Approved April 1, 1985
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on March 29, 1985 in room 529-S of the Capitol.

All members were present except:

Sen. Gannon - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Bud Cornish, Kansas Domestic Insurance Companies
Homer Cowan, Western Insurance Companies
Larry Magill, Independent Insurance Agents of Kansas
Jim Oliver, Professional Insurance Agents of Kansas
Mark Bennett, Independent Insurance Agents
Lee Wright, Farmers Insurance Group
Dick Scott, State Farm Insurance
Paul Coleman, Topeka Bar Association
Kathleen Sebelius, Kansas Trial Lawyers Association
Gary McCallister, Kansas Trial Lawyers Association
Ron Smith, Kansas Bar Association

The minutes of March 28 were approved.

The hearing was begun on HB 2422 dealing with no-fault insurance with proponents testifying on the bill. First to appear was Bud Cornish, Kansas Domestic Insurance Companies. He began by handing out information for the committee's consideration. (See Attachments I and II.) Mr. Cornish explained that the no-fault theory is set out in the statute to pay more money to more people more promptly. Prior to its enactment in 1973 costs were ising dramatically, and the necessity to determine the fault sometimes took years. No-fault was the solution to this problem. The threshhold law has eroded though, and the $500 threshhold is no longer doing the job it was originally intended to do. He informed the committee that no-fault does not prevent law suits except for pain and suffering. No-fault is a consumer concept intended to stabilize the cost of insurance. Mr. Cornish said the bill was changed in the House, and the four changes are as follows: (1) Current PIP benefits were about doubled, (2) Another PIP was added (general benefit), (3) The tort threshhold was changed from $500 to $3000, and (4) The fracture provision was removed. He pointed out the new lines of the bill and explained that the general benefit is necessary to keep a balance which holds costs down.

Sen. Karr asked why there is such a large increase from $500 to $3000, and Mr. Cornish answered that it is necessary to keep the balance of money paid out and money coming in as a result of benefits being increased.

Homer Cowan, Western Insurance Companies, followed with testimony in support of HB 2422. (See Attachment III.) He concluded that it is a consumer bill for the people. As the bill has been amended, costs will not rise if the public does not abuse it.

Sen. Strick asked if there are any instances where one could not sue. Mr. Cowan said that the fact that a person receives general benefits does not prevent him from suing if he meets the other requirements.

Sen. Karr asked Mr. Cowan to explain one of his opening comments that there should not be any threshhold. Mr. Cowan said he feels this way because it would not eliminate the no-fault concept but would be on a verbal threshhold.

Larry Magill, Independent Insurance Agents of Kansas, gave further testimony in support of the bill. (See Attachment IV.) Mr. Magill distributed information relevant to his testimony. (See Attachments V and VI.)

Jim Oliver, Professional Insurance Agents of Kansas, gave testimony in support of the bill. (See Attachment VII.)

Mark Bennett representing Independent Insurance Agents stated his support of the bill and asked for a recommendation for passage.

Lee Wright, Farmers Insurance Group, stated that he supports the bill for the same reasons as the other conferees had given.

Dick Scott, State Farm Insurance, offered his support for the bill. (See Attachment VIII.)

Testimony of opponents to HB 2422 was begun with the testimony of Paul Coleman, Topeka Bar Association, who was appearing on behalf of Ralph Skoog. He voiced his objection to the raising of the threshhold 600% because he can see no logical reason for it. He feels that no-fault as it is at present works so there is no reason for the increase. Also, he feels the fracture provision should be retained in the bill. (See Attachment IX.)

Kathleen Sebelius, Kansas Trial Lawyers Association, followed and briefly expressed reasons for her opposition. She introduced Gary McCallister to give further, more detailed testimony. He distributed a packet of information for the committee along with his testimony. (See Attachment X.)

Ron Smith of the Topeka Bar Association testified further in opposition to the bill. He said the bill should be changed so that the general benefits appropriately awarded should be paid regardless of Section 2, but he still would oppose the bill if this were done. When no-fault was begun, compromises were made so that a balance existed, and now that balance is being destroyed. Furthermore, he opposes removing the fracture provision. As far as the verbal threshhold, pain and suffering are regulated by the tort system so the tort threshhold should be changed rather than the benefits. The biggest problem he has with the bill is that it has been assumed that there would be no abuse. However, he feels the bill is an incentive to cheat by manipulating expenses to be over $1250 to be compensated under general benefits. Whereas, now the decision would be made in court by a jury who determines if a person should be awarded for pain and suffering. He urged the committee to forget what the lawyers and insurance companies have said and think about what the people of Kansas say is fair, and current no-fault is fair. He would endorse a reasonable increase in the threshhold for inflation purposes. This concluded the hearing on HB 2242.

There being no further time, the meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3-29	Ron Todd	Topeka	Ins. Dept.
3-29	Mark [illegible]	Topeka	AIA
"	Ron Smith	"	KS Bankers
	Homer Cowan	Ft Scott	The Western
	LARRY NAGILL	TOPEKA	IIAK
	DENNIS DEHN	"	SEN. WERTS INTERN
	Paul D. Coleman	"	Topeka Bar Assn
	[illegible]	"	[illegible]
	Geo. Wright	MISSION KS	FARMERS INS GROUP
	Lisa Ottenin	Topeka	PIAK
	Dick Scott	O.P.	State Farm Ins
	Dick Williams	McPherson	Prairie Ins. Co.'s
	L.M. Cornish	Topeka	Kansas Companies
	William L. Mitchell	Hutchinson	Alliance
	Jon Grove	Topeka	KS Assn for Aging
	Tony D. McCallister	Topeka	KTLA
	Kathleen Sebelius	"	"

Kansas Insurance Letter

Vol. 13 No. 8 March 8, 1985

No-Fault Reform Heads for House Floor

HB 2422, the new no-fault reform bill, was amended by the House Insurance Commitee March 7 and recommended for passage. It probably will be debated in the House by Tuesday, March 12.

The amended bill provides:

1) A substantial increase in "first-party" benefits paid by the policyholder's insurer without regard to fault; Wage Loss and Survivors' Benefits each increase from $650 to $1,200 a month; Medical Benefits and Rehabilitation Benefits each increase from $2,000 to $5,000; Funeral Benefits from $1,000 to $2,500; allowances for Household Expenses (substitution services) increase from $12 to $22 a day.

