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HOUSE BILL 309

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Lorenzo 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 current law,
New Mexico motorists are required to purchase liability
insurance primarily for the benefit of others. To protect
themselves and their family members from other motorists who
choose not to comply with the law, motorists must purchase**

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1 additional insurance coverage. Motorists who do not purchase
2 liability insurance required by law are nonetheless permitted
3 to make liability claims against motorists who have purchased
4 liability insurance. The legislature finds that this system
5 for compensating injured motorists is inefficient and
6 overcompensates persons with non-serious injuries. The costs
7 of compensating injured persons is compounded by extraordinary
8 litigation and claim-processing costs that are ultimately
9 borne by insurance 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. "dependent" means a person related to another
22 person by blood, affinity or adoption who resides in the same
23 household with the other person and receives financial or
24 services support from the other person;

25 C. "driving under the influence of intoxicating

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1 liquor or drugs" means a person has been convicted pursuant to
2 Section 66-8-102 NMSA 1978;

3 D. "economic loss" means pecuniary loss and
4 monetary expense incurred by or on behalf of an injured person
5 as the result of an accidental bodily injury;

6 E. "injured person" means an individual who
7 sustains accidental bodily injury, or the personal
8 representative of that individual's estate;

9 F. "insurer" means an insurer or qualified self-
10 insurer providing coverage on motor vehicles pursuant to the
11 provisions of the Personal Choice Auto Insurance Act;

12 G. "intentional misconduct" means conduct by a
13 person who:

14 (1) acts or fails to act for the purpose of
15 causing bodily injury except when the act or omission is for
16 the purpose of averting bodily harm to the person acting or to
17 another; or

18 (2) knows or reasonably should have known
19 that bodily injury is substantially certain to result from
20 his conduct;

21 H. "loss of income from work" means:

22 (1) if the injured person was employed or
23 self-employed at any time during the year preceding an
24 accident, eighty percent of the average weekly amount the
25 injured person would have earned, or could have reasonably

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1 expected to earn but for the accidental bodily injury, through
2 employment in his usual occupation or profession, reduced by
3 either:

4 (a) eighty percent of the average
5 weekly amount received from substitute employment or self-
6 employment; or

7 (b) the average weekly amount of income
8 the injured person would have earned in available appropriate
9 substitute employment that the person was capable of
10 performing but unreasonably failed to undertake; or

11 (2) if the injured person was unemployed, the
12 amount of unemployment compensation benefits the injured
13 person would have been eligible to receive but for the
14 accidental bodily injury, except that "loss of income from
15 work" does not include any loss of income after an injured
16 person's death;

17 I. "medical expenses" means reasonable expenses
18 incurred by or on behalf of an injured person for necessary
19 medical, chiropractic, surgical, dental, ambulance, hospital,
20 medical rehabilitation, physical therapy and professional
21 nursing services and drugs, medically necessary equipment
22 designed primarily for a medical purpose, eyeglasses, hearing
23 aids and prosthetic devices, but "medical expenses" does not
24 include:

25 (1) that portion of the charge for a room in

1 a hospital, clinic, convalescent or nursing home, extended
2 care facility or similar facility in excess of the reasonable
3 and customary charge for semi-private accommodations unless
4 otherwise medically necessary;

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

13 (3) that portion of a charge for services,
14 products or facilities by a health care provider in excess of
15 the provider's reasonable and customary charge for like
16 services, products or facilities;

17 J. "medical rehabilitation" means necessary
18 services designed to reduce the disability and dependence of
19 an injured person and to restore the person, to the extent
20 reasonably possible, to his pre-accident level of functioning;

21 K. "motor vehicle" means a self-propelled vehicle
22 of a kind required to be registered pursuant to New Mexico law
23 for use on public streets and highways, other than a vehicle
24 with three or fewer load-bearing wheels;

25 L. "motor vehicle insurance policy" means that

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1 term as defined in Section 59A-7-7.1 NMSA 1978;

2 M. "noneconomic loss" means a loss other than
3 economic loss;

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

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

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

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

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

23 Q. "pedestrian" means a person not occupying a
24 motor vehicle;

25 R. "personal compensation benefits" means benefits

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1 with an aggregate limit of at least fifteen thousand dollars
2 (\$15,000) per person per accident for economic loss resulting
3 from accidental bodily injury, as follows:

4 (1) medical expenses;

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

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

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

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

23 T. "personal compensation insured" means a person
24 other than a tort chooser who:

25 (1) is the named insured of a personal

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1 compensation policy or a resident relative;

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

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

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

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

20 W. "replacement services loss" means expenses
21 reasonably incurred for ordinary and necessary services from
22 others in lieu of those the injured person would have
23 performed, not for income but for the benefit of the injured
24 person's family, if he had not been injured. "Replacement
25 services loss" does not include expenses for services

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1 performed by a person residing in the household of the injured
2 person, services performed by a person related to the injured
3 person or services performed after the injured person's death;

4 X. "resident relative" means a person related to a
5 named insured of a motor vehicle insurance policy by blood,
6 affinity or adoption and who primarily makes his home in the
7 same family unit as the named insured, even though he may
8 temporarily live elsewhere;

9 Y. "superintendent" means the superintendent of
10 insurance;

11 Z. "tort chooser" means a person who has exercised
12 his right pursuant to Section 5 of the Personal Choice Auto
13 Insurance Act to reject that act's limitations on tort rights
14 and liabilities;

15 AA. "tort coverage" means coverage under a motor
16 vehicle bodily injury and property damage liability policy in
17 which a tort chooser involved in an accident with a personal
18 compensation chooser recovers damages from the tort chooser's
19 own insurer for economic and noneconomic loss that the tort
20 chooser is barred from recovering from the personal
21 compensation chooser;

22 BB. "uncompensated economic loss" means that
23 portion of economic loss arising out of accidental bodily
24 injury that exceeds the total of benefits provided by
25 applicable personal compensation policies and benefits

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1 received from all other sources as reimbursement for or
2 arising from accidental bodily injury, other than life
3 insurance benefits, regardless of the nature or number of
4 benefit sources available or their form, but "uncompensated
5 economic loss" does not include:

6 (1) the amount of economic loss resulting
7 from application of a deductible under a personal compensation
8 policy;

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

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

18 CC. "uninsured motorist" means a person who is the
19 owner of, or other person responsible for maintaining
20 insurance coverage on, a motor vehicle subject to the
21 insurance requirements of the Mandatory Financial
22 Responsibility Act or the Personal Choice Auto Insurance Act
23 and who fails to maintain the minimum required coverage
24 pursuant to those acts.

