

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 515

By: Pruitt

AS INTRODUCED

An Act relating to insurance; creating the Auto Choice Reform Act; providing short title; defining terms; authorizing choice of insurance systems; requiring certain notice; authorizing use of electronic signature; stating effect of certain choice; authorizing certain choice by specific person; authorizing insurer to apply certain conditions to coverage based upon certain circumstance; authorizing application of certain rules for purpose of uniformity; binding persons to insurance choice of specified person; stating exceptions; stating consequences for failure to elect type of insurance; construing provision; authorizing establishment of certain program by Insurance Commissioner; requiring certain consumer information be provided by insurer; creating certain presumption under certain circumstances; stating effect of act; providing minimum requirements for certain policies; authorizing certain subrogation rights under certain circumstances; authorizing periodic payments of benefits under certain circumstances; requiring payment of benefits within specified time; stating consequences; authorizing certain methods for underwriting; stating application of deductibles and exclusions; stating requirements for certain insurance; authorizing recovery under certain policy; authorizing nonpayment under certain circumstances; stating requirements for tolling certain time period; authorizing cancellation, nonissuance or nonrenewal of certain policy; authorizing certain recovery; stating certain liability; allocating certain monies; authorizing certain payment under specific circumstances; prohibiting certain recovery; stating application of certain coverage; authorizing first party benefits under certain circumstances; stating persons insurer may seek reimbursement; authorizing reimbursement from collateral source; prohibiting introduction of certain evidence; providing for choice-of-law principles; providing for application of act inside and outside state; prohibiting certain jurisdiction; providing for statute of limitations; prohibiting cancellation or nonrenewal or increased premiums under certain circumstances under certain circumstances; authorizing cancellation or nonrenewal or increased premiums; excepting certain persons from liability; stating exceptions; construing act; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 961 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Auto Choice Reform Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 962 of Title 36, unless there is created a duplication in numbering, reads as follows:

In this act:

1. "Accident" means an unforeseen or unplanned event that:
 - a. causes injury, and
 - b. arises from the operation, maintenance, or use of a motor vehicle;
2. "Add-on law" means a state law that provides that persons injured in motor vehicle accidents:
 - a. are compensated without regard to fault for economic loss, and
 - b. have the right to claim without any limitation for noneconomic loss based on fault;
3. "Collateral source" means a person, other than a tortfeasor or a motor vehicle insurer, that has a legal obligation to pay compensation for economic loss to a person who is injured in an accident;
4. "Common carrier" means a motorized vehicle of any kind, licensed for highway use, that is:
 - a. required to be registered under the provisions of applicable state law relating to motor vehicles, and
 - b. used in the business of transporting persons;
5. "Economic loss" means objectively verifiable pecuniary loss caused by an accident for:

- a. reasonable and necessary medical and rehabilitation expenses,
- b. loss of earnings,
- c. funeral costs, and
- d. replacement services loss;

6. "Electronic signature" means any letters, characters, or symbols executed or adopted by a party with an intent to authenticate a writing that are:

- a. manifested by:
 - (1) electronic means, or
 - (2) any other similar means, and
- b. logically associated with that writing;

7. "Financial responsibility law" means a law, including a law requiring compulsory coverage, penalizing motorists for failing to carry defined limits of tort liability insurance covering motor vehicle accidents;

8. "First party benefits" means benefits paid or payable by an insurer to an insured of that insurer under a personal injury protection policy or a tort maintenance coverage policy applicable to that insured;

9. "Injury" means bodily injury, sickness, disease, or death;

10. "Insurer" means any person who is engaged in the business of issuing or delivering motor vehicle insurance policies, including an insurance agent, if appropriate, under applicable state law;

11. "Motor carrier" means:

- a. a person who:
 - (1) transports by motor vehicle goods for another person or entity for compensation, and
 - (2) is liable for the operation of the vehicle under part 387 of title 49, Code of Federal Regulations, or

- b. a person who transports such person's goods by a motor vehicle that such person owns or leases;

12. "Motor vehicle" means a vehicle with four (4) or more wheels licensed for highway use that is required to be registered under the provisions of the applicable state financial responsibility law relating to motor vehicles;

13. "Named insured" means a person designated by name in a personal injury protection policy or tort maintenance coverage policy as the insured;

