

No. 1989-4

AN ACT

SB 109

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, requiring certain insurers to provide for extraordinary medical benefits; providing for limits, for transition of catastrophic loss benefits and for funding of benefits; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1306(7) of Title 75 of the Pennsylvania Consolidated Statutes is repealed.

Section 2. Section 1309 of Title 75 is amended to read:

§ 1309. Renewal of registration.

At least 60 days prior to the expiration of each registration, the department shall send to the registrant an application for renewal of registration. Upon return of the application, accompanied by self-certification of financial responsibility[,] **and the applicable fee or fees [and proof that the Catastrophic Loss Trust fund charge has been paid],** the department shall send to the registrant a renewed registration card. Failure to receive a renewal application shall not relieve a registrant from the responsibility to renew the registration.

Section 3. Section 1373(7) of Title 75 is repealed.

Section 4. Sections 1711, 1715, 1722 and 1723 of Title 75 are amended to read:

§ 1711. Required benefits.

An insurer issuing or delivering liability insurance policies covering any motor vehicle of the type required to be registered under this title, except recreational vehicles not intended for highway use, motorcycles, motor-driven cycles or motorized pedalcycles or like type vehicles, registered and operated in this Commonwealth, shall include coverage providing a medical benefit in the amount of \$10,000, an income loss benefit up to a monthly maximum of \$1,000 up to a maximum benefit of \$5,000 and a funeral benefit in the amount of \$1,500, as defined in section 1712 (relating to availability of benefits), with respect to injury arising out of the maintenance or use of a motor vehicle. The income loss benefit provided under this section may be expressly waived by the named insured provided the named insured has no expectation of actual income loss due to age, disability or lack of employment history. *At the election of the named insured, such policy shall also include an extraordinary medical benefit as described in section 1715(a)(1.1) and (d) (relating to availability of adequate limits).*

§ 1715. Availability of adequate limits.

(a) General rule.—An insurer shall make available for purchase first party benefits as follows:

(1) For medical benefits, up to at least \$100,000.

(1.1) For extraordinary medical benefits, from \$100,000 to \$1,100,000, which may be offered in increments of \$100,000, as limited by subsection (d).

(2) For income loss benefits, up to at least \$2,500 per month up to a maximum benefit of at least \$50,000.

(3) For accidental death benefits, up to at least \$25,000.

(4) For funeral benefits, \$2,500.

(5) For combination of benefits enumerated in paragraphs (1) through (4) and subject to a limit on the accidental death benefit of up to \$25,000 and a limit on the funeral benefit of \$2,500, up to at least \$277,500 of benefits in the aggregate or benefits payable up to three years from the date of the accident, whichever occurs first, *provided that nothing contained in this subsection shall be construed to limit, reduce, modify or change the provisions of subsection (d).*

(b) Higher or lower limits and additional benefits.—Insurers may make available higher or lower limits or benefits in addition to those enumerated in subsection (a).

(c) Restriction on providing first party benefits.—An insurer shall not issue or deliver a policy providing first party benefits in accordance with this subchapter unless the policy also contains coverage for liability in amounts at least equal to the limits required for financial responsibility.

(d) Limitations.—The maximum medical benefit which shall be paid on behalf of any one eligible claimant under subsection (a)(1.1) shall be \$50,000 per year and \$1,000,000 lifetime aggregate of reasonable and necessary expenses only for medical treatment and rehabilitative services which, as described in section 1712(1) (relating to availability of benefits), exceed \$100,000. During the first 18 months of eligibility, the insurer shall approve payments on behalf of a claimant without regard to the \$50,000 per year limit but subject to the \$1,000,000 lifetime aggregate.

(e) Other extraordinary medical benefits.—Notwithstanding the requirement of subsection (a)(1.1), an insured may obtain the extraordinary medical benefits described in that subsection through any insurance contract, program or group arrangement.

(f) Determining adverse experience of an agent.—For purposes of determining adverse experience of an agent, experience generated from extraordinary medical benefit coverage described in subsection (a)(1.1) shall be excluded.

(g) Voluntary pooling.—Notwithstanding any other provisions of this act or the act of June 11, 1947 (P.L. 538, No. 246), known as The Casualty and Surety Rate Regulatory Act, two or more insurers may enter into an arrangement or agreement to provide for the availability of an extraordinary medical benefit pursuant to the provisions of this chapter. All such arrangements or agreements entered into by an insurer shall be subject to the prior approval of the Insurance Commissioner.