25 Section 4. [NEW MATERIAL] MOTOR VEHICLE INSURANCE

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1 **REQUIREMENTS. --**

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

12 B. A tort chooser is not eligible for a personal
13 compensation policy and shall comply with the provisions of
14 the Mandatory Financial Responsibility Act by obtaining a
15 motor vehicle bodily injury and property damage liability
16 policy or providing other evidence of financial
17 responsibility. He shall carry tort coverage with limits at
18 least equal to the bodily injury limits required by that act.

19 C. The personal compensation policy required by
20 this section may be provided through insurance or a qualified
21 plan of self-insurance approved by the superintendent. The
22 superintendent may approve a self-insurance plan and issue a
23 certificate of self-insurance if the superintendent is
24 satisfied that the plan is actuarially sound and will continue
25 to have sufficient financial assets to respond to claims.

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1 D. The named insured of a personal compensation
2 policy may waive benefits for loss of income from work for an
3 appropriate rate reduction by completing a certification form
4 prescribed by the superintendent stating under oath that
5 neither the named insured nor any resident relative has earned
6 income from regular employment during the past thirty days,
7 and that none of them expects to earn income from regular
8 employment for at least one hundred eighty days from the date
9 the certification is executed. A properly completed form
10 shall be conclusive proof of the insured's intent to waive
11 loss of income benefits.

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

20 F. The additional optional insurance coverages
21 required to be made available under a personal compensation
22 policy at additional cost are:

23 (1) personal compensation benefits covering
24 loss in excess of fifteen thousand dollars (\$15,000) per
25 person, in optional increments up to not less than an

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1 aggregate limit of one hundred thousand dollars (\$100,000) per
2 person per accident. Except as provided in Subsection D of
3 this section, if the aggregate limit is one hundred thousand
4 dollars (\$100,000) or more, the sublimit for loss of income
5 from work shall be not less than five hundred dollars (\$500)
6 per week;

7 (2) motor vehicle bodily injury liability
8 insurance with a limit of not less than fifteen thousand
9 dollars (\$15,000) per person per accident, exclusive of
10 interest and costs, due to accidental bodily injury and,
11 subject to the per-person limit, an aggregate limit of not
12 less than thirty thousand dollars (\$30,000), exclusive of
13 interest and costs; and

14 (3) scheduled benefits coverage with limits
15 of at least ten thousand dollars (\$10,000) per person per
16 accident, in optional increments up to not less than one
17 hundred thousand dollars (\$100,000) per person per accident.
18 Scheduled benefits coverage shall provide benefits, payable in
19 addition to and without regard to any other benefits payable,
20 for loss from accidental bodily injury sustained by the named
21 insured of a personal compensation policy or a resident
22 relative who is not a tort chooser while engaged in the
23 operation, maintenance or use of a motor vehicle or as a
24 pedestrian. Scheduled benefits coverage shall be paid as
25 follows, provided that only the largest applicable benefit

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1 shall be paid for any one person for a single accident:

2 (a) loss of life, the principal sum;

3 (b) permanent and total disability, the
4 principal sum;

5 (c) loss of two or more members, the
6 principal sum;

7 (d) loss of one member, one-half of the
8 principal sum;

9 (e) loss of thumb and index finger on
10 the same hand, one-fourth of the principal sum;

11 (f) permanent and total loss of
12 hearing, one-half of the principal sum;

13 (g) permanent and total loss of the
14 sense of smell or taste, one-fourth of the principal sum;

15 (h) loss of a finger or toe, one-eighth
16 of the principal sum;

17 (i) serious permanent disfigurement,
18 one-eighth of the principal sum; and

19 (j) permanent and total loss of use of
20 an internal organ, one-eighth of the principal sum.

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

23 (1) "loss" means, with regard to a hand or
24 foot, permanent, complete loss of use of the hand or foot, or
25 actual severance of the hand or foot through or above the

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1 wrist or ankle joints; with regard to an eye, complete,
2 irrecoverable loss of sight; with regard to a thumb,
3 permanent, complete loss of use of the thumb or actual
4 severance of the thumb through the proximal phalanx or
5 metacarpal; with regard to the index finger or any other
6 finger, permanent, complete loss of use of the particular
7 finger or actual severance of the particular finger through
8 the middle or proximal phalanx or metacarpal; and with regard
9 to any toe, actual severance through the proximal phalanx or
10 metacarpal of the particular toe;

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

12 (3) "permanent and total disability" means,
13 for persons who have reached the age of majority or who are
14 working full time at the time of the accidental bodily injury,
15 the insured's complete inability after one year of continuous
16 total disability to engage in an occupation or employment for
17 which the insured is fitted by reason of education, training
18 or experience for the remainder of the insured's life. As
19 used in this paragraph, "continuous total disability" means
20 the insured's complete inability during the first year of
21 disability to perform every duty of the insured's occupation
22 commencing with the thirtieth day after the date of the
23 accident. For persons who are both under the age of majority
24 and not working full time at the time of the accidental bodily
25 injury, "permanent and total disability" means having an

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1 abnormal electroencephalography and abnormal brain magnetic
2 resonance image or the presence of seizures for two
3 consecutive years; and

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

6 H. An insurer may offer:

7 (1) limits higher than those required by this
8 section;

9 (2) deductible and coinsurance options for
10 the coverage described in Paragraph (1) of Subsection F of
11 this section;

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

15 (4) coverages in addition to those required
16 by this section, including collision and comprehensive
17 physical damage.

18 I. Any coverages provided pursuant to this section
19 shall be subject to the premium rates, policy forms, terms,
20 limitations, conditions and exclusions approved by the
21 superintendent.

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

25 K. Each insurer shall furnish the first named

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1 insured with a card constituting evidence of financial
2 responsibility and proof of insurance; provided, the card
3 shall not be deemed to create insurance coverage if the policy
4 has, in fact, lapsed or been canceled on the date of the
5 accident. The card, insurance policy, insurance policy
6 binder, certificate of insurance or such other proof as may be
7 prescribed by the motor vehicle division of the taxation and
8 revenue department shall constitute sufficient proof of
9 insurance and evidence of financial responsibility for
10 purposes of New Mexico law.

