

PROGRAM BILL #288

S.

Senate

IN SENATE--Introduced by Sen.

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

INSURLA
(Relates to no-fault insurance)

Ins. no-fault

AN ACT

to amend the insurance law, in
relation to no-fault insurance

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s20 Adams	s03 Foley	s24 Lanza	s37 Oppenheimer	s09 Skelos
s15 Addabbo	s08 Puschillo	s39 Larkin	s11 Padavan	s14 Smith
s55 Alessi	s22 Golden	s01 LaValle	s21 Parker	s25 Squadron
s48 Aubertine	s47 Griffo	s40 Leibell	s13 Peralta	s58 Stachowski
s42 Bonacic	s06 Hannon	s52 Libous	s30 Perkins	s16 Stavisky
s46 Breslin	s36 Hassell	s45 Little	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	Thompson	s05 Marcellino	s56 Robach	Cousins
s32 Diaz	s10 Huntley	s62 Maziarz	s41 Saland	s60 Thompson
s17 Dilan	s07 Johnson, C.	s43 McDonald	s19 Sampson	s49 Valesky
s29 Duane	s04 Johnson, O.	s18 Montgomery	s23 Savino	s59 Volker
s33 Espada	s34 Klein	s38 Morahan	s31 Schneiderman	s53 Winner
s44 Farley	s26 Krueger	s54 Nozzolio	s28 Serrano	s57 Young
s02 Flanagan	s27 Kruger	s12 Onorato	s51 Seward	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a010 Conte	a093 Reastie	a022 Meng	a067 Rosenthal
a001 Alessi	a032 Cook	a028 Hovesi	a102 Miller, J.	a118 Russell
a021 Alfano	a142 Corwin	a048 Hkind	a038 Miller, M.	a012 Saladino
a105 Anedore	a085 Crespo	a018 Hooper	a052 Millman	a113 Sayward
a084 Arroyo	a107 Crouch	a144 Hoyt	a103 Molinaro	a029 Scarborough
a035 Aubry	a063 Cusick	a060 Hyer-Spencer	a015 Montesano	a016 Schimel
a136 Bacallias	a045 Cymbrowitz	a042 Jacobs	a132 Morelle	a140 Schiminger
a099 Ball	a138 DelMonte	a095 Jaffee	a003 Murray	a145 Schroeder
a124 Barclay	a034 DenDekker	a057 Jeffries	a037 Nolan	a122 Scozzafava
a014 Barra	a116 Destito	a131 John	a128 Oaks	a064 Silver
a040 Barron	a081 Dinowitz	a112 Jordan	a069 O'Donnell	a100 Skarzedos
a082 Benedetto	a114 Duprey	a074 Kavanagh	a137 O'Mara	a093 Spano
a079 Benjamin	a004 Englebright	a065 Kellner	a051 Ortiz	a121 Stirpe
a073 Bing	a130 Errigo	a129 Kolb	a150 Farment	a011 Sweeney
a058 Boyland	a072 Espallat	a135 Koon	a088 Paulin	a110 Tedisco
a008 Boyle	a071 Farrell	a025 Lancman	a141 Peoples-	a002 Thiele
a044 Brennan	a005 Fields	a091 Latimer	Stokes	a061 Titona
a092 Brodeky	a123 Finch	a013 Lavine	a058 Perry	a031 Titus
a046 Brook-Krasny	a007 Fitzpatrick	a050 Lentol	a023 Pheffer	a062 Tobacco
a147 Burling	a143 Gabryszak	a125 Lifton	a068 Powell	a054 Tomas
a117 Butler	a090 Galef	a127 Lopez, P.	a087 Pretlow	a115 Townsend
a101 Cahill	a133 Gantt	a053 Lopez, V.	a146 Quinn	a041 Weinstein
a096 Calhoun	a036 Giamaris	a126 Lupardo	a097 Rabbitt	a020 Weisenberg
a043 Camera	a077 Gibson	a111 Magee	a009 Rala	a024 Weprin, D.
a106 Canestrari	a149 Giglio	a120 Magnarelli	a006 Ramos	a070 Wright
a026 Carrozza	a066 Glick	a059 Maisel	a134 Reilich	a094 Zebrowski
a089 Castelli	a108 Gordon	a030 Markey	a109 Reilly	a039
a086 Castro	a075 Gottfried	a027 Mayersohn	a078 Rivera, J.	
a119 Christensen	a098 Gunther	a019 McDonough	a080 Rivera, N.	
a033 Clark	a139 Hawley	a104 McEneny	a076 Rivera, P.	
a047 Colton	a148 Hayes	a017 McKevitt	a056 Robinson	

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. The opening paragraph of section 5102 of the insurance law
2 is amended and a new subsection (n) is added to read as follows:

3 In this [chapter] article:

4 (n) "Provider of health services" means a person or entity who renders
5 health services.