14. "No-fault motor vehicle law" means a state law that provides that:

- a. persons injured in motor vehicle accidents are paid compensation without regard to fault for their economic loss that results from injury, and
- b. in return for the payment referred to in subparagraph a of this paragraph, claims based on fault, including claims for noneconomic loss, are limited to a defined extent;

15. "Noneconomic loss" means subjective, nonmonetary losses recognized under applicable state tort law;

16. "Occupy" means, with respect to the operation, maintenance, or use of a motor vehicle, to be in or on a motor vehicle or to be engaged in the immediate act of entering into or alighting from a motor vehicle;

17. a. "Operation, maintenance, or use of a motor vehicle" means any activity involving or related to the transportation by a motor vehicle.

- b. Such term includes occupying or being engaged in the immediate act of entering into or alighting from a motor vehicle before or after its use for transportation.

c. Such term does not include:

- (1) conduct within the course of a business of manufacturing, sale, repairing, servicing, or otherwise maintaining motor vehicles, unless the conduct occurs outside the scope of the business activity, or
- (2) conduct within the course of loading or unloading a motor vehicle, unless the conduct occurs while occupying or being engaged in the immediate act of entering into or alighting from a motor vehicle before or after its use for transportation;

18. "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity;

19. "Personal injury protection" means insurance that provides for:

- a. benefits to a personal injury protection insured for economic loss without regard to fault for injury resulting from a motor vehicle accident in accordance with this act,
- b. a waiver of tort claims against other drivers, other than:
 - (1) claims for uncompensated economic loss based on fault, and
 - (2) other tort claims exempted from such a waiver under this act,
- c. coverage against claims for uncompensated economic losses based on fault by another party that is entitled to recover those losses under this act, and
- d. coverage against claims for economic or noneconomic losses of a third party with respect to which the

recovery of those losses is not covered under this act;

20. "Personal injury protection insured" means a person covered by the form of insurance described in Section 4 of this act;

21. "Personal injury protection insurer" means an insurer who is engaged in the business of providing personal injury protection;

22. "Personal injury protection system" means the insurance system described in Section 4 of this act;

23. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services from other persons who are not members of the injured person's household, in lieu of the services the injured person would have performed for the benefit of the household;

24. a. "Resident relative or dependent" means a person:

(1) who is related to the named insured by blood, marriage, or adoption, including a dependent receiving financial services or support from such insured, and

(2) who:

(a) resides in the same household as the named insured at the time of the accident, or

(b) usually makes a home in the same family unit as the named insured, even though that person may temporarily live elsewhere.

b. Such term does not include any person who maintains or is required to maintain insurance for a motor vehicle that such person owns;

25. "Tort liability" means the legal obligation to pay damages for an injury in an accident adjudged to have been caused by a tortfeasor, under applicable state law;

26. "Tort liability insurance" means a contract of insurance under which an insurer agrees to pay, on behalf of an insured,

damages that the insured is obligated to pay to a third person because of the liability of the insured to that person;

27. "Tort maintenance coverage" means insurance coverage under which a tort maintenance insured, if involved in an accident with a personal injury protection insured, may recover first party benefits for economic and noneconomic losses from the insurer of that insured, based on fault under applicable state law;

28. "Tort maintenance insured" means a person covered by the form of insurance described in Section 5 of this act;

29. "Tort maintenance system" means an insurance system described in Section 5 of this act;

30. a. "Uncompensated economic loss" means any objectively verifiable pecuniary loss payable based on fault under applicable state tort law, except for any such loss that is determined by a court of competent jurisdiction to be, in whole or in part, a product of fraudulent activity by the person making the claim.

b. Such term includes reasonable attorney fees calculated on the basis of the time actually expended and the value of the attorney's efforts as reflected in payment to the attorney's client, other than any attorney fees when the uncompensated economic loss is attributable only to a deductible for coverage specified in division (1) of subparagraph c of this paragraph.

c. Subject to paragraph 2 of subsection J of Section 7 of this act, such term does not include amounts paid or payable under:

- (1) personal injury protection,
- (2) tort maintenance coverage,
- (3) no-fault or add-on motor vehicle insurance,

