. "noneconomic loss" means a loss other than
5 economic loss;

6 N. "occupying" means to be in, upon or engaged in
7 the immediate act of entering into or upon or alighting from a
8 motor vehicle;

9 O. "operation, maintenance or use" means
10 operation, maintenance or use of a motor vehicle as a motor
11 vehicle, including occupying the vehicle, but "operation,
12 maintenance or use" does not include:

13 (1) conduct in the course of the business of
14 repairing, servicing, washing, selling, maintaining or
15 manufacturing motor vehicles unless the conduct occurs off the
16 business premises; or

17 (2) conduct in the course of loading or
18 unloading the motor vehicle unless the conduct occurs while
19 engaged in the operation, maintenance or use of the vehicle;

20 P. "other person responsible for maintaining
21 insurance coverage" means a person with a statutory or
22 contractual responsibility of maintaining insurance coverage
23 on a motor vehicle, including lessees and employees who are
24 responsible for insuring an employer-furnished vehicle;

25 Q. "pedestrian" means a person not occupying a

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1 motor vehicle;

2 R. "personal compensation benefits" means benefits
3 with an aggregate limit of at least fifteen thousand dollars
4 (\$15,000) per person per accident for economic loss resulting
5 from accidental bodily injury, as follows:

6 (1) medical expenses;

7 (2) loss of income from work up to two
8 hundred dollars (\$200) per week so long as benefits are
9 available under the policy;

10 (3) if the injured person is not receiving
11 benefits for loss of income from work, replacement services
12 loss up to one hundred dollars (\$100) per week so long as
13 benefits are available under the policy; and

14 (4) a death benefit of fifteen thousand
15 dollars (\$15,000) payable to the dependents or, if none, to
16 the estate of the decedent, if death occurs not more than one
17 year after the date of the accident causing the accidental
18 bodily injury;

19 S. "personal compensation chooser" means a
20 personal compensation insured or a person, other than an owner
21 or operator of an uninsured motor vehicle, who has not
22 exercised his right pursuant to Section 5 of the Personal
23 Choice Auto Insurance Act to reject that act's limitations on
24 tort rights and liabilities;

25 T. "personal compensation insured" means a person

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1 other than a tort chooser who:

2 (1) is the named insured of a personal
3 compensation policy or a resident relative;

4 (2) sustains accidental bodily injury while
5 occupying the motor vehicle described on the declarations page
6 of a personal compensation policy; or

7 (3) with respect to accidents within New
8 Mexico, is a pedestrian who sustains accidental bodily injury
9 through being struck by the motor vehicle described on the
10 declarations page of a personal compensation policy;

11 U. "personal compensation policy" means an
12 insurance policy or qualified self-insurance plan that
13 provides personal compensation benefits, property damage
14 liability and compulsory financial responsibility coverage
15 applicable in jurisdictions other than New Mexico in at least
16 the minimum limits required by the Personal Choice Auto
17 Insurance Act;

18 V. "property damage liability" means liability
19 insurance coverage with a limit of at least ten thousand
20 dollars (\$10,000) per accident, exclusive of interest and
21 costs, for damage to property in any one accident;

22 W. "rehabilitation services" means necessary
23 services designed to reduce the disability and dependence of
24 an injured person and to restore the person, to the extent
25 reasonably possible, to his pre-accident level of functioning;

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1 X. "replacement services loss" means expenses
2 reasonably incurred for ordinary and necessary services from
3 others in lieu of those the injured person would have
4 performed, not for income but for the benefit of the injured
5 person's family, if he had not been injured. "Replacement
6 services loss" does not include expenses for services
7 performed by any person residing in the household of the
8 injured person, services performed by any person related to
9 the injured person or services performed after the injured
10 person's death;

11 Y. "resident relative" means a person related to a
12 named insured of a motor vehicle insurance policy by blood,
13 affinity or adoption and who primarily makes his home in the
14 same family unit as the named insured, even though he may
15 temporarily live elsewhere;

16 Z. "superintendent" means the superintendent of
17 insurance;

18 AA. "tort chooser" means a person who has
19 exercised his right pursuant to Section 5 of the Personal
20 Choice Auto Insurance Act to reject that act's limitations on
21 tort rights and liabilities;

22 BB. "tort coverage" means coverage under a motor
23 vehicle bodily injury and property damage liability policy in
24 which a tort chooser involved in an accident with a personal
25 compensation chooser recovers damages from the tort chooser's

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1 own insurer for economic and noneconomic loss that the tort
2 chooser is barred from recovering from the personal
3 compensation chooser;

4 CC. "uncompensated economic loss" means that
5 portion of economic loss arising out of accidental bodily
6 injury that exceeds the total of benefits provided by
7 applicable personal compensation policies and benefits
8 received from all other sources as reimbursement for or
9 arising from accidental bodily injury, other than life
10 insurance benefits, regardless of the nature or number of
11 benefit sources available or their form, but "uncompensated
12 economic loss" does not include:

13 (1) the amount of economic loss resulting
14 from application of a deductible under a personal compensation
15 policy;

16 (2) the amount of economic loss that would
17 have been covered under a personal compensation policy
18 providing minimum benefits that the injured person or his
19 resident relative was required to maintain by the Personal
20 Choice Auto Insurance Act but failed to maintain in effect; or

21 (3) the first fifteen thousand dollars
22 (\$15,000) of economic loss sustained by a tort chooser,
23 regardless of whether such loss is recovered from any other
24 source; and

25 DD. "uninsured motorist" means a person who is the

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1 owner of or other person responsible for maintaining insurance
2 coverage on a motor vehicle subject to the insurance
3 requirements of the Mandatory Financial Responsibility Act or
4 the Personal Choice Auto Insurance Act and who fails to
5 maintain the minimum required coverage pursuant to those acts.

6 Section 4. [NEW MATERIAL] MOTOR VEHICLE INSURANCE
7 REQUIREMENTS. --

8 A. Every owner or other person responsible for
9 maintaining insurance coverage on a motor vehicle, other than
10 those motor vehicles listed as exempt in Section 66-5-207 NMSA
11 1978, shall be covered by a personal compensation policy
12 providing personal compensation benefits, property damage
13 liability and compulsory financial responsibility coverage
14 applicable in jurisdictions other than New Mexico in at least
15 the minimum limits required by the Personal Choice Auto
16 Insurance Act, unless the owner or other person responsible
17 for maintaining insurance coverage is a tort chooser.

18 B. A tort chooser is not eligible for a personal
19 compensation policy and shall comply with the provisions of
20 the Mandatory Financial Responsibility Act by obtaining a
21 motor vehicle bodily injury and property damage liability
22 policy or providing other evidence of financial
23 responsibility. He shall carry tort coverage with limits at
24 least equal to the bodily injury limits injured by that act.

25 C. The personal compensation policy required by

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1 this section may be provided through insurance or a qualified
2 plan of self-insurance approved by the superintendent. The
3 superintendent may approve a self-insurance plan and issue a
4 certificate of self-insurance if the superintendent is
5 satisfied that the plan is actuarially sound and will continue
6 to have sufficient financial assets to respond to claims.

7 D. The named insured of a personal compensation
8 policy may waive benefits for loss of income from work for an
9 appropriate rate reduction by completing a certification form
10 prescribed by the superintendent stating under oath that
11 neither the named insured or any resident relative has earned
12 income from regular employment during the past thirty days,
13 and that none of them expects to earn income from regular
14 employment for at least one hundred eighty days from the date
15 the certification is executed. A properly completed form
16 shall be conclusive proof of the insured's intent to waive
17 loss of income benefits.

