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## Article 51 of the New York Insurance Law aka "The No-Fault Law"

### Section 5101. Title.

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### 5101. Title.

This article shall be known and may be cited as the "Comprehensive Motor Vehicle Insurance Reparations Act".

### 5102. Definitions. In this chapter:

(a) "Basic economic loss" means, up to fifty thousand dollars per person of the following combined items, subject to the limitations of section five thousand one hundred eight of this article:

(1) All necessary expenses incurred for:

(i) medical, hospital (including services rendered in compliance with article forty-one of the public health law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services;

(ii) psychiatric, physical and occupational therapy and rehabilitation\*;

**\*NOTE\*:** Section 5102(a)(1)(ii) of the New York Insurance Law has been amended, effective November 23, 2006, to read as follows:

(ii) psychiatric, physical therapy (provided that treatment is rendered pursuant to a referral) and occupational therapy and rehabilitation;

(iii) any non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this state; and

(iv) any other professional health services; all without limitation as to time, provided that within one 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 five thousand one hundred eight of this article.

(2) Loss of earnings from work which the person would have performed had he not been injured, and reasonable and necessary expenses incurred by such person in obtaining services in lieu of those that he would have performed for income, up to two thousand dollars per month for not more than three 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.

(3) All other reasonable and necessary expenses incurred, up to twenty-five dollars per day for not more than one year from the date of the accident causing the injury.

(4) "Basic economic loss" shall not include any loss incurred on account of death; subject, however, to the provisions of paragraph four of subsection (a) of section five thousand one hundred three of this article.

(5) "Basic economic loss" shall also include an additional option to purchase, for an additional premium, an additional twenty-five thousand dollars of coverage which the insured or his legal representative may specify will be applied to loss of earnings from work and/or psychiatric, physical or occupational therapy and rehabilitation after the initial fifty thousand dollars 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 this paragraph, or at the time of application.

(b) "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:

(1) Twenty percent of lost earnings computed pursuant to paragraph two of subsection (a) of this section.

(2) 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 nine 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.

(3) Amounts deductible under the applicable insurance policy.

(c) "Non-economic loss" means pain and suffering and similar non-monetary detriment.

(d) "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 non-permanent 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 days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

(e) "Owner" means an owner as defined in section one hundred twenty-eight of the vehicle and traffic law.

(f) "Motor vehicle" means a motor vehicle as defined in section three hundred eleven of the vehicle and traffic law and also includes fire and police vehicles. It shall not include any motor vehicle not required to carry financial security pursuant to article six, eight or forty-eight-A of the vehicle and traffic law or a motorcycle, as defined in subsection (m) hereof.

(g) "Insurer" means the insurance company or self-insurer, as the case may be, which provides the financial security required by article six or eight of the vehicle and traffic law.

(h) "Member of his household" means a spouse, child or relative of the named insured who regularly resides in his household.

(i) "Uninsured motor vehicle" means a motor vehicle, the owner of which is (i) a financially irresponsible motorist as defined in subsection (j) of section five thousand two hundred two of this chapter or (ii) unknown and whose identity is unascertainable.

(j) "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 article six or eight of the vehicle and traffic law or which is referred to in subdivision two of section three hundred twenty-one of such law; or any other person entitled to first party benefits.

(k) "Bus" means both a bus and a school bus as defined in sections one hundred four and one hundred forty-two of the vehicle and traffic law.

(l) "Compensation provider" means the state insurance fund, or the person, association, corporation or insurance carrier or

statutory fund liable under state or federal laws for the payment of workers' compensation benefits or disability benefits under article nine of the workers' compensation law.

(m) "Motorcycle" means any motorcycle, as defined in section one hundred twenty-three of the vehicle and traffic law, and which is required to carry financial security pursuant to article six, eight or forty-eight-A of the vehicle and traffic law.