- (4) federal, state, or private disability or sickness programs,
- (5) federal, state, or private health insurance programs,
- (6) employer wage continuation programs, or
- (7) workers' compensation or similar occupational compensation laws; and

31. "Uninsured motorist" means the owner of a motor vehicle, including the resident relatives or dependents of the owner, who is uninsured under either the personal injury protection system described in Section 4 of this act or the tort maintenance system described in Section 5 of this act:

- a. at the limits prescribed by the applicable state financial responsibility law, or
- b. an amount prescribed under paragraph 1 of subsection A of Section 4 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 963 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. Under this act, an insurer may offer a choice between:

- a. the personal injury protection system described in Section 4 of this act, and
- b. the tort maintenance system described in Section 5 of this act.

2. A self-insured person, as determined under an applicable state law, may elect coverage under paragraph 1 of this subsection by filing a notice with the appropriate state or federal agency.

3. For purposes of making an election of an insurance system under this subsection, unless prohibited by applicable state law, an electronic signature shall have the same force and effect as a handwritten signature.

B. 1. Except as provided in paragraph 2 of this subsection, a person who chooses either the personal injury protection system or the tort maintenance system also binds the resident relatives or dependents of that person.

2. An adult resident relative or dependent of a person described in paragraph 1 of this subsection may select the form of insurance that such person does not select if the adult resident relative or dependent makes that selection expressly in writing to the insurer.

3. Insurers may specify reasonable terms and conditions governing the commencement, duration, and application of the chosen coverage, depending on the number of motor vehicles and owners of such vehicles in a household.

C. 1. Notwithstanding paragraph 2 of subsection B of this section and in order to minimize conflict between the insurance options, an insurer may maintain and apply underwriting rules that encourage uniformity in the provision of insurance benefits within a household.

2. Except as provided in paragraph 6 of this subsection, an employer that elects an insurance option described in subparagraph a or b of paragraph 1 of subsection A of this section binds the employees of that employer for purposes of coverage of that employee in the course of employment by that employer.

3. Except as provided in paragraph 6 of this subsection, a motor carrier that elects an insurance option described in subparagraph a or b of paragraph 1 of subsection A of this section binds any owner, operator, or occupant of a motor vehicle operated by that motor carrier.

4. Except as provided in paragraph 6 of this subsection, an owner of a common carrier that elects an insurance option described in subparagraph a or b of paragraph 1 of subsection A of this

section binds the owner and any operator or occupant of that common carrier.

5. a. Except as provided in subparagraph b of this paragraph, a person who is engaged in the business of renting motor vehicles and who elects an insurance option described in subparagraph a or b of paragraph 1 of subsection A of this section binds any operator or occupant of the rented motor vehicle with respect to the operation of that vehicle,
- b. subparagraph a of this paragraph shall not apply if a customer who rents a motor vehicle:
 - (1) specifically elects to obtain coverage within the rental agreement other than the coverage elected by the person engaged in the business of renting the motor vehicle, and
 - (2) pays a separate charge for that optional coverage.
6. a. An employee under paragraph 2 of this subsection may elect to purchase separate personal injury protection or tort maintenance coverage in excess of the insurance provided by the employer in the scope of the employment of that employee.
- b. An operator or occupant of a motor carrier under paragraph 3 of this subsection may elect to purchase separate personal injury protection or tort maintenance coverage in excess of the insurance provided to that operator or occupant by the motor carrier as an operator or occupant of that motor carrier.
- c. An operator or occupant of a common carrier under paragraph 4 of this subsection may elect to purchase separate personal injury protection or tort

maintenance coverage in excess of the insurance provided to that operator or occupant by the owner of the common carrier as an operator or occupant of the common carrier.

- d. The election by an employee, operator, or occupant to purchase insurance coverage under this paragraph shall not affect the liability of an employer, motor carrier, or common carrier.

D. 1. Except as provided in paragraph 1 of subsection B of this section, any person who fails to elect a type of insurance under paragraph 1 of subsection A of this section shall be deemed to have elected insurance under the tort maintenance system in effect in the state of that person's residence.

2. This subsection shall not be construed to prevent a state from enacting a law that deems a person who fails to elect a type of insurance under this section to have elected insurance under the personal injury protection system.