18 E. Prior to the inception of a personal
19 compensation policy, the insurer shall offer the named insured
20 the additional, optional insurance coverages specified in
21 Subsection F of this section. A named insured's decision to
22 purchase or not to purchase such coverages is binding on all
23 insureds covered by the policy and applies to all renewals and
24 replacement policies until the named insured requests a
25 change.

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1 F. The additional optional insurance coverages
2 required to be made available under a personal compensation
3 policy at additional cost are:

4 (1) personal compensation benefits covering
5 loss in excess of fifteen thousand dollars (\$15,000) per
6 person, in optional increments up to not less than an
7 aggregate limit of one hundred thousand dollars (\$100,000) per
8 person per accident. Except as provided in Subsection D of
9 this section, if the aggregate limit is one hundred thousand
10 dollars (\$100,000) or more, the sublimit for loss of income
11 from work shall be not less than five hundred dollars (\$500)
12 per week;

13 (2) motor vehicle bodily injury liability
14 insurance with a limit of not less than fifteen thousand
15 dollars (\$15,000) per person per accident, exclusive of
16 interest and costs, due to accidental bodily injury and,
17 subject to the per-person limit, an aggregate limit of not
18 less than thirty thousand dollars (\$30,000), exclusive of
19 interest and costs; and

20 (3) scheduled benefits coverage with limits
21 of at least ten thousand dollars (\$10,000) per person per
22 accident, in optional increments up to not less than one
23 hundred thousand dollars (\$100,000) per person per accident.
24 Scheduled benefits coverage shall provide benefits, payable in
25 addition to and without regard to any other benefits payable,

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1 for loss from accidental bodily injury sustained by the named
2 insured of a personal compensation policy or a resident
3 relative who is not a tort chooser while engaged in the
4 operation, maintenance or use of a motor vehicle or as a
5 pedestrian. Scheduled benefits coverage shall be paid as
6 follows, provided that only the largest applicable benefit
7 shall be paid for any one person for a single accident:

- 8 (a) loss of life, the principal sum;
- 9 (b) permanent and total disability, the
10 principal sum;
- 11 (c) loss of two or more members, the
12 principal sum;
- 13 (d) loss of one member, one-half of the
14 principal sum;
- 15 (e) loss of thumb and index finger on
16 the same hand, one-fourth of the principal sum;
- 17 (f) permanent and total loss of
18 hearing, one-half of the principal sum;
- 19 (g) permanent and total loss of the
20 sense of smell or taste, one-fourth of the principal sum;
- 21 (h) loss of a finger or toe, one-eighth
22 of the principal sum;
- 23 (i) serious permanent disfigurement,
24 one-eighth of the principal sum; and
- 25 (j) permanent and total loss of use of

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1 an internal organ, one-eighth of the principal sum.

2 G. As used in Paragraph (3) of Subsection F of
3 this section:

4 (1) "loss" means, with regard to a hand or
5 foot, permanent, complete loss of use of the hand or foot, or
6 actual severance of the hand or foot through or above the
7 wrist or ankle joints; with regard to an eye, complete,
8 irrecoverable loss of sight; with regard to a thumb,
9 permanent, complete loss of use of the thumb or actual
10 severance of the thumb through the proximal phalanx or
11 metacarpal; with regard to the index finger or any other
12 finger, permanent, complete loss of use of the particular
13 finger or actual severance of the particular finger through
14 the middle or proximal phalanx or metacarpal; and with regard
15 to any toe, actual severance through the proximal phalanx or
16 metacarpal of the particular toe;

17 (2) "member" means hand, foot or eye;

18 (3) "permanent and total disability" means,
19 for persons who have reached the age of majority or who are
20 working full time at the time of the accidental bodily injury,
21 the insured's complete inability after one year of continuous
22 total disability to engage in an occupation or employment for
23 which the insured is fitted by reason of education, training
24 or experience for the remainder of the insured's life. As
25 used in this paragraph, "continuous total disability" means

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1 the insured's complete inability during the first year of
2 disability to perform every duty of the insured's occupation
3 commencing with the thirtieth day after the date of the
4 accident. For persons who are both under the age of majority
5 and not working full time at the time of the accidental bodily
6 injury, "permanent and total disability" means having an
7 abnormal electroencephalography and abnormal brain magnetic
8 resonance image or the presence of seizures for two
9 consecutive years; and

10 (4) "principal sum" means the coverage limit
11 for scheduled benefits coverage.

12 H. An insurer may offer:

13 (1) limits higher than those required by this
14 section;

15 (2) deductible and coinsurance options for
16 the coverage described in Paragraph (1) of Subsection F of
17 this section;

18 (3) a limit on the coverage specified in
19 Paragraph (2) of Subsection F of this section on a combined
20 limit basis instead of a split limits basis; and

21 (4) coverages in addition to those required
22 by this section, including collision and comprehensive
23 physical damage.

24 I. Any coverages provided pursuant to this section
25 shall be subject to the premium rates, policy forms, terms,

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1 limitations, conditions and exclusions approved by the
2 superintendent.

3 J. The coverages provided pursuant to this section
4 shall be subject to the provisions of Sections 8 and 10 of the
5 Personal Choice Auto Insurance Act.

6 K. Each insurer shall furnish the first named
7 insured with a card constituting evidence of financial
8 responsibility and proof of insurance; provided, the card
9 shall not be deemed to create insurance coverage if the policy
10 has, in fact, lapsed or been canceled on the date of the
11 accident. The card, insurance policy, insurance policy
12 binder, certificate of insurance or such other proof as may be
13 prescribed by the motor vehicle division of the taxation and
14 revenue department shall constitute sufficient proof of
15 insurance and evidence of financial responsibility for
16 purposes of New Mexico law.

17 Section 5. [NEW MATERIAL] RIGHT OF REJECTION--UNIFORMITY
18 OF CHOICE.--

19 A. A person or a resident relative, including a
20 person who is not the owner or other person responsible for
21 maintaining insurance coverage on a motor vehicle, may execute
22 a form prescribed by the superintendent rejecting the
23 limitations on tort rights and liabilities of the Personal
24 Choice Auto Insurance Act and shall file the form with the
25 superintendent, who shall maintain the forms as public

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1 records. Rejection is effective with respect to any accident
2 occurring after the date and time the superintendent receives
3 the rejection form. Rejection for a minor or incapacitated
4 person shall be made on his behalf by his parent or guardian
5 and shall remain effective until revoked or until the person
6 is no longer a minor or incapacitated, whichever comes first.
7 Completion and filing of the form prescribed by the
8 superintendent shall be conclusive proof that the person
9 completing the form made an informed and knowledgeable
10 decision concerning rejection. Rejection remains effective
11 until revoked in writing on a form prescribed by the
12 superintendent.

13 B. Each person so rejecting, if he is the owner or
14 other person responsible for maintaining insurance coverage on
15 a motor vehicle, shall maintain in effect a policy of motor
16 vehicle bodily injury and property damage liability insurance
17 with at least the minimum coverages, including tort coverage,
18 and limits required by the Personal Choice Auto Insurance Act
19 and the Mandatory Financial Responsibility Act.

20 C. A person who effectively rejects in compliance
21 with Subsections A and B of this section retains all tort
22 rights and tort liabilities to the extent provided in the
23 Personal Choice Auto Insurance Act. The rejecting person is
24 not entitled to collect personal compensation benefits under
25 any motor vehicle insurance policy unless he has subsequently

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1 revoked the rejection as provided in Subsection D of this
2 section.