**5103.** Entitlement to first party benefits; additional financial security required.

(a) Every owner's policy of liability insurance issued on a motor vehicle in satisfaction of the requirements of article six or eight of the vehicle and traffic law shall also provide for; every owner who maintains another form of financial security on a motor vehicle in satisfaction of the requirements of such articles shall be liable for; and every owner of a motor vehicle required to be subject to the provisions of this article by subdivision two of section three hundred twenty-one of the vehicle and traffic law 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 his household 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 his household, other than occupants of a motorcycle, for loss arising out of the use or operation of (i) an uninsured motor vehicle or motorcycle, within the United States, its territories or possessions, or Canada; and (ii) an insured motor vehicle or motorcycle outside of this state and within the United States, its territories or possessions, or Canada.

(3) Any New York resident who is neither the owner of a motor vehicle with respect to which coverage for first party benefits is required by this article nor, as a member of a household, is entitled to first party benefits under paragraph two 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.

(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 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) hereof a person who:

(1) Intentionally causes his own injury.

(2) Is injured as a result of operating a motor vehicle while in an intoxicated condition or while his ability to operate such vehicle is impaired by the use of a drug within the meaning of section eleven hundred ninety-two of the vehicle and traffic law.

(3) Is injured while he is:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer, or

(ii) operating a motor vehicle in a race or speed test, or

(iii) operating or occupying a motor vehicle known to him to be stolen, or

(iv) operating or occupying any motor vehicle owned by such injured person with respect to which the coverage required by subsection (a) hereof is not in effect, or

(v) a pedestrian, through being struck by any motor vehicle owned by such injured pedestrian with respect to which the coverage required by subsection (a) hereof is not in effect, or

(vi) 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) hereof shall be offered (i) without a deductible and (ii) with a family deductible of up to two hundred dollars (which deductible shall apply only to the loss of the named insured and members of his household). The superintendent 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) hereof shall be subject to approval pursuant to article twenty-three of this chapter. Minimum benefit standards for such policies and for self-insurers, and rights of subrogation, examination and other such matters, shall be established by regulation pursuant to section three hundred one of this chapter.

(e) Every owner's policy of liability insurance issued in satisfaction of article six or eight of the vehicle and traffic law 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 or an all terrain vehicle in satisfaction of the requirements of article six or eight of the vehicle and traffic law or section twenty-four hundred seven of such law shall also provide for; every owner who maintains another form of financial security on a motorcycle or an all terrain vehicle in satisfaction of the requirements of such articles or section shall be liable for; and every owner of a motorcycle or an all terrain vehicle required to be subject to the provisions of this article by subdivision two of section three hundred twenty-one of such law shall be liable for; the payment of first party benefits to persons, other than the occupants of such motorcycle or all terrain vehicle, another motorcycle or all terrain vehicle, or any motor vehicle, for loss arising out of the use or operation of the motorcycle or all terrain vehicle within this state. Every insurer and self-insurer may exclude from the coverage required by this subsection a person who intentionally causes his 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) A company authorized to provide the insurance specified in paragraph three of subsection (a) of section one thousand one hundred thirteen of this chapter or a corporation organized pursuant to article forty-three of this chapter may, individually or jointly, with the approval of the superintendent upon a showing that the company or corporation is qualified to provide for all of the items of basic economic loss specified in paragraph one of subsection (a) of section five thousand one hundred two of this article, provide coverage for such items of basic economic loss to the extent that an insurer would be required to provide under this article. Where a policyholder elects to be covered under such an arrangement the insurer providing coverage for the automobile shall be furnished with the names of all persons covered by the company or corporation under the arrangement and such persons shall not be entitled to benefits for any of the items of basic economic loss specified in such paragraph. The premium for the automobile insurance policy shall be appropriately reduced to reflect the elimination of coverage for such items of basic economic loss. Coverage by the automobile insurer of such eliminated items shall be effected or restored upon request by the insured and payment of the premium for such coverage. All companies and corporations providing coverage for items of basic economic loss pursuant to the authorization of this subsection shall have only those rights and obligations which are applicable to an insurer subject to this article.