E. 1. The Insurance Commissioner may establish and maintain a program designed to ensure that consumers are adequately informed concerning:

- a. the comparative cost of insurance under the personal injury protection system and the tort maintenance system, and
- b. the benefits, rights, and obligations of insurers and insureds under each such system.

2. An insurer that offers a choice of insurance systems under paragraph 1 of subsection A of this section shall provide to each consumer, before that consumer chooses motor vehicle insurance, written consumer information to ensure that consumers are adequately informed about:

- a. the comparative cost of insurance under the personal injury protection system and the tort maintenance system, and
- b. the benefits, rights, and obligations of insurers and insureds under each system.

3. If an insurer files consumer information forms under paragraph 2 of this subsection with the state official charged with jurisdiction over insurance rates for motor vehicles and such forms are not disapproved within a reasonable period of time after that filing, such filing and use of the information in accordance with paragraph 2 of this subsection shall be presumed to be adequate notice.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 964 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. In order to constitute a personal injury protection policy covered by this act, a motor vehicle insurance policy issued by an insurer shall, at a minimum:

1. For each accident, provide personal injury protection benefits to each personal injury protection insured in amounts equal to the minimum per-person limits of liability insurance for personal injury under the relevant state financial responsibility law applicable to private passenger vehicles;

2. Contain provisions for a waiver of tort claims against drivers other than the insured, except:

- a. claims for uncompensated economic loss based on fault, or
- b. other tort claims exempted from such a waiver under this act;

3. Contain provisions for third party liability coverage in amounts equal to the minimum limits required under applicable federal or state financial responsibility law for:

- a. property damage, and
- b. bodily injury to cover:
 - (1) uncompensated economic losses for parties who are entitled to recover such losses under this act, and
 - (2) economic and noneconomic losses of third parties whose recovery is not affected by this act.

B. 1. a. (1) Except as provided in subparagraph b of this paragraph, in any case in which a personal injury protection insurer and a collateral source are obligated to pay benefits for the same economic loss under this act, the personal injury protection insurer shall be liable for the primary payment of benefits to cover that economic loss.

(2) A collateral source shall be liable for economic loss only to the extent that the loss exceeds benefits paid or payable by an insurer under an applicable personal injury protection insurance policy.

b. Personal injury protection benefits shall be reduced by an amount equal to any benefits provided or required to be provided under:

- (1) an applicable federal or state law for workers' compensation,
- (2) any state-required nonoccupational disability insurance, or
- (3) any occupational disability insurance covering professional drivers of motor vehicles who are independent contractors.

2. a. A personal injury protection insurer may take appropriate measures to ensure that any person

otherwise eligible for personal injury protection benefits who has been paid or is being paid for losses payable by personal injury protection from a source other than the applicable personal injury protection insurer shall not receive multiple payment for those losses.

- b. Any right to payment for losses referred to in subparagraph a of this paragraph from a personal injury protection insurer accrues only to that payor. Payments by a payor referred to in subparagraph a of this paragraph shall not be counted against personal injury limits for personal injury protection until such time as the payor is reimbursed under this subparagraph.

3. Upon receipt of reasonable notice, a personal injury protection insurer shall reimburse a collateral source for payments made by that collateral source for economic loss for injury resulting from a motor vehicle accident, to the extent that the personal injury protection insurer is obligated to pay for that economic loss.

C. 1. A personal injury protection insurer may pay personal injury protection benefits periodically as losses accrue.

2. Except as provided in Section 6 of this act, a personal injury protection insurer that does not pay a claim for personal injury protection benefits during the thirty-day period beginning on the date on which that insurer receives a submission of reasonable proof of the loss for which those benefits are payable, shall pay:

- a. the loss compounded at a rate of twenty-four percent (24%) per annum as liquidated damages, and
- b. reasonable attorney fees calculated on the basis of the time actually expended or the value of the

attorney's efforts as reflected in payment to the attorney's client.

D. 1. A personal injury protection insurer may write personal injury protection:

- a. (1) without any deductible, or
- (2) subject to a reasonable deductible, and
- b. with an exclusion of coverage for first party benefits to cover the losses of the personal injury protection insured caused by that insured's:
 - (1) driving under the influence of alcohol or illegal drugs, or
 - (2) driving while seeking to intentionally injure another person.