3 D. Revocation of rejection forms shall be made on
4 a form prescribed by the superintendent. Revocation becomes
5 effective as of the date and time the superintendent receives
6 it. Revocation remains effective until superseded by the
7 filing of a rejection form. Regardless of the nonfiling of
8 subsequent revocation forms, a person eligible for payment of
9 personal compensation benefits as a named insured under a
10 personal compensation policy shall be deemed to have withdrawn
11 any rejection.

12 E. In order to minimize conflict in choices
13 between personal compensation choosers and tort choosers,
14 insurers are authorized to maintain underwriting rules that
15 require uniformity of choice by the named insured and all
16 resident relatives.

17 F. The superintendent shall adopt and promulgate
18 rules governing:

19 (1) rejection and revocation of such
20 rejection pursuant to this section, including situations
21 involving multiple vehicles and multiple policies in the same
22 household; and

23 (2) a system for maintaining and providing
24 access to forms filed pursuant to this section.

25 Section 6. [NEW MATERIAL] CONSUMER INFORMATION

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1 PROGRAM --

2 A. The superintendent shall establish and maintain
3 a program to inform consumers about the comparative costs of a
4 personal compensation policy and a motor vehicle bodily injury
5 and property damage liability policy, including with the
6 latter required minimum uninsured motorist coverage, as well
7 as the benefits, rights and responsibilities under each type
8 of insurance. The program shall include procedures for
9 informing insureds of their right of rejection.

10 B. The superintendent shall prepare a budget
11 reflecting costs associated with carrying out his
12 responsibilities under the Personal Choice Auto Insurance Act.
13 The superintendent's budgeted costs shall be assessed annually
14 to all motor vehicle insurers doing business in New Mexico pro
15 rata on the basis of earned premium reported for the preceding
16 calendar year.

17 C. A person, after being provided information in a
18 form approved by the superintendent explaining the basis for
19 choosing between being a personal compensation chooser and a
20 tort chooser, shall be bound to the terms of the status and
21 coverage chosen and is precluded from claiming liability
22 against another person based on being inadequately informed.

23 Section 7. [NEW MATERIAL] APPLICATION OF PERSONAL
24 COMPENSATION BENEFITS AND COVERAGES TO OTHER JURISDICTIONS. --

25 A. A personal compensation policy shall pay

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1 personal compensation benefits for accidental bodily injury of
2 a personal compensation insured sustained within the United
3 States, its territories or possessions or Canada.

4 B. A personal compensation policy shall, if an
5 insured becomes subject to a compulsory financial
6 responsibility or similar law of another jurisdiction of the
7 United States, its territories or possessions or Canada,
8 provide the coverage required by the law of that jurisdiction.

9 Section 8. [NEW MATERIAL] PERSONS NOT ENTITLED TO
10 PERSONAL COMPENSATION BENEFITS--LIMITATIONS ON PERSONAL
11 COMPENSATION BENEFITS. --

12 A. Notwithstanding any other provision of the
13 Personal Choice Auto Insurance Act, an insurer is not
14 obligated to provide personal compensation benefits for any
15 injured person who:

16 (1) was injured in a motor vehicle accident
17 while committing a felony or while voluntarily operating or
18 occupying a vehicle known by him to be stolen;

19 (2) was injured while engaged in the
20 operation, maintenance or use of a motor vehicle owned by,
21 furnished to or available for the regular use of the injured
22 person, or a resident relative of the injured person, if such
23 motor vehicle is not covered by the policy against which a
24 claim is made;

25 (3) was injured as a pedestrian by a motor

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1 vehicle owned by, furnished to or available for the regular
2 use of the injured person, or a resident relative of the
3 injured person, if the motor vehicle is not covered by the
4 policy against which a claim is made;

5 (4) was injured as a result of his
6 intentional misconduct. If a person dies as a result of his
7 intentional misconduct, the insurer is not obligated to
8 provide the person's dependents and estate his personal
9 compensation benefits;

10 (5) was an uninsured motorist at the time of
11 the accident causing the injuries. As used in this paragraph,
12 "uninsured motorist" means a person who is the owner of or
13 other person responsible for maintaining insurance coverage on
14 a motor vehicle pursuant to the Personal Choice Auto Insurance
15 Act but who has failed to maintain the coverage;

16 (6) was injured while operating or occupying
17 a motor vehicle involved in an organized race or speed
18 contest; or

19 (7) is a tort chooser.

20 B. There shall be no coverage for the named
21 insured or any resident relative under a personal compensation
22 policy while operating or occupying a self-propelled vehicle
23 with three or fewer load-bearing wheels.

24 C. An insurer shall not be obligated to pay
25 personal compensation benefits, other than medical payments,

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1 to or on behalf of any injured person who was driving under
2 the influence of intoxicating liquor or drugs.

3 D. Nothing in this section bars an insurer from
4 providing personal compensation benefits for any injured
5 person, otherwise excluded by this section, if the policy
6 clearly states that it provides the coverage.

7 Section 9. [NEW MATERIAL] PAYMENT OF PERSONAL
8 COMPENSATION BENEFITS. -- Personal compensation benefits are
9 payable to any one of the following:

- 10 A. the injured person;
- 11 B. the parent or guardian of the injured person,
12 if the injured person is a minor or incapacitated;
- 13 C. a dependent or the personal representative of
14 the estate of the injured person; or
- 15 D. any person providing medical or other health
16 care services, products or facilities for which payment is
17 due.

18 Section 10. [NEW MATERIAL] PRIORITY OF BENEFITS. --

19 A. Personal compensation policies are liable to
20 pay personal compensation benefits in the following order of
21 priority up to their respective coverage limits:

- 22 (1) the personal compensation policy covering
23 a motor vehicle involved in the accident, if the injured
24 person was engaged in the operation, maintenance or use of the
25 motor vehicle or was a pedestrian injured by the motor vehicle

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1 at the time of the accident;

2 (2) a personal compensation policy under
3 which the injured person is a named insured;

4 (3) a personal compensation policy under
5 which the injured person is a resident relative; and

6 (4) a personal compensation policy under
7 which the injured person qualifies as a personal compensation
8 insured other than as described in Paragraphs (1) through (3)
9 of this subsection.

10 B. Subject to the payment priorities in Subsection
11 A of this section, if a personal compensation insured is
12 entitled to benefits under more than one personal compensation
13 policy or coverage, the maximum recovery shall not exceed the
14 amount payable under the personal compensation policy with the
15 highest limit.

16 C. If two or more insurers are obligated to pay
17 personal compensation benefits at the same priority, the
18 insurer against whom the claim is first made shall pay the
19 claim up to that insurer's policy limits as if wholly
20 responsible and may thereafter recover contribution pro rata
21 on the basis of coverage limits from any other insurer at the
22 same priority level.

23 D. For purposes of payment of personal
24 compensation benefits only, an unoccupied, parked motor
25 vehicle is not a motor vehicle involved in an accident unless

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1 it was parked in such a way as to cause unreasonable risk of
2 injury.

3 Section 11. [NEW MATERIAL] COORDINATION OF BENEFITS. --
4 The personal compensation insurer has the primary obligation
5 to indemnify its personal compensation insured who sustains
6 accidental bodily injury; provided that personal compensation
7 benefits are excess over and shall not duplicate the amount of
8 benefits an injured person recovers, or is entitled to
9 recover, under a state or federal workers' compensation law or
10 similar occupational injury law, based on the same accidental
11 bodily injury.

12 Section 12. [NEW MATERIAL] LIMITATION ON PAYMENT OF
13 INCURRED MEDICAL EXPENSE. -- Personal compensation benefits do
14 not include:

15 A. medical expenses incurred for treatment of
16 accidental bodily injury when the injury is first discovered
17 and treated more than one year after the date of the accident;

18 B. medical expenses incurred for treatment
19 occurring more than one year after the most recently occurring
20 previous treatment for that accidental bodily injury; or

21 C. loss of income or replacement services loss
22 accruing more than one year after the most recently occurring
23 previous treatment for the accidental bodily injury.