§ 1722. Preclusion of pleading, proving and recovering required benefits.

In any action for damages against a tortfeasor arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive benefits under the coverages set forth in section 1711 (relating to required benefits) *or the coverage set forth in section 1715(a)(1.1) (relating to availability of adequate limits)* shall be precluded from pleading, introducing into evidence or recovering the amount of benefits paid or payable under section 1711 *or 1715(a)(1.1)*. This preclusion applies only to the amount of benefits set forth in [section] *sections 1711 and 1715(a)(1.1)*.

§ 1723. Reporting requirements.

Beginning December 31, 1986, and each year thereafter, each insurance company writing automobile insurance in this Commonwealth shall file with the Insurance Department the number of its insureds, the number of its insureds who have purchased first party medical benefits in excess of the minimum required by section 1711 (relating to required benefits) and the number of insureds who have purchased first party medical benefits *[in the amount of \$100,000] under section 1715(a)(1) and (1.1) (relating to availability of adequate limits)*. The Insurance Department shall furnish this information to the General Assembly annually.

Section 5. Section 1787(d) of Title 75 is repealed.

Section 6. Section 1791 of Title 75 is amended to read:

§ 1791. Notice of available benefits and limits.

It shall be presumed that the insured has been advised of the benefits and limits available under this chapter provided the following notice in bold print of at least ten-point type is given to the applicant at the time of application for original coverage or at the time of the first renewal after October 1, 1984, and no other notice or rejection shall be required:

IMPORTANT NOTICE

Insurance companies operating in the Commonwealth of Pennsylvania are required by law to make available for purchase the following benefits for you, your spouse or other relatives or minors in your custody or in the custody of your relatives, residing in your household, occupants of your motor vehicle or persons struck by your motor vehicle:

(1) Medical benefits, up to at least \$100,000.

(1.1) Extraordinary medical benefits, from \$100,000 to \$1,100,000 which may be offered in increments of \$100,000.

(2) Income loss benefits, up to at least \$2,500 per month up to a maximum benefit of at least \$50,000.

(3) Accidental death benefits, up to at least \$25,000.

(4) Funeral benefits, \$2,500.

(5) As an alternative to paragraphs (1) through (4), a combination benefit, up to at least \$277,500 of benefits in the aggregate or benefits payable up to three years from the date of the accident, whichever occurs first, subject to a limit on accidental death benefit of up to \$25,000 and a limit on funeral benefit of \$2,500, *provided that nothing contained in this subsection shall be construed to limit, reduce, modify or change the provisions of section 1715(d) (relating to availability of adequate limits)*.

(6) Uninsured, underinsured and bodily injury liability coverage up to at least \$100,000 because of injury to one person in any one accident and up to at least \$300,000 because of injury to two or more persons in any one accident or, at the option of the insurer, up to at least \$300,000 in a single limit for these coverages, except for policies issued under the Assigned Risk Plan. Also, at least \$5,000 for damage to property of others in any one accident.

Additionally, insurers may offer higher benefit levels than those enumerated above as well as additional benefits. However, an insured may elect to purchase lower benefit levels than those enumerated above.

Your signature on this notice or your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected.

Section 7. Title 75 is amended by adding sections to read:

§ 1798.1. Extraordinary medical benefit rate.

(a) *Filing.*—Each insurer issuing or delivering liability insurance policies as described in section 1711 (relating to required benefits) shall file with the Insurance Commissioner for an extraordinary medical benefit rate for coverage under section 1715(a)(1.1) (relating to availability of adequate limits). The filing shall be subject to the act of June 11, 1947 (P.L. 538, No. 246), known as *The Casualty and Surety Rate Regulatory Act*, provided that no first time filing for extraordinary medical benefit coverage which is scheduled for a formal administrative hearing may be deemed effective until an adjudication is issued by the Insurance Commissioner. Insurers may provide for the discounting of extraordinary medical benefit loss reserves in annual financial statements. Unallocated extraordinary medical benefit loss expense payments may be treated in accordance with section 315 of the act of May 17, 1921 (P.L. 789, No. 285), known as *The Insurance Department Act of one thousand nine hundred and twenty-one*, and regulations promulgated pursuant thereto. The Insurance Commissioner may order the discounting of extraordinary medical benefit losses and allocated loss adjustment expenses in calculating rates for coverage under section 1715(a)(1.1) to the extent determined to be actuarially sound.