2. The deductibles and exclusions described in paragraph 1 of this subsection shall apply only to:

- a. the person named in the applicable insurance policy, and
- b. the resident relatives or dependents of the person described in subparagraph a of this paragraph.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 965 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. The coverage for a person who chooses insurance under subparagraph b of paragraph 1 of subsection A of Section 3 of this act shall include:

- a. the type of motor vehicle insurance that is otherwise required under applicable state law, and
- b. tort maintenance coverage at a level that is at least equivalent to the level of insurance required under the applicable state financial responsibility law for bodily injury liability.

2. The responsibility for payment for any claim under tort maintenance coverage is assumed by the insurer of the tort maintenance insured to the extent of such coverage.

B. A tort maintenance insured who also purchases an insurance policy that provides uninsured motorist coverage or underinsured motorist coverage may recover under the terms of that policy for any economic or noneconomic loss arising from an accident involving a personal injury protection insured, in any case in which the amount of those economic or noneconomic losses exceed the aggregate amount recovered or recoverable from the:

1. Tort maintenance coverage of the tort maintenance insured;
- and
2. Personal injury protection insured.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 966 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. No insurer shall be obligated to pay first party benefits to a personal injury protection insured for any economic loss that occurred more than sixty (60) days prior to the submission of a claim for such loss.

2. The time for submission of a claim shall be tolled during any period during which the insured can show that:

- a. the insured was physically unable:
 - (1) to submit proof of the claim, or
 - (2) to supply the identity of the insurer to the provider of services, or
- b. the insured was unable to identify the insurer despite good faith efforts to do so.

B. No insurer shall be obligated to pay any first party benefits to a personal injury protection insured for any economic loss that a court of competent jurisdiction determines is, in whole

or in part, the product of fraudulent activity by the insured with respect to an accident.

C. An insurer may cancel, decline to renew, or refuse to issue a personal injury protection policy to any person who a court of competent jurisdiction has determined has engaged in fraudulent activity with respect to an accident during the previous three (3) years.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 967 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. A tort maintenance insured who is involved in an accident with another person shall be subject to applicable state law for injury, except that, based on fault, that person may, upon submission of proof of insurance:

- a. recover from any personal injury protection insured for uncompensated economic loss, and not for noneconomic loss, and
- b. be liable to a personal injury protection insured for uncompensated economic loss, and not for noneconomic loss.

2. In determining the extent of recovery of a tort maintenance insured from a personal injury protection insured under subsection B of this section, the payments made to the tort maintenance insured from tort maintenance coverage shall first be allocable to economic loss, and any remainder may be allocable to noneconomic loss.

B. 1. A personal injury protection insured who is injured in an accident may recover under the policy of that insured only for economic loss, without regard to fault.

2. A personal injury protection insured who is involved in an accident with a tort maintenance insured, or another personal injury protection insured, may recover based on fault from that other

insured for uncompensated economic loss (and not for noneconomic loss).

C. 1. A personal injury protection insured who is involved in an accident with an uninsured motorist:

- a. shall be compensated under the insured person's policy for economic loss without regard to fault, and
- b. may recover from the uninsured motorist, other than under uninsured or underinsured motorist coverage, for economic loss and for noneconomic loss based on fault.

2. An uninsured motorist may not recover from a personal injury protection insured for noneconomic loss.

D. Notwithstanding any other provision of this act, a personal injury protection insured who is in an accident may:

1. Recover all damages based on fault under applicable state law from a person who:

- a. at the time of the accident, was driving under the influence of alcohol or illegal drugs, as those terms are defined under applicable state law, or
- b. caused an injury while seeking to intentionally injure another person; and

2. Be liable for all damages based on fault under applicable state law, if such insured:

- a. at the time of the accident, was driving under the influence of alcohol or illegal drugs, as those terms are defined under applicable state law, or
- b. caused an injury while seeking to intentionally injure another person.

E. Nothing in this act shall be construed to affect the tort rights or obligations of any person lawfully uninsured under the terms of an applicable state law for insurance under either the personal injury protection system or tort maintenance system under paragraph 1 of subsection A of Section 3 of this act.