24 Section 13. [NEW MATERIAL] LIMITATIONS ON TORT RIGHTS
25 AND LIABILITIES-- CLAIMS FOR UNCOMPENSATED ECONOMIC LOSS. --

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1 A. Except as provided otherwise in Subsections D
2 and E of this section:

3 (1) no person, other than a tort chooser,
4 shall have a cause of action in tort or otherwise for
5 accidental bodily injury caused in whole or in part by the
6 operation, maintenance or use of a motor vehicle subject to
7 the Personal Choice Auto Insurance Act, other than for
8 uncompensated economic loss; and

9 (2) a tort chooser shall have no cause of
10 action in tort or otherwise against a personal compensation
11 chooser for accidental bodily injury caused in whole or in
12 part by the operation, maintenance or use of a motor vehicle
13 subject to the Personal Choice Auto Insurance Act, other than
14 for uncompensated economic loss.

15 B. Subject to the provisions of Subsection A of
16 this section and except as provided otherwise in Subsections D
17 and E of this section, an uninsured motorist shall not have a
18 cause of action to recover damages resulting from an accident
19 arising out of the operation, maintenance or use of a motor
20 vehicle from a personal compensation chooser or a tort chooser
21 for:

22 (1) the first fifteen thousand dollars
23 (\$15,000) of economic loss resulting from accidental bodily
24 injury; or

25 (2) the first ten thousand dollars (\$10,000)

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1 of property damage.

2 C. As used in this section, "uninsured motorist"
3 means a person who is the owner of or other person responsible
4 for maintaining insurance coverage on a motor vehicle subject
5 to the insurance requirements of the Personal Choice Auto
6 Insurance Act, but who fails to maintain the minimum required
7 coverages.

8 D. Any person shall have a cause of action under
9 common law tort principles for economic and noneconomic loss
10 against any other person who causes accidental bodily injury
11 or motor vehicle property damage while committing a felony or
12 while driving under the influence of intoxicating liquor or
13 drugs. Insurers are prohibited from paying the damages
14 assessed against an insured pursuant to this subsection,
15 except for economic loss.

16 E. Any person shall have a cause of action under
17 common law tort principles for economic and noneconomic loss
18 resulting from accidental bodily injury or property damage
19 caused by intentional misconduct of another person. Insurers
20 are prohibited from paying damages assessed against an insured
21 pursuant to this subsection.

22 F. The limitations of causes of action in tort or
23 otherwise specified in Subsections A and B of this section
24 apply only to:

- 25 (1) an individual engaged in the operation,

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1 maintenance or use of a vehicle at the time of the accident;
2 or

3 (2) a person whose relationship to the
4 individual described in Paragraph (1) of this subsection
5 created liability for that person by operation of law.

6 Section 14. [NEW MATERIAL] CLAIMS FOR UNCOMPENSATED
7 ECONOMIC LOSS--SETTLEMENT PERIOD--ATTORNEY FEES.--

8 A. Any claimant seeking recovery for uncompensated
9 economic loss from another person, as authorized by the
10 Personal Choice Auto Insurance Act, shall make demand for
11 settlement in writing, accompanied by supporting documentation
12 and all relevant bills and employer records, to the person or
13 the person's insurer at least thirty days before filing any
14 lawsuit seeking damages against the person. The person
15 against whom the claim is made or his insurer shall reply in
16 writing to the demand prior to the last day of the settlement
17 period, or the person shall be deemed to have made no offer.
18 If any applicable statute of limitation would otherwise run
19 during the thirty-day settlement period, that statute of
20 limitation shall be tolled until the end of the second
21 business day after the last day of the settlement period. The
22 thirty-day settlement period shall begin to run on the day the
23 written demand is mailed or otherwise delivered.

24 B. If the claimant is unable to reach an agreement
25 with the person against whom the claim is made or the person's

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1 insurer by the last day of the settlement period, the claimant
2 shall be entitled to file a lawsuit seeking uncompensated
3 economic loss based on common law tort principles. If the
4 claimant is deemed the prevailing party in the lawsuit as
5 provided in this subsection, he shall, in addition to any
6 damages awarded, be awarded reasonable attorney fees, not to
7 exceed one-third of the gross amount of the recovery,
8 exclusive of interest and court costs; provided that if the
9 gross recovery exceeds one hundred thousand dollars
10 (\$100,000), the maximum fee shall be limited to one-third of
11 the amount up to one hundred thousand dollars (\$100,000) plus
12 fifteen percent of the amount in excess of one hundred
13 thousand dollars (\$100,000). The claimant shall be deemed to
14 be the prevailing party if he is awarded damages, exclusive of
15 interest and court costs, in an amount equal to or greater
16 than the midpoint between the last written demand made during
17 the settlement period by the claimant and the last written
18 offer made during the settlement period by the person against
19 whom the claim is made or the person's insurer.

20 C. Nothing in this section shall be deemed to
21 prohibit the parties from compromising a claim at any time by
22 mutual agreement.

23 Section 15. [NEW MATERIAL] RIGHT OF SUBROGATION--
24 CONDITIONS.--An insurer shall be subrogated, to the extent of
25 any personal compensation benefits paid, to all of the rights

1 of its insured with respect to an accident caused, in whole or
2 in part, by the fault of any person who is not a personal
3 compensation chooser.

4 Section 16. [NEW MATERIAL] PAYMENT OF INSURANCE
5 BENEFITS-- CAUSES OF ACTION. --

6 A. No offset shall be allowed against personal
7 compensation benefits due based on the value of a cause of
8 action until after a monetary recovery is made. After
9 recovery is made, a deduction from future benefits may be made
10 in no more than the amount of the net recovery, exclusive of
11 attorney fees, expenses and costs incurred in effecting the
12 recovery.

13 B. If personal compensation benefits have been
14 received, the insurer may require the recipient to repay, out
15 of such recovery, an amount equal to the personal compensation
16 benefits received but not more than the net recovery,
17 exclusive of attorney fees, expenses and costs incurred in
18 effecting the recovery. Any remainder of the net recovery
19 shall be credited periodically against loss as it accrues,
20 until an amount equal to the net recovery has been deducted.
21 The insurer shall have a lien on the recovery equal to net
22 personal compensation benefits received.

23 C. Recovery on a cause of action shall not operate
24 to reduce personal compensation benefit coverage limits, which
25 shall be paid out in full to the extent economic loss exceeds

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1 the amount of recovery.

2 Section 17. [NEW MATERIAL] PERSONAL COMPENSATION
3 BENEFITS-- PROMPT PAYMENT. --

4 A. Personal compensation benefits shall be paid as
5 loss accrues. Loss accrues when medical expense, loss of
6 income from work or replacement services loss occurs or when
7 the injured person dies. Notwithstanding any provision of the
8 New Mexico Insurance Code, personal compensation benefits for
9 accrued losses are overdue if not paid within thirty days
10 after the insurer receives reasonable proof of the fact and
11 the amount of loss; provided that an insurer may accumulate
12 claims for periods not exceeding thirty days, in which case
13 benefits are not overdue if paid within twenty days after the
14 last day of the period of accumulation. If reasonable proof
15 is not supplied as to the entire claim, the amount that is
16 supported by reasonable proof shall be paid promptly as
17 provided in this subsection, and any part of the remainder of
18 the claim that is later supported by reasonable proof shall be
19 paid promptly in the same manner.