(b) *Rates.*—All rates established under this section shall be adequate to assure actuarial soundness. Under no circumstances shall rates for other coverages required under the provisions of this chapter be modified or otherwise established to subsidize, in whole or in part, the rate for the extraordinary medical benefit. In making a rate for the extraordinary medical benefit, due consideration shall be given to the current factors generally in use in making motor vehicle insurance rates.

(c) *Limitation.*—The extraordinary medical benefit rate for coverage under section 1715(a)(1.1) shall not be subject to any premium tax levied under State law.

§ 1798.2. Transition.

(a) *Savings provision.*—Notwithstanding the repeal of Subchapter F (relating to Catastrophic Loss Trust Fund) by the act of December 12, 1988

(P.L.1120, No.144), all natural persons who suffer or suffered a catastrophic loss prior to June 1, 1989, or who may suffer a catastrophic loss during the registration year for which payment was made in accordance with former section 1762 (relating to funding), shall continue to receive, or be eligible to receive, catastrophic loss benefits as if Subchapter F had not been repealed. To ensure the administration and delivery of catastrophic loss benefits to eligible claimants, all powers and duties previously imposed on the Catastrophic Loss Trust Fund Board under Subchapter F are hereby transferred to the Insurance Commissioner. For the purposes of this section, the Catastrophic Loss Trust Fund shall continue to exist, notwithstanding the repeal of section 1764 (relating to Catastrophic Loss Trust Fund).

(b) Rate filing.—All insurers shall, within 30 days of the effective date of this section, file for approval by the Insurance Commissioner an extraordinary medical benefit rate pursuant to section 1798.1(a) (relating to extraordinary medical benefit rate). Any insurer having an approved rate for catastrophic loss coverage on the effective date of this section shall utilize that approved rate.

(c) Notice.—For extraordinary medical benefit rate filings approved after the effective date of this section, the insurer shall provide the following notice to all policyholders no later than 30 days from the date of approval, which notice shall not be subject to any provision of any law or regulation requiring the approval of the Insurance Commissioner prior to its adoption or use:

IMPORTANT NOTICE

EXTRAORDINARY MEDICAL BENEFITS

By virtue of recent amendment to the Motor Vehicle Financial Responsibility Law, as of June 1, 1989, the first party benefits coverage may be extended to provide an extraordinary medical benefit which will pay the medical and rehabilitation costs for you and your family members residing in your household which are more than \$100,000 for each person injured as the result of an automobile accident, up to a lifetime benefit limit of \$1,000,000 for each person. The cost of this extraordinary medical benefit coverage on an annual basis is \$ _____ per vehicle. If you wish to purchase the extraordinary medical benefit coverage, please notify your agent or insurance company for additional information. If you do not wish to purchase extraordinary medical benefit coverage, please disregard this notice.

§ 1798.3. Unfunded liability report.

By May 15, 1989, the Insurance Commissioner and the Budget Secretary shall jointly prepare and provide to the Governor and to the General Assembly a report on the actuarial soundness of the fund, including a projection of the additional revenues needed on a year-to-year basis and a comparison of the cost of providing additional revenues on a year-to-year, as-needed basis and the cost of providing adequate revenues to eliminate the unfunded liability within no more than five years. The report shall include recommendations as to how rapidly the unfunded liability should be eliminated and what the source or sources of the additional revenues should be, which shall include,

but not be limited to, the General Fund or other surcharges. If such report includes recommendations for collecting a surcharge to eliminate the unfunded liability, the report shall compare the consequences of imposing that surcharge on each motor vehicle required to be registered under Chapter 13 (relating to registration of vehicles) except trailers, recreational vehicles not intended for highway use, motorcycles, motor-driven cycles, motorized pedalcycles or like type vehicles; on each insured as defined in section 1702 (relating to definitions); and on each motor vehicle for which coverage is purchased under section 1715(a)(1) (relating to availability of adequate limits) and shall compare the consequences of eliminating the unfunded liability over a period of five years, a period of ten years, a period of 15 years and a period of 20 years.

Section 8. Section 7 (section 1798.2(a)) shall be retroactive to December 12, 1988, and sections 1, 2, 3, 5 and 7 (section 1798.2(b)), if enacted after May 1, 1989, shall be retroactive to May 1, 1989.

Section 9. This act shall take effect as follows:

- (1) Sections 4 (sections 1711 and 1715) and 6 shall take effect June 1, 1989.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 26th day of April, A. D. 1989.

ROBERT P. CASEY