

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1148

By: Covey

AS INTRODUCED

An Act relating to motor vehicles; creating the Oklahoma Motor Vehicle No-Fault Act; providing short title; defining terms; requiring owner's policies to provide certain coverage; providing for entitlement to first-party benefits; providing for causes of action; limiting right of recovery; providing for settlement; providing for coverage for nonresident motorists; limiting certain charges; providing for wrongful death actions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

ARTICLE VII.

OKLAHOMA MOTOR VEHICLE NO-FAULT ACT

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-701 of Title 47, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 9 of this act shall constitute Article VII of Chapter 7 of the Uniform Vehicle Code and shall be known and may be cited as the "Oklahoma Motor Vehicle No-Fault Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-702 of Title 47, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Motor Vehicle No-Fault Act:

1. "Basic economic loss" means up to Fifty Thousand Dollars (\$50,000.00) per person of the following combined items, subject to the limitations of Section 8 of this act:

- a. all necessary expenses incurred for medical, hospital, surgical, nursing, dental, ambulance, x-ray,

prescription drug and prosthetic services; psychiatric, physical and occupational therapy and rehabilitation; any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this state; and any other professional health services, all without limitation as to time, provided that within one (1) year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury. For the purpose of determining basic economic loss, the expenses incurred under this paragraph shall be in accordance with the limitations of Section 8 of this act,

- b. loss of earnings from work which the person would have performed if the person had not been injured, and reasonable and necessary expenses incurred by the person in obtaining services in lieu of those that the person would have performed for income, up to Two Thousand Dollars (\$2,000.00) per month for not more than three (3) years from the date of the accident causing the injury. An employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of the employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle, is not entitled to receive first-party benefits for "loss of earnings from work" to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in the employee's

level of future benefits arising from a subsequent illness or injury, and

- c. all other reasonable and necessary expenses incurred, up to Twenty-five Dollars (\$25.00) per day for not more than one (1) year from the date of the accident causing the injury.

"Basic economic loss" shall not include any loss incurred on account of death, subject however to the provisions of paragraph 4 of subsection A of Section 3 of this act. "Basic economic loss" shall also include an additional option to purchase, for an additional premium, an additional Twenty-five Thousand Dollars (\$25,000.00) of coverage which the insured or legal representative of the insured may specify will be applied to loss of earnings from work and psychiatric, physical or occupational therapy and rehabilitation after the initial Fifty Thousand Dollars (\$50,000.00) of basic economic loss has been exhausted. This optional additional coverage shall be made available and notice with explanation of such coverage shall be provided by an insurer at the first policy renewal after the effective date of the Oklahoma Motor Vehicle No-Fault Act, or at the time of application;

2. "First party benefits" means payments to reimburse a person for basic economic loss on account of personal injury arising out of the use or operation of a motor vehicle, less:

- a. twenty percent (20%) of lost earnings computed pursuant to subparagraph b of paragraph 1 of this section,
- b. amounts recovered or recoverable on account of such injury under state or federal laws providing Social Security disability benefits, or workers' compensation benefits, or disability benefits under Article 9 of the Workers' Compensation Law, or Medicare benefits, other than lifetime reserve days and provided further

that the Medicare benefits utilized herein do not result in a reduction of such person's Medicare benefits for a subsequent illness or injury, and

c. amounts deductible under the applicable insurance policy;

3. "Noneconomic loss" means pain and suffering and similar nonmonetary detriment;

4. "Serious injury" means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a nonpermanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety (90) days during the one hundred eighty (180) days immediately following the occurrence of the injury or impairment;

5. "Owner" means an owner or lessee of a motor vehicle;

6. "Insurer" means the insurance company or self-insurer, as the case may be, which provides the financial security required by Chapter 7 of the Uniform Vehicle Code;

7. "Member of the household" means a spouse, child or relative of the injured person or named insured who regularly resides in the household of the injured person or named insured;

8. "Uninsured motor vehicle" means a motor vehicle, the owner of which does not carry required financial security or is unknown and whose identity is unascertainable;

9. "Covered person" means any pedestrian injured through the use or operation of, or any owner, operator or occupant of, a motor vehicle which has in effect the financial security required by

Chapter 7 of the Uniform Vehicle Code, or any other person entitled to first-party benefits; and