11 Section 5. [NEW MATERIAL] RIGHT OF REJECTION-- UNIFORMITY
12 OF CHOICE. --

13 A. A person or a resident relative, including a
14 person who is not the owner or other person responsible for
15 maintaining insurance coverage on a motor vehicle, may execute
16 a form prescribed by the superintendent rejecting the
17 limitations on tort rights and liabilities of the Personal
18 Choice Auto Insurance Act and shall file the form with the
19 superintendent, who shall maintain the forms as public
20 records. Rejection is effective with respect to an accident
21 occurring after the date and time the superintendent receives
22 the rejection form. Rejection for a minor or incapacitated
23 person shall be made on his behalf by his parent or guardian
24 and shall remain effective until revoked or until the person
25 is no longer a minor or incapacitated, whichever comes first.

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1 Completion and filing of the form prescribed by the
2 superintendent shall be conclusive proof that the person
3 completing the form made an informed and knowledgeable
4 decision concerning rejection. Rejection remains effective
5 until revoked in writing on a form prescribed by the
6 superintendent.

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

14 C. A person who effectively rejects in compliance
15 with Subsections A and B of this section retains all tort
16 rights and tort liabilities to the extent provided in the
17 Personal Choice Auto Insurance Act. The rejecting person is
18 not entitled to collect personal compensation benefits under a
19 motor vehicle insurance policy unless he has subsequently
20 revoked the rejection as provided in Subsection D of this
21 section.

22 D. Revocation of rejection forms shall be made on
23 a form prescribed by the superintendent. Revocation becomes
24 effective as of the date and time the superintendent receives
25 it. Revocation remains effective until superseded by the

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1 filing of a rejection form. Regardless of the nonfiling of
2 subsequent revocation forms, a person eligible for payment of
3 personal compensation benefits as a named insured under a
4 personal compensation policy shall be deemed to have withdrawn
5 any rejection.

6 E. In order to minimize conflict in choices
7 between personal compensation choosers and tort choosers,
8 insurers are authorized to maintain underwriting rules that
9 require uniformity of choice by the named insured and all
10 resident relatives.

11 F. The superintendent shall adopt and promulgate
12 rules governing:

13 (1) rejection and revocation of such
14 rejection pursuant to this section, including situations
15 involving multiple vehicles and multiple policies in the same
16 household; and

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

19 Section 6. [NEW MATERIAL] CONSUMER INFORMATION
20 PROGRAM --

21 A. The superintendent shall establish and maintain
22 a program to inform consumers about the comparative costs of a
23 personal compensation policy and a motor vehicle bodily injury
24 and property damage liability policy, including with the
25 latter required minimum uninsured motorist coverage, as well

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1 as the benefits, rights and responsibilities under each type
2 of insurance. The program shall include procedures for
3 informing insureds of their right of rejection.

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

11 C. A person, after being provided information in a
12 form approved by the superintendent explaining the basis for
13 choosing between being a personal compensation chooser and a
14 tort chooser, shall be bound to the terms of the status and
15 coverage chosen and is precluded from claiming liability
16 against another person based on being inadequately informed.

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

19 A. A personal compensation policy shall pay
20 personal compensation benefits for accidental bodily injury of
21 a personal compensation insured sustained within the United
22 States, its territories or possessions or Canada.

23 B. A personal compensation policy shall, if an
24 insured becomes subject to a compulsory financial
25 responsibility or similar law of another jurisdiction of the

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1 United States, its territories or possessions or Canada,
2 provide the coverage required by the law of that jurisdiction.

3 Section 8. [NEW MATERIAL] PERSONS NOT ENTITLED TO
4 PERSONAL COMPENSATION BENEFITS--LIMITATIONS ON PERSONAL
5 COMPENSATION BENEFITS. --

6 A. Notwithstanding any other provision of the
7 Personal Choice Auto Insurance Act, an insurer is not
8 obligated to provide personal compensation benefits for any
9 injured person who:

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

13 (2) was injured while engaged in the
14 operation, maintenance or use of a motor vehicle owned by,
15 furnished to or available for the regular use of the injured
16 person, or a resident relative of the injured person, if such
17 motor vehicle is not covered by the policy against which a
18 claim is made;

19 (3) was injured as a pedestrian by a motor
20 vehicle owned by, furnished to or available for the regular
21 use of the injured person, or a resident relative of the
22 injured person, if the motor vehicle is not covered by the
23 policy against which a claim is made;

24 (4) was injured as a result of his
25 intentional misconduct. If a person dies as a result of his

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1 intentional misconduct, the insurer is not obligated to
2 provide the person's dependents and estate his personal
3 compensation benefits;

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

10 (6) was injured while operating or occupying
11 a motor vehicle involved in an organized race or speed
12 contest; or

13 (7) is a tort chooser.

14 B. There shall be no coverage for the named
15 insured or a resident relative under a personal compensation
16 policy while operating or occupying a self-propelled vehicle
17 with three or fewer load-bearing wheels.

18 C. An insurer shall not be obligated to pay
19 personal compensation benefits, other than medical payments,
20 to or on behalf of an injured person who was driving under the
21 influence of intoxicating liquor or drugs.

22 D. Nothing in this section bars an insurer from
23 providing personal compensation benefits for an injured
24 person, otherwise excluded by this section, if the policy
25 clearly states that it provides the coverage.

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

- 4 A. the injured person;
- 5 B. the parent or guardian of the injured person,
6 if the injured person is a minor or incapacitated;
- 7 C. a dependent or the personal representative of
8 the estate of the injured person; or
- 9 D. a person providing medical or other health care
10 services, products or facilities for which payment is due.

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

- 12 A. Personal compensation policies are liable to
13 pay personal compensation benefits in the following order of
14 priority up to their respective coverage limits:
- 15 (1) the personal compensation policy covering
16 a motor vehicle involved in the accident, if the injured
17 person was engaged in the operation, maintenance or use of the
18 motor vehicle or was a pedestrian injured by the motor vehicle
19 at the time of the accident;
- 20 (2) a personal compensation policy under
21 which the injured person is a named insured;
- 22 (3) a personal compensation policy under
23 which the injured person is a resident relative; and
- 24 (4) a personal compensation policy under
25 which the injured person qualifies as a personal compensation

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1 insured other than as described in Paragraphs (1) through (3)
2 of this subsection.

3 B. Subject to the payment priorities in Subsection
4 A of this section, if a personal compensation insured is
5 entitled to benefits under more than one personal compensation
6 policy or coverage, the maximum recovery shall not exceed the
7 amount payable under the personal compensation policy with the
8 highest limit.