F. Nothing in this act shall be construed to affect the tort rights or obligations of a person who occupies a motor vehicle with fewer than four (4) load-bearing wheels or an attachment thereto, unless an applicable contract for personal injury protection under which that person is insured specifies otherwise. The preceding sentence applies without regard to whether the person is otherwise legally insured for personal injury protection or tort maintenance coverage.

G. An owner, operator, or occupant of a motor vehicle involved in an accident forfeits the right to make a claim against an insured motorist for economic or noneconomic loss resulting from injury incurred by that owner, operator, or occupant if that owner, operator, or occupant knowingly participated in a scheme to obtain insurance payments for any accident that was staged with the intent to commit insurance fraud.

H. 1. Except as provided in paragraph 2 of this subsection, a personal injury protection insured or a tort maintenance insured may recover first party benefits only under the coverage of that insured in effect at the time of the accident.

2. a. Except as provided in subparagraph b of this paragraph, with respect to an accident that occurred while an injured individual was occupying a motor vehicle:

(1) furnished by an employer, the primary coverage shall be the coverage applicable to the motor vehicle, or

(2) that was being used in the business of transporting individuals or property, the primary coverage shall be the coverage applicable to that motor vehicle.

b. A claimant may claim first party benefits in an amount greater than the amounts determined under the limits

under the primary insurance coverage described in division (1) or (2) of subparagraph a of this paragraph, if that claimant would otherwise be able to receive those increased benefits by reason of insurance coverage of that claimant that would otherwise apply, but for the operation of subparagraph a of this paragraph.

I. 1. a. A personal injury protection insurer may seek reimbursement under subparagraph b of this paragraph, from:

- (1) an uninsured motorist who is liable for damages caused by the accident,
- (2) a motorist who was under the influence of alcohol or illegal drugs at the time of the accident and whose conduct was the proximate cause of the accident,
- (3) a person who caused an injury while seeking to intentionally injure another person, or
- (4) any other person who is not affected by the limitations on tort rights and liabilities under this act and whose conduct was the proximate cause of the accident.

b. A personal injury protection insurer may seek reimbursement under this subparagraph to the extent of the obligations of that insurer, with respect to payments for a personal injury protection insured of that insurer with respect to an accident caused in whole or in part, as determined in accordance with applicable state law, from a person referred to in subparagraph a of this paragraph, for the losses that insurer:

- (1) has paid or reimbursed, or

(2) under applicable law, is obligated to pay;

2. With respect to an accident, a collateral source may seek reimbursement from an insurer in a civil action based on fault;

3. In any action to recover losses arising out of an accident, a person may not recover or introduce into evidence in a civil action against another person any amount of a loss that a collateral source or personal injury protection insurer:

a. has paid or reimbursed, or

b. is obligated to pay.

J. 1. With respect to a claim relating to a motor vehicle accident involving persons from different states, the choice-of-law principles applicable under the law of the state of competent jurisdiction shall apply.

2. With respect to an accident that involves a person from a state in which this act does not apply and a person from a state in which this act applies, in any case in which the accident occurs in a state in which this act applies, the coverage of the person from the state in which this act does not apply shall be deemed to be the form of insurance, whether personal injury protection or tort maintenance coverage, that most closely reflects the form of insurance that the person maintains in the state of residence of the person.

K. This act shall not confer jurisdiction on the district courts of the United States under Section 1331 or 1337 of Title 28, United States Code.

L. 1. Subject to paragraph 2 of this subsection, nothing in this act shall supersede an applicable state law that imposes a statute of limitations for claims related to an injury caused by an accident, except that such statute shall be tolled during the period during which any personal injury protection or tort maintenance coverage benefits are paid.

2. Unless otherwise provided by state law, a claim for personal injury protection benefits under this act shall be filed not later than two (2) years after the economic loss that is the subject of the claim is incurred.

M. An insurer shall not cancel, decline to renew, or increase the premium of a person insured by the insurer solely because that insured person or any other injured person made a claim for:

1. Personal injury protection benefits; or

2. Tort maintenance coverage benefits in any case in which there is no basis for ascribing fault to the insured or one for whom the insured is vicariously liable.

N. Nothing in this act shall be construed to limit insurers from canceling, failing to renew, or increasing premiums for an insured person if there is a basis for ascribing moving traffic violations or fault for an accident caused by that insured or any resident relative or dependent, or employee of that insured.

