§ 5208. Notice of claim. (a) The protection provided by the corporation on account of motor vehicle accidents caused by financially irresponsible motorists shall be available to:

(1) Any qualified person having a cause of action because of death or bodily injury, arising out of a motor vehicle accident occurring within this state, who files with the corporation within one hundred eighty days of the accrual of the cause of action, as a condition precedent to the right to apply for payment from the corporation, an affidavit stating that:

(A) the person has a cause of action for damages arising out of the accident and setting forth the facts in support,

(B) the cause of action is against the owner or operator of a designated uninsured motor vehicle, and

(C) the person is making a claim for such damages.

(2) (A) Any qualified person having a cause of action because of death or bodily injury, arising out of a motor vehicle accident occurring within this state and reported within twenty-four hours after the occurrence to a police, peace or judicial officer in the vicinity or to the commissioner, and who files with the corporation within ninety days of the accrual of the cause of action, as a condition precedent to the right to apply for payment from the corporation, an affidavit stating that:

(i) the person has the cause of action for damages arising out of the accident and setting forth the supporting facts,

(ii) the cause of action is against a person whose identity is unascertainable, and

(iii) the person is making a claim for those damages.

(B) The fact that the accident was not reported within twenty-four hours after the occurrence as required by subparagraph (A) hereof shall not prejudice the rights of the person if it is shown that it was not reasonably possible to make such a report or that it was made as soon as was reasonably possible.

(3) (A) Any qualified person having a cause of action because of death or bodily injury, arising out of a motor vehicle accident occurring within this state, who files with the corporation an affidavit as a condition precedent to the right to apply for payment from the corporation, stating that:

(i) the person has a cause of action for damages arising out of the accident for damages and setting forth the supporting facts,

(ii) the insurers of the person alleged to be liable for the damages have disclaimed liability or denied coverage because of some act or omission of the person alleged to be liable including the denial of coverage based upon the lack of a policy of insurance in effect at the time the cause of action arose; provided, however, that in the case of a denial of coverage based upon the lack of a policy of insurance in effect at the time the cause of action arose, timely reasonable efforts had been made to ascertain insurance coverage, and

(iii) the person is making a claim for those damages.

(B) The affidavit shall be filed within one hundred eighty days of the affiant's receipt of notice of the disclaimer or denial of coverage.

(b) If a qualified person fails to file the affidavit as provided in paragraphs one and two of subsection (a) hereof within the specified period, or by reason of being an infant or mentally or physically incapacitated or deceased, is prevented from filing the affidavit as provided in paragraph three of such subsection within the specified period, or fails to file within one hundred eighty days, due to receipt of erroneous information from the department of motor vehicles or erroneous information from a police report with respect to identification of a vehicle, then upon a filing within thirty-one days of receipt of written notice of correction of the error by the department of motor vehicles or discovery of the mistake contained in the police report:

(1) The corporation may accept the filing of the affidavit if accompanied by proof satisfactory to it, of the facts which caused the delay and that it was not reasonably possible to file the affidavit within the specified period and that the affidavit was filed as soon as was reasonably possible.

(2) A court may upon like proof grant leave to file the affidavit within a reasonable time after the expiration of the specified period. In making its decision the court shall also and in particular consider, whether the corporation acquired actual knowledge of the essential facts constituting the claim within the time specified in paragraph one of subsection (a) hereof or a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including

whether:

(A) The claimant failed to file a timely affidavit by reason of the claimant's justifiable reliance upon settlement representations made by a person believed to be the insurance representative of the financially irresponsible motorist.

(B) The claimant in filing made an excusable error concerning the identity or existence of the corporation against which the claim should or could be filed.

(C) The delay in filing substantially prejudiced the corporation in maintaining a defense on the merits.

(c) Application to the court for leave to file must be made within one year from the beginning of the period for filing the affidavit, specified in paragraph one, two, or three of subsection (a) hereof upon affidavit showing the evidentiary facts which are relied on in support of the proof required in subsection (b) of this section, accompanied by a copy of the proposed affidavit. Notice of the return time together with a copy of the application must be served at least eight days before the time named for the hearing upon the corporation by delivery to the person designated by law as a person to whom a summons in an action in the supreme court issued against such party may be delivered.

(d) Every qualified person shall promptly furnish the corporation with copies of all papers in any action for the enforcement of every cause of action referred to in paragraph one, two, or three of subsection (a) hereof.

(e) The commissioner shall furnish to the corporation, upon request, information as to whether any operator or owner of a motor vehicle involved in any accident had in effect at the time of the accident any motor vehicle liability insurance or other evidence that the motor vehicle was an insured motor vehicle.