10. "Compensation provider" means the State Insurance Fund, or the person, association, corporation or insurance carrier liable under state or federal laws for the payment of workers' compensation benefits or disability benefits.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-703 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Every owner's policy of liability insurance issued on a motor vehicle in satisfaction of the requirements of Chapter 7 of the Uniform Vehicle Code shall also provide that every owner who maintains another form of financial security on a motor vehicle in satisfaction of the requirements of the Code shall be liable for, and every owner of a motor vehicle required to be subject to the provisions of the Oklahoma Motor Vehicle No-Fault Act shall be liable for, the payment of first-party benefits to:

1. Persons, other than occupants of another motor vehicle or a motorcycle, for loss arising out of the use or operation in this state of such motor vehicle. In the case of occupants of a bus other than operators, owners, and employees of the owner or operator of the bus, the coverage for first-party benefits shall be afforded under the policy or policies, if any, providing first-party benefits to the injured person and members of the household of the insured person for loss arising out of the use or operation of any motor vehicle of such household. In the event there is no such policy, first-party benefits shall be provided by the insurer of such bus;

2. The named insured and members of the household, other than occupants of a motorcycle, for loss arising out of the use or operation of an uninsured motor vehicle or motorcycle, within the United States, its territories or possessions, or Canada; and an

insured motor vehicle or motorcycle outside of this state and within the United States, its territories or possessions, or Canada;

3. Any resident of this state who is neither the owner of a motor vehicle with respect to which coverage for first-party benefits is required by the Oklahoma Motor Vehicle No-Fault Act nor, as a member of a household, is entitled to first-party benefits under paragraph 2 of this subsection, for loss arising out of the use or operation of the insured or self-insured motor vehicle outside of this state and within the United States, its territories or possessions, or Canada; and

4. The estate of any covered person, other than an occupant of another motor vehicle or a motorcycle, a death benefit in the amount of Two Thousand Dollars (\$2,000.00) for the death of such person arising out of the use or operation of such motor vehicle which is in addition to any first-party benefits for basic economic loss.

B. An insurer may exclude from coverage required by subsection A of this section a person who:

1. Intentionally causes the person's own injury;

2. Is injured as a result of operating a motor vehicle while in an intoxicated condition or while the ability of the person to operate the vehicle is impaired by the use of a drug within the meaning of Section 11-902 of Title 47 of the Oklahoma Statutes; and

3. Is injured while the person is committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer, or operating a motor vehicle in a race or speed test, or operating or occupying a motor vehicle known to the person to be stolen, or operating or occupying any motor vehicle owned by such injured person with respect to which the coverage required by subsection A of this section is not in effect, or a pedestrian, through being struck by any motor vehicle owned by such injured pedestrian with respect to which the coverage required by subsection A of this section is not in effect, or repairing,

servicing or otherwise maintaining a motor vehicle if such conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises.

C. Insurance offered by any company to satisfy the requirements of subsection A of this section shall be offered without a deductible and with a family deductible of up to Two Hundred Dollars (\$200.00), which deductible shall apply only to the loss of the named insured and members of the household. The Insurance Commissioner may approve a higher deductible in the case of insurance policies providing additional benefits or pursuant to a plan designed and implemented to coordinate first-party benefits with other benefits.

D. Insurance policy forms for insurance to satisfy the requirements of subsection A of this section shall be subject to approval pursuant to the Insurance Code. Minimum benefit standards for such policies and for self-insurers, and rights of subrogation, examination and other such matters, shall be established by rules promulgated by the Insurance Commissioner.

E. Every owner's policy of liability insurance issued in satisfaction of Chapter 7 of the Uniform Vehicle Code shall also provide, when a motor vehicle covered by such policy is used or operated in any other state or in any Canadian province, insurance coverage for such motor vehicle at least in the minimum amount required by the laws of that state or province.

F. Every owner's policy of liability insurance issued on a motorcycle in satisfaction of the requirements of Chapter 7 of the Uniform Vehicle Code shall also provide that every owner who maintains another form of financial security on a motorcycle in satisfaction of the requirements of the Code shall be liable for, and every owner of a motorcycle required to be subject to the provisions of the Oklahoma Motor Vehicle No-Fault Act shall be

liable for, the payment of first-party benefits to persons, other than the occupants of such motorcycle, another motorcycle, or any motor vehicle, for loss arising out of the use or operation of the motorcycle within this state. Every insurer and self-insurer may exclude from the coverage required by this subsection a person who intentionally causes the person's own injury or is injured while committing an act which would constitute a felony or while seeking to avoid lawful apprehension or arrest by a law enforcement officer.

