

SUMMARY OF PENNSYLVANIA AUTO INSURANCE LAW

The laws relating to automobile insurance coverage are compiled in 75 Pa.C.S.A. §§ 1701 et seq., known as the Act 6 Amendments to the PA Motor Vehicle Financial Responsibility Law (MVFRL).

I. General Provisions

A. Financial Responsibility State

PA is a financial responsibility insurance state. Therefore, one must purchase liability coverage in the amount of \$15,000.00/\$30,000.00 and property damage in the amount of \$5,000.00. (75 Pa.C.S.A. § 1702).

An insurer issuing or delivering liability insurance policies in PA shall include coverage providing a medical benefit in the amount of \$5,000.00. (Pa. 75 Pa.C.S.A. § 7111).

B. Choice-no-fault State

PA is a choice-no-fault state. Choice-no-fault is a hybrid of the pure no-fault system. Under this system, drivers have the choice of being insured under either a pure no-fault plan or a modified no-fault plan. Under the pure no-fault plan, one is unable to sue negligent drivers for non-economic damages, and is immune from such suits himself/herself. Under the traditional tort (personal injury suits) rights, one can sue other drivers who have also chosen to retain their tort rights, and in return they can sue him/her. If one that has chosen the modified plan has an accident with a driver insured under the pure no-fault plan, they are both unable to sue the other party.

C. PA Fair Share Act

On June 19, 2002, the PA Governor at the time signed into law Act 57 of 2002, the Fair Share Act. A challenge to this Act is presently pending before the Commonwealth Court.

The PA Fair Share Act applies to all cases which “accrue” after August 19, 2002; meaning any claims with a date of accident/loss of August 20, 2002 or later must be analyzed under this Act.

In the past, PA law provided for a pure joint and several liability system among joint tortfeasors. However, amendments to the Comparative Negligence Act, 42 Pa.C.S.A. § 7102 were recently signed into law.

Any defendant found less than 60% liable will only be responsible for paying its percentage share of the entire verdict. (See 42 Pa.C.S.A. § 7102 attached).

D. Insurers Rights in Instances of Misrepresentation on the Policy

PA permits a 60 day look-back period to investigate a potential insured's background. An automobile insurer can rescind its insurance policy for material misrepresentation within 60 days after effective date of policy, but 60 days after the effective date an insurer is limited to cancellation. (*Powell v. Walker*, 630 A.2d 16, 428 Pa. Super. 31 (1993)); *Erie Insurance Co. v. Lake*, 543 Pa. 363, 671 A.2d 681 (1996)).

E. Statute of Limitations for Auto Claims

1. Two (2) year Statute of Limitations for property damage and liability claims
2. Limited Tort Cases
 - a. The limited tort plaintiff does not have a cause of action until he/she has sustained a serious injury. (*Walls v. Scheckler*, 700 A.2d 532 (Pa Super 1997)).
3. Payment of first party benefits
 - a. 4 years from the date of the accident giving rise to the claim
 - b. If first party benefits have been paid, an action for further benefits shall be commenced within 4 years from the date of the last payment. (*75 Pa.C.S.A. § 1721*).
 - c. For minors entitled to first party benefits, an action shall be commenced within 4 years from the date on which the injured minor obtains 18 years of age
4. Uninsured/underinsured motorist benefits
 - a. Statute of Limitations is contractual therefore the 4 year Statute of Limitations for contracts applies. (*75 Pa.C.S.A. § 1799*).
 - b. Statute of Limitations on uninsured motorist benefits starts when 3 events occur:
 1. The insured is involved in a MVA;
 2. The insured sustained bodily injury as a result of that accident; and
 3. The insured knew of the uninsured status of the tortfeasor. (*Boyle v. State Farm Mutual Insurance Co.*, 310 Pa. Super 10, 456 A.2d 156 (1983)).
 - c. Statute of Limitations on underinsured motorist benefits starts when:
 1. The insured is involved in an accident;
 2. The insured sustains bodily injury as a result of that accident; and
 3. There is a third party settlement for policy limits or a verdict exceeding the limits. (*Wright v. Aetna*

II. Types of Auto Insurance Coverage

A. Liability Coverage

1. Mandatory coverage for bodily injury claims
2. Protects from claims made against the individual
3. Minimum coverage the law requires is \$15,000 per individual and \$30,000 per incident (“15/30”)
4. Higher limits are available and usually purchased if individual has assets to protect
5. Liability coverage can also be purchased for property damage claims which applies to damage the individual caused to the other person’s vehicle

B. First Party (PIP) Coverage

1. Mandatory coverage
2. Basic no-fault type of medical insurance for individual’s own medical bills
3. Minimum coverage is \$5,000
4. Regardless of fault, the individual’s medical bills will be paid through PIP coverage.