20 B. For the purpose of calculating the extent to
21 which personal compensation benefits are overdue, payment
22 shall be treated as made on the date a draft or other valid
23 instrument is placed in the United States mail in a properly
24 addressed postpaid envelope or, if not mailed, on the date of
25 personal delivery to the insured.

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1 C. Notwithstanding any provision of the New Mexico
2 Insurance Code, if an insurer is found after an administrative
3 hearing by the superintendent or upon review by a court of
4 competent jurisdiction to be in violation of this section, the
5 exclusive remedy shall be the recovery of the personal
6 compensation benefits and interest at a rate of twelve percent
7 a year beginning from the date the benefits were due, together
8 with reasonable attorney fees, expenses and costs. In the
9 event of an insurer's willful or wanton failure to comply with
10 this section, the recovery shall be three times the amount of
11 the personal compensation benefits that are overdue, together
12 with attorney fees, expenses and costs.

13 Section 18. [NEW MATERIAL] ASSIGNMENT OR GARNISHMENT--
14 PERSONAL COMPENSATION BENEFITS EXEMPT.--

15 A. Personal compensation benefits are exempt from
16 garnishment, attachment, execution or any other process or
17 claim to the extent that wages or earnings are exempt under
18 any applicable law.

19 B. An agreement for assignment of any right to
20 personal compensation benefits payable in the future shall be
21 unenforceable except to the extent that:

22 (1) benefits are for the cost of medical or
23 other health care services, products or facilities provided or
24 to be provided by the assignee; or

25 (2) benefits for loss of income from work or

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1 replacement services loss are assigned for payment of alimony,
2 maintenance or child support.

3 Section 19. [NEW MATERIAL] LIMITATION OF ACTIONS. --

4 A. Subject to the arbitration provisions in
5 Section 24 of the Personal Choice Auto Insurance Act, if no
6 personal compensation benefits have been paid, an action
7 therefor may not be commenced against the insurer later than
8 two years after the date of the accident causing the injuries.

9 B. Subject to the arbitration provisions in
10 Section 24 of the Personal Choice Auto Insurance Act, if
11 personal compensation benefits have been paid, an action for
12 recovery of further personal compensation benefits may be
13 commenced no later than two years after the date of the last
14 payment of personal compensation benefits; provided that no
15 action for personal compensation benefits shall be commenced
16 against an insurer more than four years after the date of the
17 accident.

18 C. The statute of limitations period for personal
19 injury provided in Section 37-1-8 NMSA 1978 shall, for a cause
20 of action for uncompensated economic loss under the Personal
21 Choice Auto Insurance Act, commence on the day after the
22 insured has incurred economic loss in excess of fifteen
23 thousand dollars (\$15,000) or the insured has exhausted his
24 policy limits, whichever is earlier.

25 Section 20. [NEW MATERIAL] MENTAL AND PHYSICAL

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1 EXAMINATIONS. --

2 A. If the mental or physical condition of an
3 injured person is material to any claim that has been or may
4 be made for personal compensation benefits, the injured
5 person, upon request of an insurer, shall submit to reasonable
6 mental or physical examination by a health care provider
7 designated by the insurer at a reasonably convenient time and
8 location, subject to rules, if any, adopted and promulgated by
9 the superintendent. The cost of any such examination shall be
10 borne by the insurer and shall not be charged against or
11 operate to reduce benefit limits.

12 B. If an insurer has requested in writing that an
13 injured person submit to mental or physical examination
14 pursuant to Subsection A of this section and the person
15 refuses to comply, the insurer may, upon at least thirty days'
16 prior written notice to the insured, suspend all future
17 personal compensation benefits and cease payment of any
18 incurred but unpaid portion of bills for services, which such
19 examination is intended to verify as medically necessary,
20 until the injured person complies with the request.

21 Section 21. [NEW MATERIAL] EMPLOYER AND PROVIDER
22 REQUIREMENTS--MEDICAL EXPENSE REVIEW. --

23 A. Upon request of an insurer, an employer shall
24 furnish a statement of the work record and earnings of an
25 injured person who has filed a claim for personal compensation

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1 benefits. The statement shall cover the period specified by
2 the insurer and may include the one-year period before, and
3 the entire period after, the date of the accident.

4 B. To ensure that the treatment and expenses are
5 both reasonable and necessary, insurers may review or obtain a
6 review of treatment and expenses prior to, during and after
7 the course of treatment of an injured person.

8 C. Every medical or other health care provider
9 providing, before or after an injury upon which a claim for
10 personal compensation benefits is based, any services,
11 products or facilities in relation to that or any other
12 injury, or in relation to a condition claimed to be connected
13 with that or any other injury, shall, upon request of the
14 insurer against whom the claim has been made, furnish the
15 insurer a written report of the history, condition, treatment
16 and dates and costs of treatment of the injured person. The
17 information shall be provided with a declaration that the
18 services, products or facilities rendered were reasonable and
19 necessary with respect to the injury sustained and shall
20 identify which expenses were incurred as a result of the
21 injury. Each medical or other health care provider shall also
22 produce in a timely manner and permit the inspection and
23 copying of its records regarding such history, condition,
24 treatment and the dates and costs thereof. The person
25 providing the declaration required under this section shall

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1 attest to it as follows: "I declare that I have read the
2 foregoing and the facts alleged are true, to the best of my
3 knowledge and belief.". The cost of obtaining the information
4 and records required by this subsection shall be borne by the
5 insurer and shall not be charged against or operate to reduce
6 benefit limits.

7 D. No cause of action for violation of the
8 physician-patient privilege or invasion of the right of
9 privacy shall exist against any medical or other health care
10 provider complying with the provisions of this section, but
11 the insurer is responsible for ensuring the confidentiality of
12 the records in the hands of its officers, employees and
13 agents.

14 E. A dispute regarding the right to the discovery
15 of facts about an injured person by the insurer may be
16 resolved through arbitration as provided in Section 24 of the
17 Personal Choice Auto Insurance Act or in court proceedings.

18 Section 22. [NEW MATERIAL] ASSIGNED CLAIMS PLAN. --

19 A. Insurers, other than self-insurance plans,
20 authorized to provide insurance under the Personal Choice Auto
21 Insurance Act shall organize, participate in and maintain an
22 assigned claims plan to provide benefits equivalent to the
23 minimum personal compensation benefits required by that act to
24 an injured person covered by that act if the person is not a
25 tort chooser or a resident relative of an uninsured motorist

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1 as defined in Paragraph (5) of Subsection A of Section 8 of
2 that act and if:

3 (1) personal compensation benefits are
4 unavailable, for a reason other than as specified in Section 8
5 of that act; or

6 (2) personal compensation benefits are
7 unavailable because of the insolvency of an insurer for whose
8 covered claims the New Mexico property and casualty insurance
9 guaranty association is not responsible.

10 B. The assigned claims plan shall adopt bylaws and
11 rules, and enter into necessary agreements for the operation
12 of the plan and the equitable distribution of costs, as
13 approved by the superintendent.

14 C. Any claim brought through the assigned claims
15 plan shall be assigned to an insurer in accordance with the
16 plan's bylaws and rules. Upon such assignment, the insurer
17 shall have the rights and obligations it would have had if,
18 prior to such assignment, it had issued a personal
19 compensation policy providing the minimum personal
20 compensation coverage required by law.

21 D. Any person accepting personal compensation
22 benefits under the assigned claims plan shall have the rights
23 and obligations the person would have had under a personal
24 compensation policy issued to him providing the minimum
25 personal compensation coverage required by law.