2) An additional first-party benefit, termed General Benefits, which automatically will provide a "pain and suffering" award based on incurred medical expenses between $1,250 and $3,000. This will be $500, plus the dollar amount that exceeds $1,250. For example:

Medical Expense	General Benefit (pain/suffering)	Total Medical and General
$1,251	$501	$1,751
$1,500	$750	$2,250
$1,750	$1,000	$2,750
$2,000	$1,250	$3,250
$2,500	$1,750	$4,250
$3,000	$2,250	$5,250

3) The "tort threshold" is increased from $500 to $3,000, which will permit the seriously injured to sue for pain/suffering and other non-monetary loss in addition to the pain/suffering provided under "General Benefits."

The current $500 threshold set in 1973 has been eroded by inflation and is ineffective in meeting the original goals of no-fault. HB 2422 will provide a reasonable balance, as it will require prompt payment of benefits and reduce the total cost of litigation for both plaintiffs and defendants.

(continued)

3/29/85
Attachment I

Changes - HB2422

	Current Law on PIP Benefits		New PIP Benefits
Disability (Loss of Earnings)	$650	To	$1200
Survivors Benefit	$650	To	$1200
Medical Expence	$2000	To	$5000
Funeral Expence	$1000	To	$2500
Rehabilitation Expence	$2000	To	$5000
Substitute Service Exp	$12/day	To	$22/day

New Gen Benefit - $1250 Threshold for Automatic Payment for Pain & Suffering for All injured

Medical	Pain + Suffering	TOTAL
100	0	
250	0	
500	0	
750	0	
1000	0	
1250	0	

Threshold for Automatic Payment of Pain + Suffering To All Injured

1251	500 + 1	$1751
1500	500 + 250	$2250
1750	500 + 500	$2750
2000	500 + 750	3250
2500	500 + 1250	4250
3000	500 + 1750	5250

Even if your Medical is less than $3000 you can Enter Tort System if injuries are permanent injuries or disfigurement, Loss of a body Member or Permanent Loss of a body function or Death For Pain + Suffering

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You Can Always Enter the Tort System & Collect Any Thing Else - Loss Income - Financial Loss - Loss of Use

3/29/85
Attachment II

POSITION MEMORANDUM

OF

THE WESTERN CASUALTY AND SURETY COMPANY

THE WESTERN FIRE INSURANCE COMPANY

THE WESTERN INDEMNITY COMPANY, INC.

ALL OF

FORT SCOTT, KANSAS

SUBJECT: No-Fault -- (1985) HOUSE BILL 2422

NO-FAULT! -- Kansas Style ---- An expanded approach. This proposal has a different wrinkle. If adopted, it likely would serve as a model for all other states.

PURPOSE: To get more of the premium dollar into the pockets of injured Kansas citizens quicker. The M M Q approach -- More Money Quicker!

TRADE OFF: Most everything in life costs something. Benefit levels cannot be more than doubled without substantial premium increase, unless something is given in return. -- The trade off here is the L E L approach -- Less Expensive Litigation.

3/29/85
Attachment III

PAIN AND SUFFERING:

When you cut your finger, there is pain. A headache, toothache, likewise causes pain. A back sprain caused by shoveling snow or carrying out the trash, often causes acute pain, sleepless nights. The M M Q approach contemplates that most of the non-serious injuries in an automobile accident, should not be involved in a lawsuit that is very expensive and quite often results in your attorney as the only one who profited. Your own mental stress, loss of work to attend depositions and trial, may not be worth the amount of dollars actually received for your pocket only. -- Indeed, your own mental and physical stress often prevents your back or neck sprain from recovering. We believe the L E L approach is better for the greatest number of people. G N P -- Greatest Number of People.

GENERAL DAMAGE BENEFIT:

Now, No-Fault, Kansas Style, can offer an additional benefit at no additional cost to you and increase all other benefits at the same time. G D B -- General Damage Benefit.

COST:

No increase in premium. (Based upon the fact that present rate levels are adequate.) N I P -- No Increase in Premium.

UP TO $2,000 IN CASH!:

The G D B built in to H.B. 2422 offers you up to $2,000 in Cash, with no attorney fee involved. And, this payment is in addition to all other No-Fault benefits which have been more than doubled.

THE WESTERN CASUALTY AND SURETY COMPANY • THE WESTERN FIRE INSURANCE COMPANY • THE WESTERN INDEMNITY COMPANY, INC.
FORT SCOTT, KANSAS 66701

Here is how it works:

---------- $3,000.00

G D B -- Continues until your medical expenses reach the $3,000 level.

---------- $2,000.00

General Damage Benefits - (G D B) -- Dollar for dollar paid in addition to No-Fault benefits

---------- $1,000.00

No Fault Benefits only (Medical - Wages, etc.)

---------- $00.00

TORT THRESHOLD

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The right to bring suit is retained at the lower level, available without regard to the medical expense incurred. Medical expense may be $10.00, $100.00 or any amount, and the right to bring a lawsuit is available under these circumstances:

1. Any economic loss not paid by No-Fault payments.
2. Any permanent disfigurement.
3. Any permanent injury (no matter how slight).
4. Loss of a body member (little finger or any other member).
5. Any loss of a bodily function.
6. Death

The only thing where you cannot sue -- A Non-Serious Injury.

Here is how the G D B works:

1. Medical incurred -- $900.00. The G D B is not triggered -- $900.00 in medical is paid.

2. Medical incurred -- $1,001.00. The G D B is $100.00, plus $1,001.00 in medical.

3. Medical incurred -- $1,110.00. The G D B is $110.00, plus $1,110.00 in medical.

4. Medical incurred -- $1,500.00. The G D B is $500.00, plus $1,500.00 in medical.

5. Medical incurred -- $2,500.00. The G D B is $1,500.00, plus $2,500.00 in medical.

6. Medical incurred -- $3,000.00. The G D B is $2,000.00, plus $3,000.00 in medical.

7. Medical incurred -- $3,500.00. The G D B is $2,000.00, plus $3,500.00 in medical - the maximum.

This additional payment is not subject to attorney fees and is payable immediately.