9 C. If two or more insurers are obligated to pay
10 personal compensation benefits at the same priority, the
11 insurer against whom the claim is first made shall pay the
12 claim up to that insurer's policy limits as if wholly
13 responsible and may thereafter recover contribution pro rata
14 on the basis of coverage limits from any other insurer at the
15 same priority level.

16 D. For purposes of payment of personal
17 compensation benefits only, an unoccupied, parked motor
18 vehicle is not a motor vehicle involved in an accident unless
19 it was parked in such a way as to cause unreasonable risk of
20 injury.

21 Section 11. [NEW MATERIAL] COORDINATION OF BENEFITS. --
22 The personal compensation insurer has the primary obligation
23 to indemnify its personal compensation insured who sustains
24 accidental bodily injury; provided that personal compensation
25 benefits are excess over and shall not duplicate the amount of

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1 benefits an injured person recovers, or is entitled to
2 recover, under a state or federal workers' compensation law or
3 similar occupational injury law, based on the same accidental
4 bodily injury.

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

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

11 B. medical expenses incurred for treatment
12 occurring more than one year after the most recently occurring
13 previous treatment for that accidental bodily injury; or

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

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

19 A. Except as provided otherwise in Subsections D
20 and E of this section:

21 (1) no person, other than a tort chooser,
22 shall have a cause of action in tort or otherwise for
23 accidental bodily injury caused in whole or in part by the
24 operation, maintenance or use of a motor vehicle subject to
25 the Personal Choice Auto Insurance Act, other than for

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1 uncompensated economic loss; and

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

8 B. Subject to the provisions of Subsection A of
9 this section and except as provided otherwise in Subsections D
10 and E of this section, an uninsured motorist shall not have a
11 cause of action to recover damages resulting from an accident
12 arising out of the operation, maintenance or use of a motor
13 vehicle from a personal compensation chooser or a tort chooser
14 for:

15 (1) the first fifteen thousand dollars
16 (\$15,000) of economic loss resulting from accidental bodily
17 injury; or

18 (2) the first ten thousand dollars (\$10,000)
19 of property damage.

20 C. As used in this section, "uninsured motorist"
21 means a person who is the owner of or other person responsible
22 for maintaining insurance coverage on a motor vehicle subject
23 to the insurance requirements of the Personal Choice Auto
24 Insurance Act, but who fails to maintain the minimum required
25 coverages.

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1 D. A person shall have a cause of action under
2 common law tort principles for economic and noneconomic loss
3 against any other person who causes accidental bodily injury
4 or motor vehicle property damage while committing a felony or
5 while driving under the influence of intoxicating liquor or
6 drugs. Insurers are prohibited from paying the damages
7 assessed against an insured pursuant to this subsection,
8 except for economic loss.

9 E. A person shall have a cause of action under
10 common law tort principles for economic and noneconomic loss
11 resulting from accidental bodily injury or property damage
12 caused by intentional misconduct of another person. Insurers
13 are prohibited from paying damages assessed against an insured
14 pursuant to this subsection.

15 F. The limitations of causes of action in tort or
16 otherwise specified in Subsections A and B of this section
17 apply only to:

18 (1) an individual engaged in the operation,
19 maintenance or use of a vehicle at the time of the accident;
20 or

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

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

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

17 B. If the claimant is unable to reach an agreement
18 with the person against whom the claim is made or the person's
19 insurer by the last day of the settlement period, the claimant
20 shall be entitled to file a lawsuit seeking uncompensated
21 economic loss based on common law tort principles. If the
22 claimant is deemed the prevailing party in the lawsuit as
23 provided in this subsection, he shall, in addition to any
24 damages awarded, be awarded reasonable attorney fees, not to
25 exceed one-third of the gross amount of the recovery,

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1 exclusive of interest and court costs; provided that if the
2 gross recovery exceeds one hundred thousand dollars
3 (\$100,000), the maximum fee shall be limited to one-third of
4 the amount up to one hundred thousand dollars (\$100,000) plus
5 fifteen percent of the amount in excess of one hundred
6 thousand dollars (\$100,000). The claimant shall be deemed to
7 be the prevailing party if he is awarded damages, exclusive of
8 interest and court costs, in an amount equal to or greater
9 than the midpoint between the last written demand made during
10 the settlement period by the claimant and the last written
11 offer made during the settlement period by the person against
12 whom the claim is made or the person's insurer.

13 C. Nothing in this section shall be deemed to
14 prohibit the parties from compromising a claim at any time by
15 mutual agreement.

16 Section 15. [NEW MATERIAL] RIGHT OF SUBROGATION--
17 CONDITIONS.--An insurer shall be subrogated, to the extent of
18 any personal compensation benefits paid, to all of the rights
19 of its insured with respect to an accident caused, in whole or
20 in part, by the fault of a person who is not a personal
21 compensation chooser.

22 Section 16. [NEW MATERIAL] PAYMENT OF INSURANCE
23 BENEFITS-- CAUSES OF ACTION.--

24 A. No offset shall be allowed against personal
25 compensation benefits due based on the value of a cause of

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1 action until after a monetary recovery is made. After
2 recovery is made, a deduction from future benefits may be made
3 in no more than the amount of the net recovery, exclusive of
4 attorney fees, expenses and costs incurred in effecting the
5 recovery.

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

16 C. Recovery on a cause of action shall not operate
17 to reduce personal compensation benefit coverage limits, which
18 shall be paid out in full to the extent economic loss exceeds
19 the amount of recovery.

20 Section 17. [NEW MATERIAL] PERSONAL COMPENSATION
21 BENEFITS-- PROMPT PAYMENT. --

22 A. Personal compensation benefits shall be paid as
23 loss accrues. Loss accrues when medical expense, loss of
24 income from work or replacement services loss occurs or when
25 the injured person dies. Notwithstanding any provision of the

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1 New Mexico Insurance Code, personal compensation benefits for
2 accrued losses are overdue if not paid within thirty days
3 after the insurer receives reasonable proof of the fact and
4 the amount of loss; provided that an insurer may accumulate
5 claims for periods not exceeding thirty days, in which case
6 benefits are not overdue if paid within twenty days after the
7 last day of the period of accumulation. If reasonable proof
8 is not supplied as to the entire claim, the amount that is
9 supported by reasonable proof shall be paid promptly as
10 provided in this subsection, and any part of the remainder of
11 the claim that is later supported by reasonable proof shall be
12 paid promptly in the same manner.