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1 E. Benefits available through the assigned claims
2 plan shall be reduced to the extent that benefits covering the
3 same loss are available from other sources, regardless of the
4 nature or number of benefit sources available and regardless
5 of the nature or form of the benefits. The plan coverage
6 shall be deemed secondary to those sources.

7 F. The assigned claims plan and the insurer to
8 whom the claim is assigned are subrogated, to the extent of
9 personal compensation benefits paid for a loss, to all of the
10 rights of the claimant against any person liable for the loss
11 and against any insurer, its successor in interest or any
12 other person or organization legally obligated to provide
13 personal compensation benefits to the injured person for the
14 loss.

15 Section 23. [NEW MATERIAL] INCENTIVES FOR INSURED. --
16 Each insurer shall adopt an actuarially sound program that
17 provides incentives to a personal compensation chooser in the
18 form of increased benefits, reduced premiums or other methods
19 to:

20 A. purchase motor vehicles equipped with automatic
21 seat and harness belts or air bags, but the incentives shall
22 not include a provision for a loss of coverage or benefits for
23 failure to use the devices; and

24 B. have medical expense benefits delivered by a
25 managed care program designated by the insurer, but only the

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1 actual cost of the benefits to the insurer shall be charged
2 against the policy limits.

3 Section 24. [NEW MATERIAL] RULES. --The superintendent
4 may adopt and promulgate rules necessary to provide for the
5 effective implementation and administration of the Personal
6 Choice Auto Insurance Act that are consistent with its
7 purposes.

8 Section 25. [NEW MATERIAL] ARBITRATION. --

9 A. Any dispute with respect to personal
10 compensation benefits between an insurer and an injured
11 person, or the dependents or estate of such person, may be
12 submitted to arbitration pursuant to the provisions of this
13 section if the insurer and the person agree. Only the dispute
14 that the parties have agreed to arbitrate may be addressed by
15 the arbitration.

16 B. Upon agreement for arbitration, the parties may
17 agree on a single arbitrator or, if no such agreement can be
18 reached, each party shall select a competent arbitrator, and
19 the two arbitrators so named shall select a third arbitrator.
20 If unable to agree on the third arbitrator within thirty days,
21 either party may request a judge of the district court in the
22 county in which the arbitration is pending to select the third
23 arbitrator. The written decision of the arbitrator, or any
24 two arbitrators if a panel of three is used, shall be binding
25 on each party.

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1 C. The cost of any arbitrator or any expert
2 witness selected by one party shall be paid by that party.
3 The cost of any arbitrator agreed upon by the parties or their
4 arbitrators and other expenses of arbitration shall be shared
5 equally by both parties.

6 D. The arbitration shall take place in the county
7 in which the insured resides unless the parties agree to
8 another location. The Rules of Civil Procedure for the
9 District Courts and the Rules of Evidence shall apply.

10 Section 26. [NEW MATERIAL] OUT-OF-STATE VEHICLES. --

11 A. Each insurer doing business in New Mexico shall
12 file with the superintendent, as a condition of its continued
13 transaction of business, a form approved by the superintendent
14 declaring that any contract of primary motor vehicle
15 insurance, wherever issued, covering the operation,
16 maintenance or use of a motor vehicle shall be deemed, while
17 the motor vehicle is in New Mexico, to provide at least the
18 minimum benefits required for a personal compensation policy
19 by the Personal Choice Auto Insurance Act. The insured under
20 any such policy is deemed to have elected coverage under a
21 personal compensation policy, and to have accepted the
22 limitations on tort rights and liabilities of the Personal
23 Choice Auto Insurance Act.

24 B. The provisions of this section do not apply to
25 any named insured who, prior to a motor vehicle accident

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1 within New Mexico, has become a tort chooser pursuant to
2 Section 5 of the Personal Choice Auto Insurance Act. With
3 respect to such a tort chooser, the bodily injury and property
4 damage liability limits of the policy shall be operative,
5 subject to conformance with the Mandatory Financial
6 Responsibility Act.

7 Section 27. Section 59A-7-7 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 113) is amended to read:

9 "59A-7-7. "VEHICLE" INSURANCE DEFINED. -- "Vehicle"
10 insurance is insurance covering:

11 A. physical damage. Insurance against loss of or
12 damage to any land vehicle or aircraft or any draft or riding
13 animal resulting from or incident to ownership, maintenance or
14 use of any such vehicle, aircraft or animal;

15 B. public liability and property damage.
16 Insurance against any hazard or cause, and against any loss,
17 liability or expense resulting from or incident to ownership,
18 maintenance or use of any such vehicle, aircraft or animal;

19 C. cargo. Insurance against loss of or damage to
20 property contained in a vehicle or being loaded or unloaded
21 therein or therefrom or incident to the ownership, maintenance
22 or use of any such vehicle, aircraft or animal; [and]

23 D. medical payments. Insurance for payment on
24 behalf of the injured party or for reimbursement of the
25 insured for payment, irrespective of legal liability of the

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1 insured, of medical, hospital, surgical and disability
2 benefits, to persons injured and funeral and death benefits to
3 dependents, beneficiaries or personal representatives of
4 persons killed as the result of an accident, resulting from or
5 incident to ownership, maintenance or use of any such vehicle,
6 aircraft or animal. Such coverage shall not be deemed to be
7 "health" insurance for purposes of the Insurance Code; and
8 E. the risks and providing the benefits described
9 in the Personal Choice Auto Insurance Act. "

10 Section 28. A new Section 59A-7-7.1 NMSA 1978 is enacted
11 to read:

12 "59A-7-7.1. [NEW MATERIAL] "MOTOR VEHICLE INSURANCE
13 POLICY" DEFINED. -- "Motor vehicle insurance policy" means a
14 policy of vehicle insurance that covers self-propelled
15 vehicles of a kind required to be registered under New Mexico
16 law for use on public streets and highways and:

- 17 A. shall include either:
- 18 (1) a motor vehicle bodily injury and
19 property damage liability policy in compliance with the
20 Mandatory Financial Responsibility Act, together with
21 uninsured motorist coverage, subject to the provisions of
22 Section 66-5-301 NMSA 1978 permitting the insured to reject
23 the coverage; or
 - 24 (2) a personal compensation policy as defined
25 in the Personal Choice Auto Insurance Act; and

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B. may include:

- (1) physical damage coverage;
- (2) medical payments coverage; and
- (3) other coverages that the insured and the

insurer agree to include within the policy. "

Section 29. Section 59A-32-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 521) is amended to read:

"59A-32-3. PURPOSE OF ASSIGNED RISK PLAN. -- The purpose of the assigned risk plan is to provide for the equitable distribution and apportionment among insurers authorized to transact in this state the business of [~~automobile and~~] personal compensation, motor vehicle bodily injury, property damage liability and physical damage insurance, of insurance afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods. "

Section 30. Section 59A-32-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 523) is amended to read:

"59A-32-5. REQUIREMENTS OF ASSIGNED RISK PLANS. -- [~~Any such~~] An agreement or plan for the assignment of risks involving [~~automobile and~~] personal compensation, motor vehicle bodily injury, [~~and~~] property damage liability and physical damage insurance shall include provision for:

A. reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or

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1 otherwise, and by the assignment of risks to insurers
2 participating in the plan;

3 B. rates and reasonable rate modifications, which
4 shall be applicable to such risks and which shall not be
5 excessive, inadequate or unfairly discriminatory;

6 C. the coverage limits [~~of liability which~~] that
7 any insurer to [~~whom~~] which a risk is assigned shall be
8 required to assume; and

9 D. a method whereby applicants for insurance,
10 persons insured and insurers under the plan may have a hearing
11 on grievances and the right to appeal from the decision on
12 [~~any such~~] a grievance to the superintendent. "

13 Section 31. Section 59A-32-6 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 524) is amended to read:

15 "59A-32-6. REVIEW OF PROPOSED ASSIGNED RISK PLANS. --
16 Every [~~such~~] plan for the assignment of risks involving
17 [~~automobile and~~] personal compensation, motor vehicle bodily
18 injury, [~~and~~] property damage liability and physical damage
19 insurance shall be filed in writing with the superintendent.
20 The superintendent shall review the plan as soon as reasonably
21 possible after filing, to determine whether or not it meets
22 the requirements of Section [~~523 of this article~~] 59A-32-5
23 NMSA 1978. Each plan shall be on file with the superintendent
24 for a waiting period of thirty [~~(30)~~] days before it becomes
25 effective, unless sooner approved in writing. Unless

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1 disapproved in writing by the superintendent within the thirty
2 [~~(30)~~] day waiting period, a plan shall be deemed approved and
3 shall become effective upon the expiration of that period."