6 § 2. Subsection (a) of section 5106 of the insurance law is amended to
7 read as follows:

8 (a) Payments of first party benefits and additional first party bene-
9 fits shall be made as the loss is incurred. Such benefits are overdue
10 if not paid within thirty days after the claimant supplies proof of the
11 fact and amount of loss sustained. If proof is not supplied as to the
12 entire claim, the amount which is supported by proof is overdue if not
13 paid within thirty days after such proof is supplied. The failure of an
14 insurer to make timely payment or issue a denial within thirty days
15 after proof of claim has been submitted to the insurer shall not
16 preclude the insurer from issuing a denial or asserting a defense after
17 the thirty day period has elapsed. All overdue payments shall bear
18 interest at the rate of two percent per month. If a valid claim or
19 portion was overdue, the claimant shall also be entitled to recover his
20 attorney's reasonable fee, for services necessarily performed in
21 connection with securing payment of the overdue claim, subject to limi-
22 tations promulgated by the superintendent in regulations. Payment of
23 the interest penalty and reasonable attorney fees to a claimant when
24 payment of a claim is overdue shall be the exclusive remedy when an
25 insurer fails to make a timely payment.

26 § 3. Subsection (b) of section 5106 of the insurance law, as amended
27 by chapter 452 of the laws of 2005, is amended to read as follows:

1 (b) [Every insurer shall provide a claimant with the option of submit-
2 ting any dispute] All disputes, when the amount in dispute is five thou-
3 sand dollars or less, involving the insurer's liability to pay first
4 party benefits, or additional first party benefits, the amount thereof
5 or any other matter [which] that may arise pursuant to subsection (a) of
6 this section, shall be submitted to arbitration [pursuant to simplified
7 procedures to be promulgated or approved by the superintendent]. Every
8 insurer, when the amount in dispute exceeds five thousand dollars, shall
9 provide a claimant with the option of submitting any dispute involving
10 the insurer's liability to pay first party benefits, or additional first
11 party benefits, the amount thereof or any other matter that may arise
12 pursuant to subsection (a) of this section to arbitration. Such arbi-
13 trations shall be governed pursuant to simplified procedures to be
14 promulgated or approved by the superintendent. For the purposes of this
15 subsection, the "amount in dispute" means the total amount of disputed
16 first party benefits sought by a claimant for health services rendered
17 to an eligible injured person by a particular health service provider
18 arising out of injuries sustained in a motor vehicle accident. Such
19 simplified procedures shall include an expedited eligibility hearing
20 option, when required, to designate the insurer for first party benefits
21 pursuant to subsection (d) of this section. The expedited eligibility
22 hearing option shall be a forum for eligibility disputes only, and shall
23 not include the submission of any particular bill, payment or claim for
24 any specific benefit for adjudication, nor shall it consider any other
25 defense to payment.

26 § 4. Subsection (c) of section 5106 of the insurance law, is amended
27 to read as follows:

1 (c) An award by an arbitrator shall be binding except where vacated or
2 modified by a master arbitrator in accordance with simplified procedures
3 to be promulgated or approved by the superintendent. The grounds for
4 vacating or modifying an arbitrator's award by a master arbitrator shall
5 not be limited to those grounds for review set forth in article seven-
6 ty-five of the civil practice law and rules. The award of a master arbi-
7 trator shall be binding except for the grounds for review set forth in
8 article seventy-five of the civil practice law and rules, and provided
9 further that where the amount [of such master arbitrator's award] in
10 dispute is [five] three thousand dollars or greater, exclusive of inter-
11 est and attorney's fees, the insurer or the claimant may institute a
12 court action to adjudicate the dispute de novo.

13 § 5. Section 5106 of the insurance law is amended by adding a new
14 subsection (e) to read as follows:

15 (e) With respect to an action for serious personal injury permissible
16 under section five thousand one hundred four of this article, the award
17 or decision of an arbitrator or master arbitrator rendered pursuant to
18 subsection (c) of this section shall not constitute a collateral estop-
19 pel of the issues arbitrated.

20 § 5. Section 5109 of the insurance law, as added by chapter 423 of the
21 laws of 2005, is amended to read as follows:

22 § 5109. Unauthorized providers of health services. (a) [The super-
23 intendent, in consultation with the commissioner of health and the
24 commissioner of education, shall by regulation, promulgate standards and
25 procedures for investigating and suspending or removing the authori-
26 zation for providers of health services to demand or request payment for
27 health services as specified in paragraph one of subsection (a) of
28 section five thousand one hundred two of this article upon findings

1 reached after investigation pursuant to this section. Such regulations
2 shall ensure the same or greater due process provisions, including
3 notice and opportunity to be heard, as those afforded physicians inves-
4 tigated under article two of the workers' compensation law and shall
5 include provision for notice to all providers of health services of the
6 provisions of this section and regulations promulgated thereunder at
7 least ninety days in advance of the effective date of such regulations]
8 As used in this section, "health services" means services, supplies,
9 therapies or other treatments as specified in subparagraph (i), (ii) or
10 (iv) of paragraph one of subsection (a) of section five thousand one
11 hundred two of this article.