The thrust of this bill is not to compensate serious injuries. It is meant to be in addition to all other benefits, to cover inconvenience, and yes, some pain that goes with even a minor injury. In some cases, the additional payment may be more than adequate. It is true, in some cases, it may be totally inadequate, but in a high percentage of these cases, the injury is serious.

If suit is filed and you recover, the G D B payment is still yours in keep, and you do not owe attorney fees on that amount!

BENEFIT LEVELS: In addition to the G D B benefits, other benefits are increased as follows:

Disability Benefits (Wages) -- From $650.00 to $1,200.00 per month

Funeral Expense from $1,000.00 to $2,000.00

Medical Benefits from $2,000.00 to $3,000.00

Rehabilitation Benefits from $2,000.00 to $5,000.00

Substitution Benefits from $12.00 per day to $22.00

Survivors Benefits from $650.00 to $1200.00 monthly

General Damage Benefit up to $2,000.00

It is our conviction, that these additional benefits, without any additional cost, starting from an adequate rate base, will take the fault out of No-Fault and Kansas citizens will receive more for their money. It is true, that such benefits can only be offered at no cost, because this system must reduce litigation and the cost of litigation. In fact, if we do not find a way to reduce litigation cost in all other liability arenas, there won't be any system for anybody. The present system is gradually, but certainly, reaching the capacity of the industry. Without capacity, there is no insurance whatsover.

POSITION OF THE WESTERN: Attached to this memorandum is the Position of The Western submitted to the 1984 Legislature. Our 1984 position is the same as it was in 1981 - 1982 - 1983 - 1984 - and now in 1985.

THE WESTERN CASUALTY AND SURETY COMPANY • THE WESTERN FIRE INSURANCE COMPANY • THE WESTERN INDEMNITY COMPANY, INC.
FORT SCOTT, KANSAS 66701

We did, we do and we will, continue to believe Kansas is not getting it's money's worth, until there is substantial change. Our profit margin (we wish) is the same, irrespective of what system Kansas uses or mis-uses.

Respectfully submitted,

THE WESTERN CASUALTY & SURETY COMPANY
THE WESTERN FIRE INSURANCE COMPANY
THE WESTERN INDEMNITY COMPANY, INC.

Homer H. Cowan, Jr.*
Vice President

*Registered Lobbyist in the State of Kansas and the State of Missouri

Robert Demichelis was returning home from a basketball game at Northern Illinois University three years ago when he dozed off at the wheel. His Datsun 200SX bounced off a guard rail and struck a concrete divider in the middle of Interstate 5. His head rammed the windshield.

Now 28, Demichelis requires speech therapy four times a week. He can't hold a job because the accident virtually destroyed his ability to reason and make judgments. Health insurance helped pay for his medical bills, but his family has had to pay for all of his rehabilitation treatments—some $15,000 worth so far. The family is currently paying $1400 a month, and no insurance money is coming in.

Faith Ann Glynn was riding a bicycle near her home in Midland, Mich., when a car struck her from behind and catapulted her into a cement bridge. The 13-year-old girl needed two brain operations, and doctors didn't expect her to live. For two years, she lived in nursing and rehabilitation centers.

Today, five years after the accident, Faith Ann is living a near-normal life. She attends Midland High School, loves poetry, swims, and even rides her bike again. She functions almost at her age level. Her family has paid nothing for her medical care and rehabilitation treatment. The family's auto-insurance company has borne the entire cost, which has so far amounted to more than $180,000.

Both these accidents were emotionally traumatic for the families involved. But one accident produced financial trauma as well, while the other left the family financially unscathed. The difference was simply a matter of which state the victims lived in when their accidents occurred.

Demichelis had the bad luck to live in Illinois, a state that has old-fashioned automobile insurance under the tort liability system. In tort states, car owners buy auto insurance primarily to protect themselves from lawsuits in case they (or members of their family) cause an accident that injures someone else. When drivers, passengers, or pedestrians are injured, they must rely on other types of insurance to pay their bills—or sue.

Demichelis could sue no one, since there was no one to hold liable for his accident. His employer's health-insurance policy paid for most of his hospital expenses, and his group disability policy provided some benefits for a couple of years. But that was it. His auto-insurance policy paid nothing for his care.

Faith Ann Glynn was injured in Michigan, a state that has the best no-fault auto insurance law in the country. Under Michigan's no-fault system, the right to sue is limited. Car owners must buy coverage that reimburses them for their own medical and rehabilitation expenses and for lost wages. It also covers members of their families hurt in car accidents—even if they are in someone else's car, or traveling out of state, or (as in Faith Ann Glynn's case) on a bicycle or walking.

The no-fault policy on Faith Ann's family's 1978 Buick paid all of the child's medical and rehabilitation expenses. Under Michigan's law, the insurance company pays these expenses for the life of the victim. Had her mother sued the driver of the car, she probably would have collected very little. The driver carried minimum liability insurance and lived in a rented trailer. Under the tort system, Faith Ann would probably have received no more than $20,000—a small fraction of the amount her family's insurance company has already spent for her care.

The striking contrast between the Demichelis case and the Glynn case symbolizes the difference between the traditional tort approach and the no-fault approach. In light of some manifest advantages for the no-fault system, it may seem surprising that only about half the states have yet adopted any form of no-fault auto insurance. What's more, many states that nominally have no-fault have some half-hearted version of it instead of the full-scale version that exists in Michigan.

The need for no-fault

The model for no-fault insurance plans was workers' compensation insurance, which pays benefits to an injured worker without regard to whether the worker or the company caused the accident—and therefore without the need for litigation over who was at fault. In the mid-1960's, Robert Keeton, then a Harvard law professor, and Jeffrey O'Connell, then a professor of law at the University of Illinois, proposed extending the no-fault idea to auto insurance.

Shortly afterward, the U.S. Department

of Transporation (DOT) studied the automobile liability system in the U.S. and found it sorely wanting. The system was ineffective, overly costly, and slow, the DOT concluded. Often, seriously hurt victims lacked the money to pay their medical bills; they depended for compensation on proving in court that the other driver was at fault and should pay.

It could take years to settle a case—and even then injured victims played the legal system's version of roulette. If they sued a driver with no assets and little insurance, they might get nothing. But if they sued a well-insured or wealthy driver, they might hit the jackpot—including large awards for "pain and suffering."