4 Section 32. Section 59A-32-8 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 526) is amended to read:

6 "59A-32-8. FAILURE TO FILE PLAN--ASSIGNED RISK PLAN
7 PRESCRIBED.--If no plan [~~which~~] that meets the requirements of
8 Section [~~523 of this article above~~] 59A-32-5 NMSA 1978 has
9 been filed with the superintendent within ninety [~~(90)~~] days
10 after [~~June 30, 1959~~] the effective date of the Personal
11 Choice Auto Insurance Act, or within the period stated in
12 [~~any~~] an order [~~which~~] that disapproves an existing plan, the
13 superintendent may formulate and prescribe a plan [~~which~~] that
14 does meet [~~such~~] those requirements, after hearing or
15 consultation with insurers authorized to transact in this
16 state the business of [~~automobile and~~] personal compensation,
17 motor vehicle bodily injury, [and] property damage liability
18 and physical damage insurance. When [~~any~~] a plan [~~or plans~~]
19 or amendment [~~thereto~~] to it has [~~or have~~] been approved or
20 prescribed, no insurer to which [~~such~~] the plan is applicable
21 shall thereafter issue [~~any~~] a policy of [~~such~~] insurance, or
22 undertake to transact [~~such~~] business in this state, unless
23 the insurer participates in [~~such~~] the plan."

24 Section 33. Section 66-5-208 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 282, as amended) is amended to read:

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1 "66-5-208. EVIDENCE OF FINANCIAL RESPONSIBILITY-- AMOUNTS
2 AND CONDITIONS. -- [~~"Evidence of financial responsibility"~~] As
3 used in the Mandatory Financial Responsibility Act, "evidence
4 of financial responsibility" means:

5 A. evidence of the ability to respond in damages
6 for liability, on account of accidents occurring subsequent to
7 the effective date of the evidence, arising out of the
8 ownership, maintenance or use of a vehicle of a type subject
9 to registration under the laws of New Mexico, in the following
10 amounts:

11 [~~A. twenty five thousand dollars (\$25,000)~~]
12 (1) fifteen thousand dollars (\$15,000)
13 because of bodily injury to or death of one person in [~~any~~
14 ~~one~~] a single accident;

15 [~~B.~~] (2) subject to [~~this~~] the limit for one
16 person, [~~fifty thousand dollars (\$50,000)~~] thirty thousand
17 dollars (\$30,000) because of bodily injury to or death of two
18 or more persons in [~~any one~~] a single accident;

19 [~~C.~~] (3) ten thousand dollars (\$10,000)
20 because of injury to or destruction of property of others in
21 [~~any one~~] a single accident; and

22 [~~D.~~] (4) if evidence is in the form of a
23 surety bond or a cash deposit, the total amount shall be
24 [~~sixty thousand dollars (\$60,000)~~] forty thousand dollars
25 (\$40,000); or

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B. evidence of a valid personal compensation policy as specified in the Personal Choice Auto Insurance Act. "

Section 34. Section 66-5-209 NMSA 1978 (being Laws 1978, Chapter 35, Section 283, as amended) is amended to read:

"66-5-209. MEANING OF "JUDGMENT". -- [~~"Judgment"~~] As used in the Mandatory Financial Responsibility Act, "judgment" means any judgment [~~which~~] that becomes final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action, as limited by the Personal Choice Auto Insurance Act, arising out of the ownership, maintenance or use of any motor vehicle of a type subject to registration [~~under~~] pursuant to the laws of New Mexico, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including [~~the~~] its loss of use, [~~thereof~~] or upon a cause of action on an agreement of settlement for such damages. "Judgment" does not include any amount recoverable as uncompensated economic loss pursuant to the Personal Choice Auto Insurance Act. "

Section 35. Section 66-5-215 NMSA 1978 (being Laws 1978, Chapter 35, Section 298, as amended) is amended to read:

1 "66-5-215. PAYMENTS SUFFICIENT TO SATISFY REQUIREMENTS. --

2 A. Judgments herein referred to shall, for the
3 purpose of the Mandatory Financial Responsibility Act only, be
4 deemed satisfied when:

5 (1) [~~twenty-five thousand dollars (\$25,000)~~]
6 fifteen thousand dollars (\$15,000) has been credited upon any
7 judgment or judgments rendered in excess of that amount
8 because of bodily injury to or death of one person as the
9 result of any one accident;

10 (2) subject to the limit of [~~twenty-five~~
11 ~~thousand dollars (\$25,000)~~] fifteen thousand dollars (\$15,000)
12 because of bodily injury to or death of one person, the sum of
13 [~~fifty thousand dollars (\$50,000)~~] thirty thousand dollars
14 (\$30,000) has been credited upon any judgment [~~or judgments~~]
15 rendered in excess of that amount because of bodily injury to
16 or death of two or more persons as the result of any one
17 accident; or

18 (3) ten thousand dollars (\$10,000) has been
19 credited upon any judgment [~~or judgments~~] rendered in excess
20 of that amount because of injury to or destruction of property
21 of others as a result of any one accident.

22 B. However, payments made in settlements of any
23 claims because of bodily injury, death or property damage
24 arising from the accident shall be credited in reduction of
25 the amounts provided for in this section. "

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1 Section 36. Section 66-5-224 NMSA 1978 (being Laws 1978,
2 Chapter 35, Section 309, as amended) is amended to read:

3 "66-5-224. ACT NOT TO AFFECT OTHER POLICIES. --

4 A. The Mandatory Financial Responsibility Act does
5 not apply to or affect policies of motor vehicle insurance
6 [~~against liability which~~] that may now or hereafter be
7 required by any other law of New Mexico, except the Personal
8 Choice Auto Insurance Act, and such policies, if they contain
9 an agreement or are endorsed to conform with the requirements
10 of the Mandatory Financial Responsibility Act, may be
11 considered as evidence of financial responsibility [~~under~~]
12 pursuant to that act.