13 B. For the purpose of calculating the extent to
14 which personal compensation benefits are overdue, payment
15 shall be treated as made on the date a draft or other valid
16 instrument is placed in the United States mail in a properly
17 addressed postpaid envelope or, if not mailed, on the date of
18 personal delivery to the insured.

19 C. Notwithstanding any provision of the New Mexico
20 Insurance Code, if an insurer is found after an administrative
21 hearing by the superintendent or upon review by a court of
22 competent jurisdiction to be in violation of this section, the
23 exclusive remedy shall be the recovery of the personal
24 compensation benefits and interest at a rate of twelve percent
25 a year beginning from the date the benefits were due, together

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1 with reasonable attorney fees, expenses and costs. In the
2 event of an insurer's willful or wanton failure to comply with
3 this section, the recovery shall be three times the amount of
4 the personal compensation benefits that are overdue, together
5 with attorney fees, expenses and costs.

6 Section 18. [NEW MATERIAL] ASSIGNMENT OR GARNISHMENT--
7 PERSONAL COMPENSATION BENEFITS EXEMPT.--

8 A. Personal compensation benefits are exempt from
9 garnishment, attachment, execution or any other process or
10 claim to the extent that wages or earnings are exempt under an
11 applicable law.

12 B. An agreement for assignment of a right to
13 personal compensation benefits payable in the future shall be
14 unenforceable except to the extent that:

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

18 (2) benefits for loss of income from work or
19 replacement services loss are assigned for payment of alimony,
20 maintenance or child support.

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

22 A. Subject to the arbitration provisions in
23 Section 25 of the Personal Choice Auto Insurance Act, if no
24 personal compensation benefits have been paid, an action
25 therefor may not be commenced against the insurer later than

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1 two years after the date of the accident causing the injuries.

2 B. Subject to the arbitration provisions in
3 Section 25 of the Personal Choice Auto Insurance Act, if
4 personal compensation benefits have been paid, an action for
5 recovery of further personal compensation benefits may be
6 commenced no later than two years after the date of the last
7 payment of personal compensation benefits; provided that no
8 action for personal compensation benefits shall be commenced
9 against an insurer more than four years after the date of the
10 accident.

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

18 Section 20. [NEW MATERIAL] MENTAL AND PHYSICAL
19 EXAMINATIONS. --

20 A. If the mental or physical condition of an
21 injured person is material to any claim that has been or may
22 be made for personal compensation benefits, the injured
23 person, upon request of an insurer, shall submit to reasonable
24 mental or physical examination by a health care provider
25 designated by the insurer at a reasonably convenient time and

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1 location, subject to rules, if any, adopted and promulgated by
2 the superintendent. The cost of such examination shall be
3 borne by the insurer and shall not be charged against or
4 operate to reduce benefit limits.

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

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

16 A. Upon request of an insurer, an employer shall
17 furnish a statement of the work record and earnings of an
18 injured person who has filed a claim for personal compensation
19 benefits. The statement shall cover the period specified by
20 the insurer and may include the one-year period before, and
21 the entire period after, the date of the accident.

22 B. To ensure that the treatment and expenses are
23 both reasonable and necessary, insurers may review or obtain a
24 review of treatment and expenses prior to, during and after
25 the course of treatment of an injured person.

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1 C. Every medical or other health care provider
2 providing, before or after an injury upon which a claim for
3 personal compensation benefits is based, any services,
4 products or facilities in relation to that or any other
5 injury, or in relation to a condition claimed to be connected
6 with that or any other injury, shall, upon request of the
7 insurer against whom the claim has been made, furnish the
8 insurer a written report of the history, condition, treatment
9 and dates and costs of treatment of the injured person. The
10 information shall be provided with a declaration that the
11 services, products or facilities rendered were reasonable and
12 necessary with respect to the injury sustained and shall
13 identify which expenses were incurred as a result of the
14 injury. Each medical or other health care provider shall also
15 produce in a timely manner and permit the inspection and
16 copying of its records regarding such history, condition,
17 treatment and the dates and costs thereof. The person
18 providing the declaration required under this section shall
19 attest to it as follows: "I declare that I have read the
20 foregoing and the facts alleged are true, to the best of my
21 knowledge and belief.". The cost of obtaining the information
22 and records required by this subsection shall be borne by the
23 insurer and shall not be charged against or operate to reduce
24 benefit limits.

25 D. No cause of action for violation of the

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1 physician-patient privilege or invasion of the right of
2 privacy shall exist against any medical or other health care
3 provider complying with the provisions of this section, but
4 the insurer is responsible for ensuring the confidentiality of
5 the records in the hands of its officers, employees and
6 agents.

7 E. A dispute regarding the right to the discovery
8 of facts about an injured person by the insurer may be
9 resolved through arbitration as provided in Section 25 of the
10 Personal Choice Auto Insurance Act or in court proceedings.

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

12 A. Insurers, other than self-insurance plans,
13 authorized to provide insurance under the Personal Choice Auto
14 Insurance Act shall organize, participate in and maintain an
15 assigned claims plan to provide benefits equivalent to the
16 minimum personal compensation benefits required by that act to
17 an injured person covered by that act if the person is not a
18 tort chooser or a resident relative of an uninsured motorist
19 as defined in Paragraph (5) of Subsection A of Section 8 of
20 that act and if:

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

24 (2) personal compensation benefits are
25 unavailable because of the insolvency of an insurer for whose

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1 covered claims the New Mexico property and casualty insurance
2 guaranty association is not responsible.

3 B. The assigned claims plan shall adopt bylaws and
4 rules, and enter into necessary agreements for the operation
5 of the plan and the equitable distribution of costs, as
6 approved by the superintendent.

7 C. Any claim brought through the assigned claims
8 plan shall be assigned to an insurer in accordance with the
9 plan's bylaws and rules. Upon such assignment, the insurer
10 shall have the rights and obligations it would have had if,
11 prior to such assignment, it had issued a personal
12 compensation policy providing the minimum personal
13 compensation coverage required by law.

14 D. A person accepting personal compensation
15 benefits under the assigned claims plan shall have the rights
16 and obligations the person would have had under a personal
17 compensation policy issued to him providing the minimum
18 personal compensation coverage required by law.