The DOT study showed that in most cases victims who suffered large economic losses were not fully compensated, while those with minor injuries sometimes received amounts several times greater than their actual expenses. Drivers such as Demichelis, who were hurt in single-car accidents, usually got nothing.

The liability system discouraged rehabilitation and overburdened the courts and in some cases siphoned into lawyers' pockets money that could have been used to rehabilitate crash victims. Under the tort system, lawyers commonly took cases on a contingency basis—that is, they'd collect a portion of the award, usually one-third, if they won. (In some cases, of course, a lawyer helped a victim gain a large settlement.)

If lawyers were cut out of the system, Keeton and O'Connell argued, more money could go to the seriously injured, and it could go there faster. Under no-fault, you wouldn't need a lawyer to get your bills paid. In the early 1970's, a movement toward some type of no-fault system swept through state legislatures. But state trial lawyers' associations and individual trial lawyers lobbied hard to prevent no-fault laws. They were largely successful either in blocking no-fault laws or in so watering them down as to make the new system barely less litigious—and, in some cases, even more expensive—than the old.

"If we look at the laws, we can clearly see the fingerprints of the trial lawyers on them," says Robert Pike, a vice president for Allstate Insurance Co. In states where lawyers managed to preserve most of their business, no-fault hasn't kept its promises.

What makes a good law?

A good no-fault law balances payment of benefits with restrictions on lawsuits. If a state wants insurance companies to offer generous no-fault benefits at an affordable price it must restrict the number of lawsuits. Otherwise, no-fault benefits are grafted on top of the old tort system. Then the savings from reduced litigation aren't enough to pay for the new benefits, and the insurance companies must substantially raise premiums.

There are few good no-fault laws. As we've noted, Michigan has the best. Accident victims such as Faith Ann Glynn have all their medical and rehabilitation expenses paid by their own insurance company. If an injured person can't work, the law requires insurers to pay lost wages up to $2252 a month for a period of three years. Families of victims killed in auto accidents can also collect

"If we look at the laws, we can clearly see the fingerprints of the trial lawyers on them," says Robert Pike, a vice president for Allstate.

the lost-wage benefit, in the form of survivors' benefits. The Michigan law significantly restricts lawsuits; victims can sue only if the accident results in death, permanent disfigurement, or serious impairment of body function.

New York and Florida also have good laws. New York provides up to $50,000 worth of medical, wage-loss, and rehabilitation benefits. Florida provides up to $10,000. Restrictions on lawsuits are similar to Michigan's. Victims can sue only if they are seriously injured; their heirs can sue in the event of their death. These so-called "descriptive thresholds," which allow victims to sue only if they meet a serious-injury test, have turned out to be the most effective means of balancing the right to sue against the benefits provided by a no-fault system.

Descriptive thresholds are distinguished from monetary thresholds. New York and Florida had earlier used a dollar ceiling based on a victim's medical expenses. New York, for example, used to allow victims to sue if they had more than $500 in medical bills. In Florida, victims could sue if bills totaled $1000.

Dollar thresholds encouraged abuses—inflated doctor bills, faked injuries, and the like. "With a $500 threshold it was no challenge to become seriously injured in New York," says John Reiersen, assistant property-and-casualty chief of the New York Insurance Department. Since lawsuits weren't effectively eliminated, costs skyrocketed. Insurance companies were paying for a lot of lawsuits and for the required no-fault benefits as well. Insurance rates rose about 37 percent a year in New York from 1974 to 1976.

The New York state legislature replaced the dollar threshold with a descriptive one in 1977, and placed caps on fees charged by doctors and hospitals for treating auto-accident victims. Lawsuits dropped by one-third. Eighty percent of all auto negligence lawsuits have now been eliminated in New York, and rate increases have averaged less than 5 percent a year since 1978.

Descriptive thresholds are superior to dollar ones. Yet, among the 23 jurisdictions (including the District of Columbia) with no-fault laws of some type, only Michigan, New York, and Florida have them. Thirteen other states have dollar thresholds, ranging from $200 to $5000. And in seven states, no-fault benefits have simply been superimposed on an unchanged tort-liability system. These are called "add-on" states.

What makes a bad law?

In all no-fault states, the number of lawsuits has dropped, but in most of them it hasn't dropped enough to pay for the new no-fault benefits. Classic examples: Pennsylvania and New Jersey.

Pennsylvania's law gave victims unlimited medical and rehabilitation benefits, but permitted lawsuits if victims had $750 worth of medical expenses. Result: Too many victims could collect under both fault and no-fault for the same injuries. "We had two systems. One the fault, and the other no-fault, so it shouldn't be terribly surprising it became very expensive," says Jonathan Neipris, Pennsylvania's deputy insurance commissioner.

Premiums for personal-injury and liability coverages in Pennsylvania have been rising about 20 percent a year since 1975. After several years of trying to fix Pennsylvania's law and running into snags every step of the way, the state legislature decided earlier this year to eliminate all restrictions on lawsuits and become an add-on state.

New Jersey's problem was similar. Its no-fault law provided for unlimited medical benefits, yet it allowed lawsuits if victims accumulated only $200 in medical bills. The tort liability system continued to operate virtually unchanged. Insurance rates shot up. Premiums in Newark are sometimes double those in Detroit for comparable coverage. Of course, many factors influence rates, but there's little question that New Jersey's have-your-cake-and-eat-it-too no-fault law contributed to high premiums there.

Paying victims, not lawyers

Car owners get more value for their premium dollars under no-fault than they do under the tort system because more of each premium dollar is paid out in bene-

fits to auto-accident victims.

Before no-fault was passed in New York, the Department of Insurance estimated that about 16 cents of every premium dollar was paid as benefits to accident victims. The Department now estimates that approximately 40 to 50 cents goes back to victims, to pay for such things as medical care and rehabilitation. Much of the premium dollar still goes for insurance-company expenses, but less money now goes for litigation.

A recent DOT study found that the average no-fault state returns in benefits a little more than 50 cents out of every dollar. Michigan, which provides the greatest benefits, returns 55 cents.

The DOT study also found that about twice as many victims (per 100 insured cars) are being compensated under no-fault than under the tort system. No-fault is compensating more victims even in states with the lowest benefits.