13 B. The Mandatory Financial Responsibility Act does
14 not apply to or affect policies insuring solely the insured
15 named in the policy against liability resulting from the
16 maintenance or use by persons in the insured's employ or on
17 his behalf of motor vehicles not owned by the insured. "

18 Section 37. Section 66-5-226 NMSA 1978 (being Laws 1955,
19 Chapter 182, Section 330, as amended) is amended to read:

20 "66-5-226. CASH DEPOSIT AS EVIDENCE. -- Evidence of
21 financial responsibility may be demonstrated by the
22 certificate of the state treasurer that the person named in
23 the certificate has deposited with him [~~sixty thousand dollars~~
24 ~~(\$60,000)~~] forty thousand dollars (\$40,000) in cash. "

25 Section 38. Section 66-5-301 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 325, as amended) is amended to read:

2 "66-5-301. INSURANCE AGAINST UNINSURED AND UNKNOWN
3 MOTORISTS--REJECTION OF COVERAGE BY THE INSURED.--

4 A. No motor vehicle [~~or automobile~~] bodily injury
5 and property damage liability policy [~~insuring against loss~~
6 ~~resulting from liability imposed by law for bodily injury or~~
7 ~~death suffered by any person and for injury to or destruction~~
8 ~~of property of others arising out of the ownership,~~
9 ~~maintenance or use of a motor vehicle~~] shall be delivered or
10 issued for delivery in New Mexico with respect to any motor
11 vehicle registered or principally garaged in New Mexico unless
12 coverage is provided therein or supplemental thereto in
13 minimum limits for bodily injury or death and for injury to or
14 destruction of property as set forth in Section 66-5-215 NMSA
15 1978 and such higher limits as may be desired by the insured,
16 but up to the limits of liability specified in bodily injury
17 and property damage liability provisions of the insured's
18 policy, for the protection of persons insured thereunder who
19 are legally entitled to recover damages from owners or
20 operators of uninsured motor vehicles because of bodily
21 injury, sickness or disease, including death, and for injury
22 to or destruction of property resulting therefrom according to
23 the rules and regulations promulgated by, and under provisions
24 filed with and approved by, the superintendent of insurance.

25 B. The uninsured motorist coverage described in

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1 Subsection A of this section shall include underinsured
2 motorist coverage for persons protected by an insured's
3 policy. For the purposes of this subsection, "underinsured
4 motorist" means an operator of a motor vehicle with respect to
5 the ownership, maintenance or use of which the sum of the
6 limits of liability under all bodily injury liability
7 insurance applicable at the time of the accident is less than
8 the limits of liability under the insured's uninsured motorist
9 coverage. [~~No motor vehicle or automobile liability policy~~
10 ~~sold in New Mexico shall be required to include underinsured~~
11 ~~motorist coverage until January 1, 1980.~~] A personal
12 compensation insured under the Personal Choice Auto Insurance
13 Act is not an underinsured motorist except to the extent a
14 claim is made for uncompensated economic loss against the
15 motorist, as provided in that act, that exceeds the coverage
16 limit under the personal compensation policy.

17 C. The uninsured motorist coverage shall [~~provide~~
18 ~~an exclusion~~] exclude coverage of not more than the first two
19 hundred fifty dollars (\$250) of loss resulting from injury to
20 or destruction of property of the insured in any one accident.
21 The named insured shall have the right to reject uninsured
22 motorist coverage [as] described in [~~Subsections A and B of~~]
23 this section [~~provided that~~] but, unless the named insured
24 requests [~~such~~] that coverage in writing, [~~such coverage~~] it
25 need not be provided in or supplemental to a renewal policy

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1 where the named insured has rejected the coverage in
2 connection with a policy previously issued to him by the same
3 insurer. "

4 Section 39. TEMPORARY PROVISION--TRANSITION OF RENEWAL
5 POLICIES.--Each motor vehicle insurance policy in effect on
6 the effective date of the Personal Choice Auto Insurance Act
7 shall become subject to the provisions of that act on its
8 first succeeding renewal date. At least thirty days before
9 the policy renewal date, the motor vehicle insurer shall
10 notify the policyholder of the new limitations on tort rights
11 and liabilities and shall provide information on obtaining the
12 appropriate form to reject the limitations. At that time, the
13 motor vehicle insurer shall also afford the policyholder the
14 opportunity to purchase the optional coverages specified in
15 Section 4 of the Personal Choice Auto Insurance Act. If the
16 policyholder does not request any optional coverage prior to
17 the renewal date of the policy and does not inform the insurer
18 that he is a tort chooser, the policy shall be reissued as a
19 personal compensation policy with personal compensation
20 benefits equal to the medical payments coverage previously
21 selected by the insured, but in no event less than fifteen
22 thousand dollars (\$15,000). If the insurer does not offer
23 personal compensation benefits in an amount equal to the
24 insured's previous medical payments limit, then the insurer
25 shall provide the available limit that is nearest, but not

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1 less than, the previous medical payments limit. All other
2 coverages previously purchased by a named insured shall remain
3 in effect; provided that motor vehicle insurers may delete any
4 coverage that would substantially duplicate personal
5 compensation benefits, including uninsured motorist coverage
6 and disability coverage. If the policyholder requests any
7 optional coverage, the requested coverage shall be effective
8 on the reissue date of the policy if the request is received
9 by the motor vehicle insurer prior to the renewal date of the
10 policy. If received on or after the reissue date, the
11 requested coverage shall be effective at 12:01 a.m. on the day
12 after the request is received.

13 Section 40. TEMPORARY PROVISION--COST SAVINGS TO
14 CONSUMERS--CONDITIONAL REPEAL. --

15 A. Each motor vehicle insurer that writes motor
16 vehicle insurance policies shall file policy forms and rates
17 for personal compensation policies and motor vehicle liability
18 policies, including tort coverage, with the superintendent of
19 insurance no later than sixty days before the effective date
20 of the provisions of the Personal Choice Auto Insurance Act,
21 for review and approval pursuant to Chapter 59A, Article 17
22 NMSA 1978.

23 B. Each motor vehicle insurer's statewide average
24 premium for a personal compensation policy with minimum
25 required benefits during the first year following the

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1 effective date of the Personal Choice Auto Insurance Act shall
2 be at least thirty percent less than the motor vehicle
3 insurer's statewide average premium for calendar year 1998 for
4 mandatory insurance coverage, unless the motor vehicle insurer
5 first demonstrates at a rate hearing that such a decrease will
6 result in inadequate rates. For the purposes of this
7 subsection, "mandatory insurance coverage" means the minimum
8 limits for bodily injury and property damage liability set
9 forth in Section 66-5-215 NMSA 1978 immediately prior to the
10 effective date of this act and the minimum uninsured and
11 underinsured motorist coverage set forth in Section 66-5-301
12 NMSA 1978.

13 C. If a combination of insurers selling more than
14 fifty percent of the automobile insurance in this state, as
15 measured by direct earned premium for calendar year 1998,
16 cannot reduce their premiums as required by Subsection B of
17 this section, because such a reduction would result in
18 inadequate rates as determined by the superintendent of
19 insurance, this act is repealed effective one year after the
20 effective date of its provisions.

21 D. Prior to the effective date of the provisions
22 of the Personal Choice Auto Insurance Act, the superintendent
23 of insurance may adopt and promulgate rules, approve proposed
24 policy forms and review and approve motor vehicle insurance
25 rates for coverages to be made available under that act.

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1 Section 41. SEVERABILITY. --

2 A. Except as provided otherwise in Subsection B of
3 this section, if any provision of the Personal Choice Auto
4 Insurance Act or the application thereof to any person,
5 organization or circumstance is held to be unconstitutional or
6 otherwise invalid, the remainder of that act and the
7 application of such provision to other persons or
8 circumstances shall not be affected.

9 B. If Section 12 of the Personal Choice Auto
10 Insurance Act is found to be unconstitutional or invalid, in
11 whole or in part, it is to be conclusively presumed that the
12 legislature would not have enacted the remainder of this act
13 without those limitations and that act shall not be severable
14 and shall be invalid.

15 Section 42. EFFECTIVE DATE. --The effective date of the
16 provisions of:

17 A. Sections 1 through 38 of this act is July 1,
18 2000; and

19 B. Sections 39 and 40 of this act is July 1, 1999.