O. 1. Except as provided in paragraph 2 of this subsection, no insurer, insurance agent or broker, insurance producer representing a motor vehicle insurer, automobile residual market plan, or attorney licensed to practice law within a state, or any employee of any such person or entity, shall be liable in an action for damages on account of:

a. an election of:

(1) the tort maintenance system under subparagraph b of paragraph 1 of subsection A of Section 3 of this act, or

(2) the personal injury protection system under subparagraph a of paragraph 1 of subsection A of Section 3 of this act, or

b. a failure to make a required election.

2. Paragraph 1 of this subsection shall not apply in any case in which:

- a. a person described in that paragraph:
 - (1) willfully and intentionally misrepresents the insurance choices available to a customer or client of that person, or
 - (2) willfully and with the intent to defraud, induces the election of one motor vehicle insurance system described in paragraph 1 of subsection A of Section 3 of this act over the other motor vehicle insurance system described in that paragraph, and
- b. the misrepresentation or inducement under subparagraph a of this paragraph was the proximate cause of that customer or client's electing or failing to make an election of an insurance system under subparagraph a or b of paragraph 1 of 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 968 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed:

- 1. To waive or affect any defense of sovereign immunity asserted by any state under any law or by the United States;
- 2. To preempt state choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;
- 3. To affect the right of any court to transfer venue, to apply the law of a foreign nation, or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum;
- 4. To preclude a state from establishing a schedule of payments for medical protocols for treatment of an injury that arises from an accident;

5. To preclude a state from requiring personal injury protection insurers to offer first party insurance that establishes a dollar value for noneconomic loss in objectively verifiable defined classes of cases involving death or serious and permanent bodily injury;

6. To preclude a state from enacting a law applicable to all motor vehicle accident cases, including cases covered by this act, to establish a minimum dollar value for economic losses for defined classes of cases involving death or serious bodily injury;

7. To preclude a state from providing that forms of insurance other than those listed in subsection B of Section 4 of this act shall be subtracted from personal injury protection insurance benefits otherwise payable for injury; or

8. To preclude a state from enacting a law that:

- a. allows litigation by tort maintenance insureds against personal injury protection insureds for economic and noneconomic loss, and
- b. assures through a reallocation device that the advantage of tort claim waivers by personal injury protection insureds against tort maintenance insureds is reflected in the premiums of personal injury protection insureds.

B. Nothing in this act may be construed:

1. To preclude a state or state official charged with regulatory authority over the business of insurance from fully exercising that regulatory authority, including adopting regulations and procedures regarding:

- a. rates,
- b. policy forms,
- c. company solvency,
- d. consumer protection,
- e. underwriting and marketing practices, and

f. carrying out the requirements of this act; or

2. To allow or provide for federal regulation of motor vehicle insurance.

C. Nothing in this act may be construed:

1. To require a personal injury protection insurer to offer, or a personal injury protection insured to purchase, any coverage for bodily injury in addition to the coverage required under this act, including uninsured motorist coverage, underinsured motorist coverage, or coverage for medical payments;

2. To prevent insurers and insureds from contracting to limit recovery for the loss of earnings under personal injury protection by:

a. limiting such recovery to only 60 percent or more of lost wages or income,

b. limiting the amount of such recovery payable per week, or

c. limiting the period of time after an accident during which the benefits referred to in this paragraph are payable to a period of not less than one (1) year;

3. To prevent insurers and insureds from contracting:

a. to limit recovery for economic loss for medical and rehabilitation expenses to the average amount actually paid for a particular course of treatment, or

b. to provide medical or rehabilitation services through designated health care providers;

4. To prevent an insurer from contracting with insureds, as permitted by applicable state law, to have submitted to arbitration any dispute with respect to payment of personal injury protection or tort maintenance coverage;

5. To affect the worker classification of a person, either as an employee or an independent contractor, on the basis of the

election of an employer or motor carrier of an insurance system under subsection A of Section 3 of this act; or

6. To affect the awarding of punitive damages, or damages for bad faith refusal to pay a claim, under any applicable state law.

SECTION 9. This act shall become effective November 1, 2005.

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