19 E. Benefits available through the assigned claims
20 plan shall be reduced to the extent that benefits covering the
21 same loss are available from other sources, regardless of the
22 nature or number of benefit sources available and regardless
23 of the nature or form of the benefits. The plan coverage
24 shall be deemed secondary to those sources.

25 F. The assigned claims plan and the insurer to

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1 whom the claim is assigned are subrogated, to the extent of
2 personal compensation benefits paid for a loss, to all of the
3 rights of the claimant against any person liable for the loss
4 and against any insurer, its successor in interest or any
5 other person or organization legally obligated to provide
6 personal compensation benefits to the injured person for the
7 loss.

8 Section 23. [NEW MATERIAL] INCENTIVES FOR INSUREDS. --

9 Each insurer shall adopt an actuarially sound program that
10 provides incentives to a personal compensation chooser in the
11 form of increased benefits, reduced premiums or other methods
12 to:

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

17 B. have medical expense benefits delivered by a
18 managed care program designated by the insurer, but only the
19 actual cost of the benefits to the insurer shall be charged
20 against the policy limits.

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

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

2 A. A dispute with respect to personal compensation
3 benefits between an insurer and an injured person, or the
4 dependents or estate of such person, may be submitted to
5 arbitration pursuant to the provisions of this section if the
6 insurer and the person agree. Only the dispute that the
7 parties have agreed to arbitrate may be addressed by the
8 arbitration.

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

19 C. The cost of an arbitrator or an expert witness
20 selected by one party shall be paid by that party. The cost
21 of an arbitrator agreed upon by the parties or their
22 arbitrators and other expenses of arbitration shall be shared
23 equally by both parties.

24 D. The arbitration shall take place in the county
25 in which the insured resides unless the parties agree to

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1 another location. The Rules of Civil Procedure for the
2 District Courts and the Rules of Evidence shall apply.

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

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

16 B. The provisions of this section do not apply to
17 any named insured who, prior to a motor vehicle accident
18 within New Mexico, has become a tort chooser pursuant to
19 Section 5 of the Personal Choice Auto Insurance Act. With
20 respect to such a tort chooser, the bodily injury and property
21 damage liability limits of the policy shall be operative,
22 subject to conformance with the Mandatory Financial
23 Responsibility Act.

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

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1 "59A-7-7. "VEHICLE" INSURANCE DEFINED. -- "Vehicle"

2 insurance is insurance covering:

3 A. physical damage. Insurance against loss of or
4 damage to any land vehicle or aircraft or any draft or riding
5 animal resulting from or incident to ownership, maintenance or
6 use of any such vehicle, aircraft or animal;

7 B. public liability and property damage.
8 Insurance against any hazard or cause, and against any loss,
9 liability or expense resulting from or incident to ownership,
10 maintenance or use of any such vehicle, aircraft or animal;

11 C. cargo. Insurance against loss of or damage to
12 property contained in a vehicle or being loaded or unloaded
13 therein or therefrom or incident to the ownership, maintenance
14 or use of any such vehicle, aircraft or animal; [~~and~~]

15 D. medical payments. Insurance for payment on
16 behalf of the injured party or for reimbursement of the
17 insured for payment, irrespective of legal liability of the
18 insured, of medical, hospital, surgical and disability
19 benefits, to persons injured and funeral and death benefits to
20 dependents, beneficiaries or personal representatives of
21 persons killed as the result of an accident, resulting from or
22 incident to ownership, maintenance or use of any such vehicle,
23 aircraft or animal. Such coverage shall not be deemed to be
24 "health" insurance for purposes of the Insurance Code; and

25 E. the risks and providing the benefits described

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1 in the Personal Choice Auto Insurance Act. "

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

4 "59A-7-7.1. [NEW MATERIAL] "MOTOR VEHICLE INSURANCE
5 POLICY" DEFINED. -- "Motor vehicle insurance policy" means a
6 policy of vehicle insurance that covers self-propelled
7 vehicles of a kind required to be registered under New Mexico
8 law for use on public streets and highways and:

9 A. shall include either:

10 (1) a motor vehicle bodily injury and
11 property damage liability policy in compliance with the
12 Mandatory Financial Responsibility Act, together with
13 uninsured motorist coverage, subject to the provisions of
14 Section 66-5-301 NMSA 1978 permitting the insured to reject
15 the coverage; or

16 (2) a personal compensation policy as defined
17 in the Personal Choice Auto Insurance Act; and

18 B. may include:

19 (1) physical damage coverage;
20 (2) medical payments coverage; and
21 (3) other coverages that the insured and the
22 insurer agree to include within the policy. "

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

25 "59A-32-3. PURPOSE OF ASSIGNED RISK PLAN. -- The purpose
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1 of the assigned risk plan is to provide for the equitable
2 distribution and apportionment among insurers authorized to
3 transact in this state the business of [~~automobile and~~
4 personal compensation, motor vehicle bodily injury, property
5 damage liability and physical damage insurance, of insurance
6 afforded applicants who are in good faith entitled to, but who
7 are unable to procure, such insurance through ordinary
8 methods. "

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

11 "59A-32-5. REQUIREMENTS OF ASSIGNED RISK PLANS. -- [~~Any~~
12 ~~such~~] An agreement or plan for the assignment of risks
13 involving [~~automobile and~~] personal compensation, motor
14 vehicle bodily injury, [~~and~~] property damage liability and
15 physical damage insurance shall include provision for:

16 A. reasonable rules governing the equitable
17 distribution of risks by direct insurance, reinsurance or
18 otherwise, and by the assignment of risks to insurers
19 participating in the plan;

20 B. rates and reasonable rate modifications which
21 shall be applicable to such risks and which shall not be
22 excessive, inadequate or unfairly discriminatory;

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

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

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

7 "59A-32-6. REVIEW OF PROPOSED ASSIGNED RISK PLANS. --
8 Every ~~[such]~~ plan for the assignment of risks involving
9 ~~[automobile and]~~ personal compensation, motor vehicle bodily
10 injury, ~~[and]~~ property damage liability and physical damage
11 insurance shall be filed in writing with the superintendent.
12 The superintendent shall review the plan as soon as reasonably
13 possible after filing, to determine whether or not it meets
14 the requirements of Section ~~[523 of this article]~~ 59A-32-5
15 NMSA 1978. Each plan shall be on file with the superintendent
16 for a waiting period of thirty ~~[(30)]~~ days before it becomes
17 effective, unless sooner approved in writing. Unless
18 disapproved in writing by the superintendent within the thirty
19 ~~[(30)]~~ day waiting period, a plan shall be deemed approved and
20 shall become effective upon the expiration of that period. "