And benefits are paid quickly. Most laws require companies to pay victims within 30 to 60 days after they submit proof of their claims. By contrast, in tort states victims have to wait months or even years to win compensation.

Some proponents had argued that no-fault would cause auto-insurance premiums to fall. It hasn't happened. In the better no-fault states, premiums have risen about as much as in tort states.

The more thoughtful advocates of no-fault are neither surprised nor greatly disappointed that no-fault hasn't cut premiums. No-fault policies are paying the medical benefits of many people who formerly would have gone uncompensated. And the cost of health care has been rising fast.

The seriously injured

Good no-fault states offer something for the seriously injured that the tort sytem cannot offer—fast rehabilitation therapy. By the time the tort sytem comes forth with an award, it may be too late for rehabilitation to do much good for the seriously injured person. No-fault benefits paid quickly encourage rehabilitation when it's likely to be most effective, as it was in Faith Ann Glynn's case.

In the no-fault states with unlimited medical and rehabilitation benefits, the results of early rehabilitation are dramatic. For example, the Automobile Club Insurance Association in Michigan, a major auto insurer in that state, recently had 623 cases of catastrophically injured victims on its books. Of those, only 15 were in nursing homes.

An insurance-industry group recently studied 420 seriously injured auto-crash victims in the three states (Michigan, New Jersey, and Pennsylvania) with unlimited medical and rehabilitation benefits. More than 80 percent of them had been in rehabilitation programs—which often are not covered by health insurance—and most had benefitted from them. Most were living at home and many had near-normal life expectancies.

Continued on page 546

What's the auto-insurance law in your state?

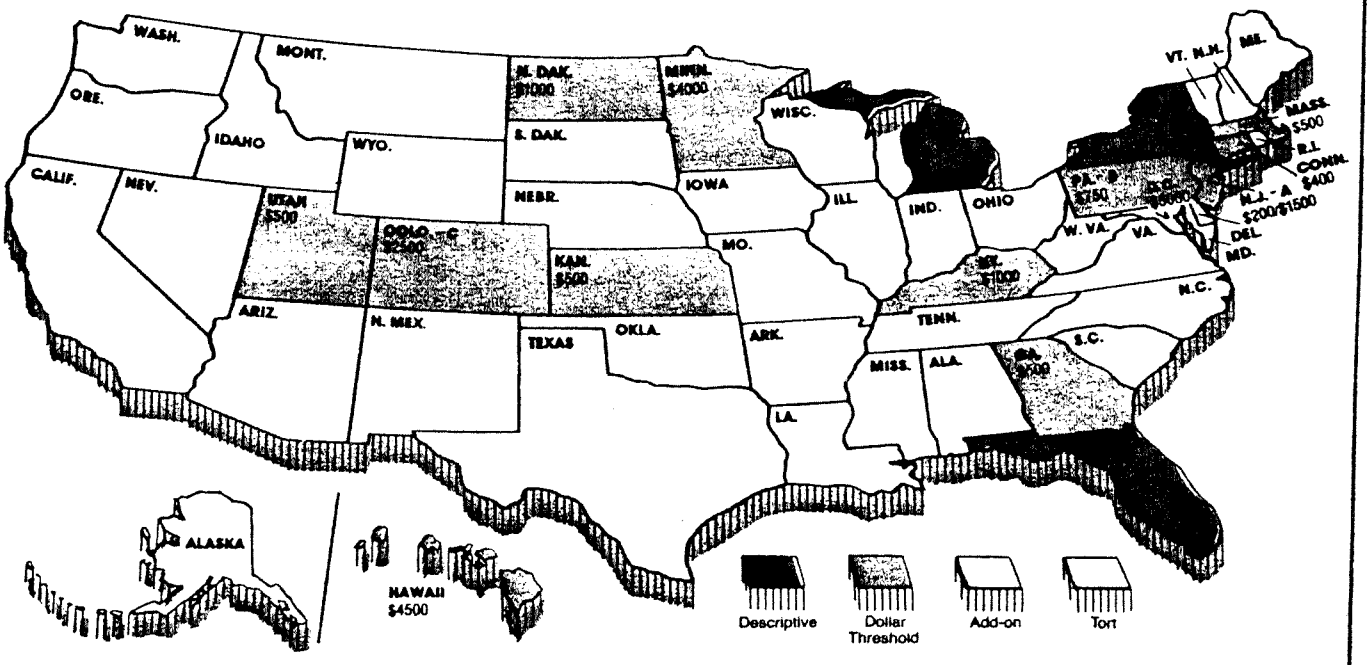
The map below shows the kinds of auto-insurance laws that prevail in the 50 states and the District of Columbia.

A state with a descriptive threshold allows victims to sue only if their injuries are serious. Their heirs can sue in the event of their death.

A state with a dollar threshold allows victims to sue if they accumulate medical bills that exceed a specified dollar amount. The map shows the thresholds for each of the 13 jurisdictions that use this arrangement.

An add-on state does not restrict the right to sue but requires insurance companies to offer no-fault coverage to car owners. In three of these states—Delaware, Maryland, and Oregon—car-owners are required to buy it.

A tort state does not restrict the right to sue. Accident victims usually receive no compensation for their injuries from their own auto insurance. They must make a claim against the other person's insurance company, or sue the party they believe caused the accident.



A—New Jersey recently changed its law, giving drivers the option of a $200 threshold or a $1500 threshold.

B—Pennsylvania, effective Oct. 1984, is eliminating restrictions on the right to sue, making it an add-on state. Also, companies will no longer be required to offer unlimited medical benefits.

C—Current threshold is $500; $2500 threshold takes effect Jan. 1, 1985.

No-fault insurance

Continued from page 513

The recent DOT report concluded: "In the absence of high-benefits no-fault auto insurance, there probably would not have been enough money available for the treatment of the catastrophically injured . . . to produce any significant improvement in the condition of any of these victims."

To get major help for the seriously injured, only a true no-fault statute with high benefit limits will do. A no-fault state with skimpy benefits is almost as bad as a tort state from the standpoint of helping the seriously injured victim. An insurance-industry research group surveyed one group of catastrophically injured crash victims and determined they needed, on average, more than $400,000 for lifetime care and rehabilitation.