12 (b) [The commissioner of health and the commissioner of education
13 shall provide a list of the names of all providers of health services
14 who the commissioner of health and the commissioner of education shall
15 deem, after reasonable investigation, not authorized to demand or
16 request any payment for medical services in connection with any claim
17 under this article because such] The superintendent may prohibit a
18 provider of health services from demanding or requesting payment for
19 health services rendered under this article, for a period not exceeding
20 three years, if the superintendent determines, after notice and hearing,
21 that the provider of health services:

22 (1) has admitted to, or been found guilty of, professional [or other]
23 misconduct [or incompetency], as defined in the education law, in
24 connection with [medical] health services rendered under this article;
25 [or

26 (2) has exceeded the limits of his or her professional competence in
27 rendering medical care under this article or has knowingly made a false

1 statement or representation as to a material fact in any medical report
2 made in connection with any claim under this article; or
3 (3)] (2) solicited, or [has] employed another person to solicit for
4 [himself or herself] the provider of health services or [for] another
5 person or entity, professional treatment, examination or care of [an
6 injured] a person in connection with any claim under this article; [or
7 (4) has] (3) refused to appear before, or [to] answer any question
8 upon request of, the [commissioner of health, the] superintendent[,] or
9 any duly authorized officer of [the] this state, [any legal question,]
10 or refused to produce any relevant information concerning [his or her]
11 the conduct of the provider of health services in connection with
12 [rendering medical] health services rendered under this article; [or
13 (5) has] (4) engaged in [patterns] a pattern of billing for:
14 (A) health services [which] alleged to have been rendered under this
15 article, when the health services were not [provided.] rendered; or
16 (B) unnecessary health services;
17 (5) utilized unlicensed persons to render health services under this
18 article, when only a person licensed in this state may render the health
19 services;
20 (6) utilized licensed persons to render health services, when render-
21 ing the health services is beyond the authorized scope of the person's
22 license;
23 (7) ceded ownership, operation or control of a business entity author-
24 ized to provide professional health services in this state, including
25 but not limited to a professional service corporation, professional
26 limited liability company or registered limited liability partnership,
27 to a person not licensed to render the health services for which the

1 entity is legally authorized to provide, except where the unlicensed
2 person's ownership, operation or control is otherwise permitted by law;

3 (8) committed a fraudulent insurance act as defined in section 176.05
4 of the penal law;

5 (9) has been convicted of a crime involving fraudulent or dishonest
6 practices; or

7 (10) violated any provision of this article or regulations promulgated
8 thereunder.

9 (c) [Providers] A provider of health services shall [refrain from
10 subsequently treating for remuneration, as a private patient, any person
11 seeking medical treatment] not demand or request payment for any health
12 services under this article [if such provider pursuant to this section
13 has been prohibited from demanding or requesting any payment for medical
14 services under this article. An injured claimant so treated or examined
15 may raise this as] that are rendered during the term of the prohibition
16 ordered by the superintendent pursuant to subsection (b) of this
17 section. The prohibition ordered by the superintendent may be a defense
18 in any action by [such] the provider of health services for payment for
19 [treatment rendered at any time after such provider has been prohibited
20 from demanding or requesting payment for medical services in connection
21 with any claim under this article] such health services.

22 (d) The [commissioner of health and the commissioner of education]
23 superintendent shall maintain [and regularly update] a database contain-
24 ing a list of providers of health services prohibited by this section
25 from demanding or requesting any payment for health services [connected
26 to a claim] rendered under this article and shall make [such] the infor-
27 mation available to the public [by means of a website and by a toll free
28 number].

1 (e) The superintendent may levy a civil penalty not exceeding fifty
2 thousand dollars on any provider of health services that the superinten-
3 dent prohibits from demanding or requesting payment for health services
4 pursuant to subsection (b) of this section. Any civil penalty imposed
5 for a fraudulent insurance act, as defined in section 176.05 of the
6 penal law, shall be levied pursuant to article four of this chapter.

7 (f) Nothing in this section shall be construed as limiting in any
8 respect the powers and duties of the commissioner of health, commission-
9 er of education or the superintendent to investigate instances of
10 misconduct by a [health care] provider [and, after a hearing and upon
11 written notice to the provider, to temporarily prohibit a provider of
12 health services under such investigation from demanding or requesting
13 any payment for medical services under this article for up to ninety
14 days from the date of such notice] of health services and take appropri-
15 ate action pursuant to any other provision of law. A determination of
16 the superintendent pursuant to subsection (b) of this section shall not
17 be binding upon the commissioner of health or the commissioner of educa-
18 tion in a professional discipline proceeding relating to the same
19 conduct.

20 § 7. This act shall take effect immediately; provided however sections
21 three and five of this act shall take effect on the one hundred eight-
22 ieth day after it shall become law.