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

23 "59A-32-8. FAILURE TO FILE PLAN--ASSIGNED RISK PLAN
24 PRESCRIBED. --If no plan ~~[which]~~ that meets the requirements of
25 Section ~~[523 of this article above]~~ 59A-32-5 NMSA 1978 has

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1 been filed with the superintendent within ninety [~~(90)~~] days
2 after [~~June 30, 1959~~] the effective date of the Personal
3 Choice Auto Insurance Act, or within the period stated in
4 [~~any~~] an order [~~which~~] that disapproves an existing plan, the
5 superintendent may formulate and prescribe a plan [~~which~~] that
6 does meet [~~such~~] those requirements, after hearing or
7 consultation with insurers authorized to transact in this
8 state the business of [~~automobile and~~] personal compensation,
9 motor vehicle bodily injury, [~~and~~] property damage liability
10 and physical damage insurance. When [~~any~~] a plan [~~or plans~~]
11 or amendment [~~thereto~~] to it has [~~or have~~] been approved or
12 prescribed, no insurer to which [~~such~~] the plan is applicable
13 shall thereafter issue [~~any~~] a policy of [~~such~~] insurance, or
14 undertake to transact [~~such~~] business in this state, unless
15 the insurer participates in [~~such~~] the plan. "

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

18 "66-5-208. EVIDENCE OF FINANCIAL RESPONSIBILITY--AMOUNTS
19 AND CONDITIONS. -- [~~"Evidence of financial responsibility",~~] As
20 used in the Mandatory Financial Responsibility Act, "evidence
21 of financial responsibility" means:

22 A. evidence of the ability to respond in damages
23 for liability, on account of accidents occurring subsequent to
24 the effective date of the evidence, arising out of the
25 ownership, maintenance or use of a vehicle of a type subject

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1 to registration under the laws of New Mexico, in the following
2 amounts:

3 [~~A. twenty five thousand dollars (\$25,000)~~]

4 (1) fifteen thousand dollars (\$15,000) because of bodily
5 injury to or death of one person in [~~any one~~] a single
6 accident;

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

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

14 [~~D.~~] (4) if evidence is in the form of a
15 surety bond or a cash deposit, the total amount shall be
16 [~~sixty thousand dollars (\$60,000)~~] forty thousand dollars
17 (\$40,000); or

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

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

23 "66-5-209. MEANING OF "JUDGMENT". -- [~~"Judgment"~~] As used
24 in the Mandatory Financial Responsibility Act, "judgment"
25 means any judgment [~~which~~] that becomes final by expiration

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1 without appeal of the time within which an appeal might have
2 been perfected or by final affirmation on appeal rendered by a
3 court of competent jurisdiction of any state or of the United
4 States, upon a cause of action, as limited by the Personal
5 Choice Auto Insurance Act, arising out of the ownership,
6 maintenance or use of any motor vehicle of a type subject to
7 registration [~~under~~] pursuant to the laws of New Mexico, for
8 damages, including damages for care and loss of services,
9 because of bodily injury to or death of [~~any~~] a person or for
10 damages because of injury to or destruction of property,
11 including [~~the~~] its loss of use [~~thereof~~], or upon a cause of
12 action on an agreement of settlement for such damages.
13 "Judgment" does not include any amount recoverable as
14 uncompensated economic loss pursuant to the Personal Choice
15 Auto Insurance Act."

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

18 "66-5-215. PAYMENTS SUFFICIENT TO SATISFY
19 REQUIREMENTS. --

20 A. Judgments herein referred to shall, for the
21 purpose of the Mandatory Financial Responsibility Act only, be
22 deemed satisfied when:

23 (1) [~~twenty-five thousand dollars (\$25,000)~~]
24 fifteen thousand dollars (\$15,000) has been credited upon any
25 judgment or judgments rendered in excess of that amount

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1 because of bodily injury to or death of one person as the
2 result of any one accident;

3 (2) subject to the limit of [~~twenty-five~~
4 ~~thousand dollars (\$25,000)~~] fifteen thousand dollars (\$15,000)
5 because of bodily injury to or death of one person, the sum of
6 [~~fifty thousand dollars (\$50,000)~~] thirty thousand dollars
7 (\$30,000) has been credited upon any judgment or judgments
8 rendered in excess of that amount because of bodily injury to
9 or death of two or more persons as the result of any one
10 accident; or

11 (3) ten thousand dollars (\$10,000) has been
12 credited upon any judgment or judgments rendered in excess of
13 that amount because of injury to or destruction of property of
14 others as a result of any one accident.

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

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

21 "66-5-224. ACT NOT TO AFFECT OTHER POLICIES. --

22 A. The Mandatory Financial Responsibility Act does
23 not apply to or affect policies of motor vehicle insurance
24 [~~against liability which~~] that may now or hereafter be
25 required by any other law of New Mexico, except the Personal

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1 Choice Auto Insurance Act, and ~~[such]~~ those policies, if they
2 contain an agreement or are endorsed to conform with the
3 requirements of the Mandatory Financial Responsibility Act,
4 may be considered as evidence of financial responsibility
5 ~~[under]~~ pursuant to that act.

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

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

13 "66-5-226. CASH DEPOSIT AS EVIDENCE. -- Evidence of
14 financial responsibility may be demonstrated by the
15 certificate of the state treasurer that the person named in
16 the certificate has deposited with him ~~[sixty thousand dollars~~
17 ~~(\$60,000)]~~ forty thousand dollars (\$40,000) in cash."

18 Section 38. Section 66-5-301 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 325, as amended) is amended to read:

20 "66-5-301. INSURANCE AGAINST UNINSURED AND UNKNOWN
21 MOTORISTS--REJECTION OF COVERAGE BY THE INSURED. --

22 A. No motor vehicle ~~[or automobile]~~ bodily injury
23 and property damage liability policy ~~[insuring against loss~~
24 ~~resulting from liability imposed by law for bodily injury or~~
25 ~~death suffered by any person and for injury to or destruction~~

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1 ~~of property of others arising out of the ownership,~~
2 ~~maintenance or use of a motor vehicle]~~ shall be delivered or
3 issued for delivery in New Mexico with respect to any motor
4 vehicle registered or principally garaged in New Mexico unless
5 coverage is provided therein or supplemental thereto in
6 minimum limits for bodily injury or death and for injury to or
7 destruction of property as set forth in Section 66-5-215 NMSA
8 1978 and such higher limits as may be desired by the insured,
9 but up to the limits of liability specified in bodily injury
10 and property damage liability provisions of the insured's
11 policy, for the protection of persons insured thereunder who
12 are legally entitled to recover damages from owners or
13 operators of uninsured motor vehicles because of bodily
14 injury, sickness or disease, including death, and for injury
15 to or destruction of property resulting therefrom, according
16 to the rules ~~[and regulations]~~ promulgated by, and under
17 provisions filed with and approved by, the superintendent of
18 insurance.