(h) Any policy of insurance obtained to satisfy the financial security requirements of article six or eight of the vehicle and traffic law which does not contain provisions complying with the requirements of this article, shall be construed as if such provisions were embodied therein.

#### **5104. Causes of action for personal injury.**

(a) Notwithstanding any other law, 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 non-economic loss, except in the case of a serious injury, or for basic economic loss. The owner, operator or occupant of a motorcycle which has in effect the financial security required by article six or eight of the vehicle and traffic law, or which is referred to in subdivision two of section three hundred twenty-one of such law, shall not be subject to an action by or on behalf of a covered person for recovery for non-economic 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 non-covered person, where 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 where the amount of such settlement exceeds fifty thousand dollars. The failure of such person to commence such action within two 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 his 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 his basic economic loss shall not be recoverable.

(c) Where there is no right of recovery for basic economic loss, such loss may nevertheless be pleaded and proved to the extent that it is relevant to the proof of non-economic loss.

**5105. Settlement between insurers.**

(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 pursuant to subsection (a) of section five thousand one hundred three of this article or section five thousand two hundred twenty-one of this chapter 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 this article, to pay damages in an action at law. In any case, the right to recover exists only if at least one of the motor vehicles involved is a motor vehicle weighing more than six thousand five hundred pounds unloaded or is a motor vehicle used principally for the transportation of persons or property for hire. However, in the case of occupants of a bus other than operators, owners, and employees of the owner or operator of the bus, an insurer which, pursuant to paragraph one of subsection (a) of section five thousand one hundred three of this article, provides coverage for first party benefits for such occupants under a policy providing first party benefits to the injured person and members of his household for loss arising out of the use or operation of any vehicle of such household, shall have no right to recover the amount of such benefits from the insurer of such bus.

(b) The sole remedy of any insurer or compensation provider to recover on a claim arising pursuant to subsection (a) hereof, shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent. 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.

**5106. Fair claims settlement.**

(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 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 days after such proof is supplied. All overdue payments shall bear interest at the rate of two percent per month. If a valid claim or portion was overdue, the claimant shall also be entitled to recover his attorney's reasonable fee, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the superintendent in regulations.

(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) hereof to arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent.

(c) An award by an arbitrator shall be binding except where vacated or modified by a master arbitrator in accordance with simplified procedures to be promulgated or approved by the superintendent. The grounds for vacating or modifying an arbitrator's award by a master arbitrator shall not be limited to those grounds for review set forth in article seventy-five of the civil practice law and rules. The award of a master arbitrator shall be binding except for the grounds for review set forth in article seventy-five of the civil practice law and rules, and provided further that where the amount of such master arbitrator's award is five thousand dollars or greater, exclusive of interest and attorney's fees, the insurer or the claimant may institute a court action to adjudicate the dispute de novo.

**5107. Coverage for non-resident motorists.**

(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 article six or eight of the vehicle and traffic law and to provide for the payment of first party benefits pursuant to subsection (a) of section five thousand one hundred three of this article when a motor vehicle covered by such policy is used or operated in this state.

(b) Every policy described in subsection (a) hereof shall be construed as having the coverage required by subsection (a) of section five thousand one hundred three of this article.

**5108. Limit on charges by providers of health services.**

(a) The charges for services specified in paragraph one of subsection (a) of section five thousand one hundred two of this article 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 under the schedules prepared and established by the chairman of

the workers' compensation board for industrial accidents, except where the insurer or arbitrator determines that unusual procedures or unique circumstances justify the excess charge.

(b) The superintendent, after consulting with the chairman of the workers' compensation board and the commissioner of health, shall promulgate rules and regulations implementing and coordinating the provisions of this article and the workers' compensation law with respect to charges for the professional health services specified in paragraph one of subsection (a) of section five thousand one hundred two of this article, including the establishment of schedules for all such services for which schedules have not been prepared and established by the chairman of the workers' compensation board.

(c) No provider of health services specified in paragraph one of subsection (a) of section five thousand one hundred two of this article may 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 days after such insurer has knowledge of such pattern.

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