A stalled crusade

Since the mid-1970's, only the District of Columbia has been able to pass a no-fault law. The no-fault movement has been stalled primarily by trial lawyers, who have fought vigorously to obstruct passage of good no-fault laws and to weaken or repeal existing laws.

In 1976, the lawyers gave a quarter of a million dollars to Congressional candidates who opposed or might oppose no-fault. Two years later, the American Trial Lawyers Association succeeded in blocking a bill that would have set Federal standards for state no-fault laws.

More recently, no-fault legislation has been debated mainly at the state level—and trial lawyers have been effective in influencing state politics. Recently, they've been at work in Kansas. This year the Kansas legislature approved an increase in no-fault benefits from $2000 to $5000 and an increase in the threshold from $500 to $1500, both modest improvements. But Governor John Carlin, who has received significant campaign contributions from several trial lawyers, vetoed the bill.

Trial lawyers were also instrumental in passing the law that eliminates restrictions on lawsuits in Pennsylvania.

While the lawyers labor against no-fault, the insurance industry is working for it—but not very hard. As Jean Hiestand, vice president and general counsel for State Farm Mutual, says, "We think the principle is sound, but the steam has gone out of the issue."

CU has long supported the principle of no-fault laws. We hope to see them in the 28 states that still use the traditional tort system. But, equally important, we'd like to see the states that have half-hearted no-fault laws give the concept the chance it deserves. Where it has been implemented well, as in Michigan and New York, no-fault works. ■

Testimony on HB 2422
Before the Senate Financial Institutions & Insurance Committee
By: Larry W. Magill, Jr. Executive Vice President
Independent Insurance Agents of Kansas

Thank you for this opportunity to provide testimony in support of HB 2422 improving Kansas' no-fault law. The Independent Insurance Agents of Kansas are excited about the potential compromise this legislation represents. Although untested in any other state, the concept of general damages for pain and suffering and inconvenience under the personal injury protection benefits offers a way of more completely compensating injured parties while at the same time attaining a threshold for actual suit which is meaningful in terms of cost savings to the system that can be passed on to the consumer.

The goals of no-fault have always been to pay more people for their medical costs and lost wages; to pay them faster and more equitably, regardless of driver negligence; and to reduce court congestion and legal costs associated with auto accident injury settlements. There is ample evidence from various studies that good no-fault laws with meaningful thresholds meet these goals and that poorly drafted no-fault laws with inadequate thresholds do not.

Attached to our testimony is a copy of an article from the March, 1984, CPCU Journal titled, "An Overview and Assessment of No-Fault Plans." The Journal is a publication of the Professional Society of Chartered Property and Casualty Underwriters, a highly regarded all-industry educational institution. The article summarizes all the various studies done by the Department of Transporation in the various states who have no-fault laws and the results. The results of those studies support our contention that no-fault, where the threshold is adequate, has succeeded in meeting its goals.

3/29/85
Attachment IV

In regard to prompt payment, the Department of Transporation (DOT) performed a study that found that it takes an average of 16 months to close claims in fault states. Colorado, on the other hand, closes 90% of their claims within six months under no-fault while New York found initial payment within three months. Massachusetts found that 97% of claims were closed within 180 days under no-fault while 58% met this test under their previous fault system.

In regard to paying more to injured victims, Michigan found that payments were 65% higher under no-fault. Michigan also found that 45% of payments were for economic loss before no-fault while 63% of payments went towards economic loss after no-fault. Florida experienced a 31% increase in benefits paid per registered vehicle under no-fault and found that the benefits to premium ratio rose 56%.

No-fault has met its goal of providing a more efficient product and in restraining premium increases. In a 1970 DOT study, 80% of cases had attorneys before no-fault while only 15% were represented by attorneys under no-fault laws. This is bound to produce a savings ultimately to the consumer. A State Farm study of premium increases from 1971 to 1975 cited in the article showed that in add-on no-fault states premiums rose 23.4% while in modified no-fault states premiums increased 12.6% and in those states with substantive no-fault laws (i.e., high thresholds) the premium increase was only 3.2%. A Rutgers Law Review study cited in the article found similar results. A host of factors affect premium increases besides a state's no-fault law. For example, changes in statutes (contributory to comparative), changes in court decisions, inflation in medical costs and car repair expenses, reductions in speed limits and increased use of seat belts, to name a few, can all impact the ultimate cost for auto

insurance. It is difficult to estimate ahead of time what a particular no-fault proposal will do to rates. All we can do is urge the legislature to balance reasonable PIP benefits with a realistic threshold.

A recent DOT study's preliminary conclusions released last summer support the information in the CPCU article. To our knowlege, the final draft of the DOT study has not been released yet by Secretary Dole. Attached is a copy of a National Underwriter article reporting on those preliminary DOT results.

It is apparent to us, insurance agents who deal with consumers daily, that Kansas citizens support the no-fault concept and would support the needed improvements proposed in HB 2422.

We need to emphasize that there is no direct tie or link between the percentage increase in PIP benefits and the increase needed in the threshold. It is simply a trade-off between the cost savings of removing suits from the litigation process versus the cost expense of providing a given level of PIP benefits that must be balanced. We feel certain that the public demands and deserves a low cost, efficient auto insurance product and is not anxious to pay additional premium for increased PIP benefits that are not offset by a reasonable threshold.

The PIP benefits should be set at a reasonable level that will adequately compensate the majority of victims after the impact of inflation over the 11 years since no-fault was initially passed. It is our understanding that the benefit level in HB 2422 should do that.

Too low a threshold, on the other hand, becomes a target which could actually exacerbate health care cost containment efforts and increase auto insurance costs. A verbal threshold is probably the best since inflation would have no impact and all but the seriously injured victims would be

compensated without the necessity of expensive litigation. We would emphasize the number of lawsuits actually filed is not the only measure of the effectiveness of a threshold. The mere threat of a suit where an insured incurs sufficient medical expenses is enough to force a company to settle nuisance claims at greatly inflated amounts compared to the more seriously injured parties who may not receive payment for all their actual losses after litigation expenses.

A 1970 DOT study found that automobile accident victims with losses of less than $500 recover more than four times their actual economic losses, while victims with economic losses of more than $25,000 recover only 30% of their losses under tort systems.