19 B. The uninsured motorist coverage described in
20 Subsection A of this section shall include underinsured
21 motorist coverage for persons protected by an insured's
22 policy. For the purposes of this subsection, "underinsured
23 motorist" means an operator of a motor vehicle with respect to
24 the ownership, maintenance or use of which the sum of the
25 limits of liability under all bodily injury liability

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1 insurance applicable at the time of the accident is less than
2 the limits of liability under the insured's uninsured motorist
3 coverage. ~~[No motor vehicle or automobile liability policy~~
4 ~~sold in New Mexico shall be required to include underinsured~~
5 ~~motorist coverage until January 1, 1980.]~~ A personal
6 compensation insured under the Personal Choice Auto Insurance
7 Act is not an underinsured motorist except to the extent a
8 claim is made for uncompensated economic loss against the
9 motorist, as provided in that act, that exceeds the coverage
10 limit under the personal compensation policy.

11 C. The uninsured motorist coverage shall ~~[provide~~
12 ~~an exclusion]~~ exclude coverage of not more than the first two
13 hundred fifty dollars (\$250) of loss resulting from injury to
14 or destruction of property of the insured in any one accident.
15 The named insured shall have the right to reject uninsured
16 motorist coverage ~~[as]~~ described in ~~[Subsections A and B of]~~
17 this section~~;~~ ~~provided that]~~ but, unless the named insured
18 requests ~~[such]~~ that coverage in writing, ~~[such coverage]~~ it
19 need not be provided in or supplemental to a renewal policy
20 where the named insured has rejected the coverage in
21 connection with a policy previously issued to him by the same
22 insurer. "

23 Section 39. TEMPORARY PROVISION--TRANSITION OF RENEWAL
24 POLICIES.--Each motor vehicle insurance policy in effect on
25 the effective date of the Personal Choice Auto Insurance Act

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1 shall become subject to the provisions of that act on its
2 first succeeding renewal date. At least thirty days before
3 the policy renewal date, the motor vehicle insurer shall
4 notify the policyholder of the new limitations on tort rights
5 and liabilities and shall provide information on obtaining the
6 appropriate form to reject the limitations. At that time, the
7 motor vehicle insurer shall also afford the policyholder the
8 opportunity to purchase the optional coverages specified in
9 Section 4 of the Personal Choice Auto Insurance Act. If the
10 policyholder does not request any optional coverage prior to
11 the renewal date of the policy and does not inform the insurer
12 that he is a tort chooser, the policy shall be reissued as a
13 personal compensation policy with personal compensation
14 benefits equal to the medical payments coverage previously
15 selected by the insured, but in no event less than fifteen
16 thousand dollars (\$15,000). If the insurer does not offer
17 personal compensation benefits in an amount equal to the
18 insured's previous medical payments limit, the insurer shall
19 provide the available limit that is nearest to and not lower
20 than the previous medical payments limit. All other coverages
21 previously purchased by a named insured shall remain in
22 effect; provided that motor vehicle insurers may delete any
23 coverage that would substantially duplicate personal
24 compensation benefits, including uninsured motorist coverage
25 and disability coverage. If the policyholder requests any

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1 optional coverage, the requested coverage shall be effective
2 on the reissue date of the policy if the request is received
3 by the motor vehicle insurer prior to the renewal date of the
4 policy. If received on or after the reissue date, the
5 requested coverage shall be effective at 12:01 a.m. on the day
6 after the request is received.

7 Section 40. TEMPORARY PROVISION-- COST SAVINGS TO
8 CONSUMERS-- CONDITIONAL REPEAL. --

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

17 B. Each motor vehicle insurer's statewide average
18 premium for a personal compensation policy with minimum
19 required benefits during the first year following the
20 effective date of the Personal Choice Auto Insurance Act shall
21 be at least thirty percent less than the motor vehicle
22 insurer's statewide average premium for calendar year 2000 for
23 mandatory insurance coverage, unless the motor vehicle insurer
24 first demonstrates at a rate hearing that such a decrease will
25 result in inadequate rates. For the purposes of this

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1 subsection, "mandatory insurance coverage" means the minimum
2 limits for bodily injury and property damage liability set
3 forth in Section 66-5-215 NMSA 1978 immediately prior to the
4 effective date of this act and the minimum uninsured and
5 underinsured motorist coverage set forth in Section 66-5-301
6 NMSA 1978.

7 C. If a combination of insurers selling more than
8 fifty percent of the automobile insurance in this state, as
9 measured by direct earned premium for calendar year 2000,
10 cannot reduce their premiums as required by Subsection B of
11 this section, because such a reduction would result in
12 inadequate rates as determined by the superintendent of
13 insurance, this act is repealed effective one year after the
14 effective date of its provisions.

15 D. Prior to the effective date of the provisions
16 of the Personal Choice Auto Insurance Act, the superintendent
17 of insurance may adopt and promulgate rules, approve proposed
18 policy forms and review and approve motor vehicle insurance
19 rates for coverages to be made available under that act.

20 Section 41. SEVERABILITY. --

21 A. Except as provided otherwise in Subsection B of
22 this section, if any provision of the Personal Choice Auto
23 Insurance Act or the application thereof to any person,
24 organization or circumstance is held to be unconstitutional or
25 otherwise invalid, the remainder of that act and the

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1 application of such provision to other persons or
2 circumstances shall not be affected.

3 B. If Section 12 of the Personal Choice Auto
4 Insurance Act is found to be unconstitutional or invalid, in
5 whole or in part, it is to be conclusively presumed that the
6 legislature would not have enacted the remainder of this act
7 without those limitations and that act shall not be severable
8 and shall be invalid.

9 Section 42. EFFECTIVE DATE. --The effective date of the
10 provisions of:

11 A. Sections 1 through 38 of this act is July 1,
12 2002; and

13 B. Sections 39 and 40 of this act is July 1, 2001.