G. Any policy of insurance obtained to satisfy the financial security requirements of Chapter 7 of the Uniform Vehicle Code which does not contain provisions complying with the requirements of the Oklahoma Motor Vehicle No-Fault Act, shall be construed as if such provisions were embodied therein.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-704 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. In any action by or on behalf of a covered person against another covered person for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right of recovery for noneconomic loss, except in the case of a serious injury, or for basic economic loss.

B. In any action by or on behalf of a covered person, against a noncovered person, if damages for personal injuries arising out of the use or operation of a motor vehicle or a motorcycle may be recovered, an insurer which paid or is liable for first-party benefits on account of such injuries has a lien against any recovery to the extent of benefits paid or payable by it to the covered person. No such action may be compromised by the covered person except with the written consent of the insurer, or with the approval of the court, or if the amount of such settlement exceeds Fifty Thousand Dollars (\$50,000.00). The failure of such person to commence such action within two (2) years after accrual gives the

insurer a cause of action for the amount of first-party benefits paid or payable against any person who may be liable to the covered person for personal injuries. The insurer's cause of action shall be in addition to the cause of action of the covered person except that in any action subsequently commenced by the covered person for such injuries, the amount of the person's basic economic loss shall not be recoverable.

C. If there is no right of recovery for basic economic loss, the loss may nevertheless be pleaded and proved to the extent that it is relevant to the proof of noneconomic loss.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-705 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Any insurer liable for the payment of first-party benefits to or on behalf of a covered person and any compensation provider paying benefits in lieu of first-party benefits which another insurer would otherwise be obligated to pay has the right to recover the amount paid from the insurer of any other covered person to the extent that such other covered person would have been liable, but for the provisions of the Oklahoma Motor Vehicle No-Fault Act, to pay damages in an action at law.

B. The sole remedy of any insurer or compensation provider to recover on a claim arising pursuant to subsection A of this section, shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the Insurance Commissioner. Such procedures shall also be utilized to resolve all disputes arising between insurers concerning their responsibility for the payment of first-party benefits.

C. The liability of an insurer imposed by this section shall not affect or diminish its obligations under any policy of bodily injury liability insurance.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-706 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Payments of first-party benefits and additional first-party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty (30) days after the claimant supplies proof of the fact and amount of loss sustained. If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty (30) days after such proof is supplied. All overdue payments shall bear interest at the rate of two percent (2%) per month. If a valid claim or portion was overdue, the claimant shall also be entitled to recover reasonable attorney fees, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the Insurance Commissioner in rules.

B. Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first-party benefits, or additional first-party benefits, the amount thereof or any other matter which may arise pursuant to subsection A of this section to arbitration pursuant to procedures to be promulgated in rules by the Insurance Commissioner.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-707 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Every insurer authorized to transact or transacting business in this state, or controlling or controlled by or under common control by or with such an insurer, which sells a policy providing motor vehicle liability insurance coverage or any similar coverage in any state or Canadian province, shall include in each such policy coverage to satisfy the financial security requirements of Chapter 7 of the Uniform Vehicle Code and to provide for the payment of first-party benefits pursuant to subsection A of Section 3 of this act

when a motor vehicle covered by such policy is used or operated in this state.

B. Every policy described in subsection A of this section shall be construed as having the coverage required by subsection A of Section 3 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-708 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The charges for services specified in subparagraph a of paragraph 1 of Section 2 of this act and any further health service charges which are incurred as a result of the injury and which are in excess of basic economic loss, shall not exceed the charges permissible pursuant to the Workers' Compensation Act, except if the insurer or arbitrator determines that unusual procedures or unique circumstances justify the excess charge.

B. The Insurance Commissioner, after consulting with the Administrator of the Workers' Compensation Court and the Commissioner of Health, shall promulgate rules implementing and coordinating the provisions of the Oklahoma Motor Vehicle No-Fault Act and the Workers' Compensation Act with respect to charges for the professional health services specified in subparagraph a of paragraph 1 of Section 2 of this act.

C. No provider of health services specified in subparagraph a of paragraph 1 of Section 2 of this act shall demand or request any payment in addition to the charges authorized pursuant to this section. Every insurer shall report to the Commissioner of Health any patterns of overcharging, excessive treatment or other improper actions by a health provider within thirty (30) days after such insurer has knowledge of such pattern.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-709 of Title 47, unless there is created a duplication in numbering, reads as follows:

The provisions of the Oklahoma Motor Vehicle No-Fault Act shall not restrict the right of action to recover damages for injuries resulting in death.

SECTION 10. This act shall become effective January 1, 2004.

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