Since 1973 when the first no-fault act was passed, inflation of medical care costs have seriously eroded the value of both the PIP benefits and the threshold. As a portion of the consumer price index, medical care costs have increased 261%, the average hospital room rate has increased 327% and the average hospital stay 385%. And these percentages are at least a year and possibly two years old and are certainly higher now.

But we urge the committee not to just take into account inflation, but to actually improve Kansas' no-fault law and make it even more effective in providing direct first-party benefits through savings in expensive litigation. The Consumer Reports article of September, 1984, provided by other conferees, the CPCU Journal article attached and the recent DOT study attached all unequivocally point to higher thresholds and increased PIP benefits as being in the consumer's best interests. HB 2422 would provide more benefits to more people faster and more economically than present law and we urge the committee to recommend it favorably for passage.

An overview and assessment of no-fault plans

by Robert C. Witt, Ph.D., CLU
and Jorge Urrutia

ABSTRACT:
This well-written article describes the current situation as regards various state no-fault plans in operation in the United States and evaluates the efficiency of no-fault as opposed to the tort/liability system of auto insurance.

ABOUT THE AUTHORS:
Robert C. Witt, Ph.D., CLU, is the Joseph H. Blades Centennial Memorial Professor of Insurance and Risk Management at the University of Texas at Austin. His work has appeared in this and other insurance journals many times previously. Jorge Urrutia is a native of Chile who is currently a Ph.D. candidate at the University of Texas.

No-fault insurance has been proposed as an alternative to the tort liability (fault) compensation system for automobile accident victims. The latter system has been criticized as providing inadequate, delayed and inequitable compensation to accident victims because of the complex and antiquated system used for allocating fault (the case-by-case method). No-fault insurance is a first party coverage that allows an injured person to collect for his economic losses (medical expenses and loss of income) from his own insurer without regard to fault. It has been alleged to be a more efficient and equitable system for compensating traffic victims for their economic losses than the tort liability system.

The no-fault plans implemented to date in 23 states and the District of Columbia differ in their main provisions, especially with respect to benefits available and to restrictions imposed on tort actions. In addition, the various studies conducted in order to evaluate the performance of no-fault plans have resulted in various different conclusions about the efficiency of such a system. Consequently, these studies have created some confusion about the real value and implications of a no-fault compensation system.

This paper attempts to reinterpret and clarify some of the results achieved under no-fault plans. The first five sections contrast and compare the tort liability system with the concept, evolution and alleged advantages and disadvantages of a no-fault compensation system for auto accident victims. The following sections review the main provisions of existing no-fault plans and attempt to assess the performance of these plans based on available empirical evidence.

Criticisms of the Tort Liability System

The purpose of tort liability law is to impose the cost of automobile accidents on those at fault. However, the efficacy of the tort liability system for automobile accident victims has been questioned for a long time. In 1932, the Columbia Report [5] pointed out that the system frequently left many injured persons with inadequate or no compensation because they were found to be negligent or the negligent party was insolvent or unknown. More recently, the main objections to the fault system have been succinctly summarized by Keeton and O'Connell [12], who have stated that it "provides too little, too late, unfairly allocated, at wasteful cost, and through means that promote dishonesty and disrespect for law."[1]

A study conducted by the Department of Transportation, DOT, [22] has also indicated that under a tort system many victims are uncompensated for their economic losses. In fact, the study indicated that more than half of all seriously injured claimants received no compensation at all under the tort liability system.[2] Moreover, the tort system was found to be inequitable because it tended to overcompensate victims suffering small economic losses and undercompensate those suffering serious personal injuries. It also has been suggested that insurance companies, to avoid litigation, overpay small losses but resist payment of large claims for serious injuries where legal expenses can be justified. In the latter case, the certainty and promptness of payment might encourage the victim to accept less than his/her economic loss.

Another cause of unfair and inefficient compensation is associated with duplication of benefits, which allows an injured person to collect from several sources. In this regard, the DOT study [22] found that automobile accident vic-

Since fault must be legally determined, this requirement also causes long delays in recoveries by accident victims...

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to offer automobile liability policies in order to defend drivers against law suits based on negligence law and to pay damages assessed up to the policy limits if fault was established. Thus, fault law was designed to impose retribution and promote individual responsibility by shifting losses to a negligent party, but liability insurance was developed to prevent the so-called wrongdoer from bearing this burden. In those cases where fault cannot be determined, the tort liability system leaves some accident victims without compensation for their losses.[5] In general, the basic purposes of tort liability law and liability insurance seem to have a fundamental conflict with each other. Liability insurance has prevented the negligence system of law from imposing retribution and vengeance on the party at fault. Nevertheless, the tort liability system of reparation with its high operating costs still is used to assess fault when its fundamental purpose has been defeated by automobile liability insurance. Yet, it does keep many attorneys employed, but it is a questionable use of their talents.

The tort liability system is extremely expensive to operate because it allocates cost and benefits on a case-by-case basis based on complicated and vague legal rules that try to assess fault under inherently complex situations involving automobile accidents. Lawyer fees plus claim administration and investigation costs have been estimated to consume more than 23 percent of premiums.[6] The high transaction costs associated with this complicated legal process use up many premium dollars that could be used to compensate accident victims on a no-fault basis. Moreover, the fault system prevents many accident victims from being compensated for their economic losses. If an accident victim is only slightly at fault under a contributory negligence system, he/she cannot recover for damages. In cases where fault cannot be proved, neither party to an accident can be compensated for losses even though a large amount of money might have been spent in trying to determine fault. If a no-fault system had existed, these transaction costs and operating expenses could have been utilized to pay the victims for their economic losses, rather than dissipated on expensive legalistic rituals.

Basic Types of No-Fault Systems

The numerous criticisms of the tort liability system, the discontent of insurance consumers, and the willingness of the automobile insurance industry and various regulatory authorities to explore alternative ways to provide a better compensation system for automobile accident victims have led to various no-fault proposals. These proposals can be contrasted with the existing tort liability reparation system, which tends to misallocate resources and legal talent. No-fault automobile insurance is a first party coverage because benefits are paid without regard to fault to the injured policy owner (the first party under the insurance contract). Under this system, each party involved in an accident collects for the economic costs of any injuries from his/her own insurer regardless of fault. The underlying idea is that automobile accidents are, to a great extent, random and inevitable (like industrial accidents), so assessing fault for compensation purposes serves no useful economic purpose. Of course, civil penalties still could be imposed for drunken driving and other socially deplorable behavior.