C. Collision Coverage

1. Optional coverage
2. Pays individual for any damage done to his/her vehicle
3. Typically purchased with a deductible = pay up to the amount of deductible limit and then insurance covers remainder
4. If accident not individual’s fault, insurance company should demand deductible back from responsible party

D. Comprehensive Coverage

1. Optional coverage
2. Provides protection if vehicle stolen or damaged in variety of ways other than accident with another vehicle
3. Operates on deductible contribution

E. Uninsured (UM) Motorist Coverage

1. Optional coverage to purchase
2. The new law, Act 6, imposed a requirement of mandatory offering of uninsured motorist protection. (*75 Pa.C.S.A. § 1731 (A)*).
3. The new law required that the insurer inform the named insured that he/she may reject this coverage by signing

separate written rejection forms set forth within the Statute. (75 Pa.C.S.A. § 1731 (B) & (C)).

4. Protects in case injured by a driver/vehicle that is uninsured
5. May be purchased in amounts equal to or smaller than liability coverage

F. Under-insured (UIM) Motorist Coverage

1. Optional coverage to purchase
2. The new law, Act 6, imposed a requirement of mandatory offering of underinsured motorist protection. (75 Pa.C.S.A. § 1731 (A)).
3. The new law required that the insurer inform the named insured that he/she may reject this coverage by signing separate written rejection forms set forth within the Statute. (75 Pa.C.S.A. § 1731 (B) & (C)).
4. Coverage only applies if individual is injured, wasn't the individual's fault, and the other party didn't carry enough insurance to adequately compensate individual for injuries
5. Usually when responsible party had minimum policy of 15/30 and individual's injuries are sufficiently serious to exceed that amount

III. Limited vs. Full Tort

There is a limited tort threshold that applies in PA. (75 Pa.C.S.A. § 1705).

A. Full Tort

1. Individual pays higher premium
2. Individual can bring a claim for any injury suffered as a result of auto accident

B. Limited Tort

1. Policy premium is less than full tort
2. Individual cannot seek recovery for non-economic damages unless the injuries suffered fall within the definition of "serious injury"
 - a. By statute, a serious injury is defined as "a personal injury resulting in death, serious impairment of body function or permanent serious disfigurement" (75 Pa.C.S.A. § 1702); (*Washington v. Baxter*, 695 A.2d 447 (Pa. Super., 1977)).
 - b. Recent trend of the courts has been to view most soft tissue injuries (neck and back sprains/strains) as insufficient to satisfy the serious impairment requirement
 - c. In most cases, even broken bones and head injuries have been considered not to meet the law's definition of serious

IV. Subrogation

A. Subrogation of First Party Benefits/PIP

In 75 Pa. C.S.A. §1720, there is an anti-subrogation clause. Specifically, §1720 states:

In actions arising out of the maintenance or use of a motor vehicle there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers compensation benefits, benefits available under §1711 (relating to required benefits), §1712 (relating to availability of benefits) or §1715 (relating to availability of adequate limits or benefits paid or payable by a program, group, contract or other arrangement whether primary or excess under) §1719 (relating to coordination of benefits).

§25(B) of Act 1993, July 2, P.L. 190, No. 44 provides that this section is repealed insofar as it relates to workers compensation payments or other benefits under the Workers Compensation Act.

B. Subrogation of UM/UIM

In Pennsylvania an underinsured motorist carrier will be subrogated to the right of its insured in the following circumstances:

1. The underinsured motorist carrier settles with the insured before the insured has settled with the tortfeasor or the tortfeasor's liability insurer;
2. The insured is at the point fully compensated; and
3. The policy requires the insured to preserve the underinsured motorist carrier's subrogation rights by not releasing the tortfeasor and the insured complies.