No-fault insurance is a relatively new type of compensation system and it has been proposed under the following three forms, which differ mainly in the restrictions imposed on tort actions.

Pure No-Fault Systems

Under a pure no-fault plan, compensation is provided for all automobile acci-

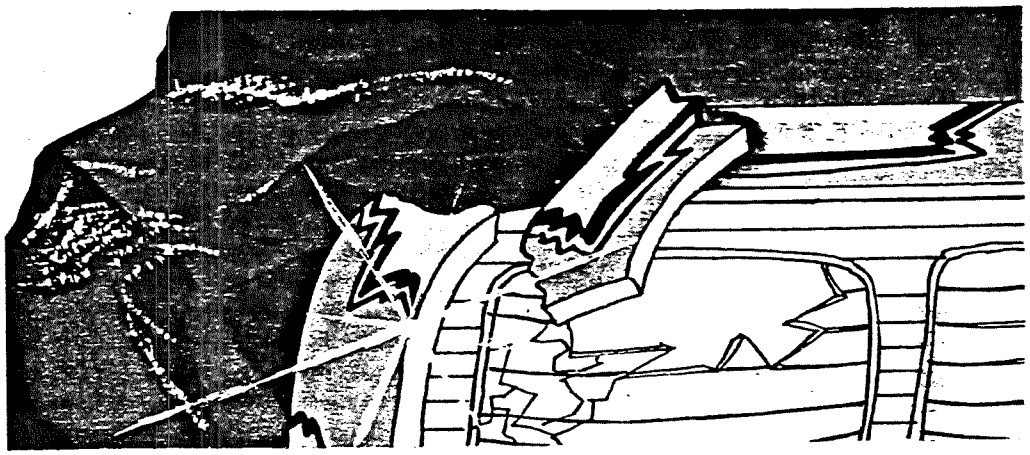
dent victims regardless of fault. In essence, the fault or tort liability system is eliminated for bodily injuries arising from automobile accidents.[7] Each injured accident victim is guaranteed compensation for his/her economic losses (loss of income, medical expenses or loss of services) from his/her own insurer or from the insurer covering occupants of the automobile involved in the accident. Recoveries for pain and suffering or non-economic damages are also eliminated. For a pure no-fault plan to be effective and politically feasible, it probably must be compulsory in order to compensate all injured accident victims. However, an elective plan might be feasible under certain circumstances.

Modified No-Fault Systems

Under this type of system, the first party coverage pays for economic losses without regard to fault until a certain monetary or verbal threshold has been exceeded. Tort actions are allowed when losses or damages exceed the defined threshold. Payments for pain and suffering are eliminated or limited below the threshold.

Add-On No-Fault or Expanded First Party Coverage

This type of compensation system imposes no limitations on tort liability suits, and for this reason it is not considered a true type of no-fault system. The critics of this system call it "phony" no-fault and argue that few additional benefits are paid to traffic victims without regard to fault. Some additional no-fault coverage is merely piled on top of existing liability coverages, which increases the premium payment. An injured accident victim retains all the rights to sue for losses in excess of the amount paid under the no-fault or first party coverages. Moreover, the insurer providing



the no-fault benefits usually retains subrogation rights against the negligent third party. Thus, a negligent driver still can be sued by the insurer which provided benefits to its injured policyowner.

Evolution of No-Fault Laws

One of the first major proposals for a no-fault automobile accident compensation system was the Columbia University Committee Plan proposed in 1932, as indicated earlier. Under this proposal, no-fault insurance would have been compulsory and no recovery for general damages (such as pain and suffering) would have been permitted. Although the plan had little impact in the U.S., it had an influence on the automobile injury compensation system adopted by the Canadian province of Saskatchewan in 1946, the first jurisdiction in North America to adopt a no-fault system.[8]

In the U.S., there was not much interest in no-fault automobile insurance until Keeton and O'Connell [12] proposed their Basic Protection Plan in 1966. It was a compulsory first party bodily injury protection plan that proposed to pay for medical expenses up to $10,000 per person and $100,000 per accident, including reasonable expenses incurred for loss of earnings, regardless of fault. Tort liability action would have been preserved for general damages exceeding $5,000 or bodily injury damages exceeding $10,000. No-fault insurance would not have been primary.

After the Keeton and O'Connell plan had been proposed, several other proposals were advanced, especially by the insurance industry, which demonstrated its support for no-fault compensation systems in automobile insurance. The plans proposed by the insurance industry included the following.[9]

1. A pure no-fault plan presented in October, 1968, by the American Insurance Association (AIA). It was called "The Complete Personal Protection Automobile Insurance Plan." It covered unlimited medical expenses, up to $1,000 for funeral expenses, and up to $750 per month for loss of income. Tort actions were abolished under this proposal. Property damage was also included on a no-fault basis.
2. A plan proposed by the National Association of Independent Insurers (NAII) in December, 1970, provided limited first party benefits and established a formula limitation on tort actions for general damages. Benefits were provided for up to $2,000 for medical, hospital and funeral expenses, and up to $6,000 for loss of income.
3. A no-fault proposal presented by the

...automobile accidents are, to a great extent, random and inevitable so assessing fault for compensation purposes serves no useful economic purpose.

American Mutual Insurance Alliance (AMIA), which eliminated tort actions for routine personal injury cases but preserved them for severe injury cases.

4. An important contribution in the acceptance of the no-fault compensation idea was the Uniform Motor Vehicle Accident Reparation Act (UMVARA), which was proposed in 1972 by the National Conference of Commissioners on Uniform States Laws. This plan provided unlimited benefits for medical expenses, up to $200 per week for loss of income, and unlimited benefits for replacement services. Tort liaility was abolished but the right to sue for general damages in excess of $5,000 was preserved if the injury resulted in death, significant permanent injury, serious permanent disfigurement or total disability for more than six months. Automobile insurance was to be primary to other coverages, except for social security, workers' compensation, and state-required non-occupational disability insurance. This plan seems to have had some influence on later federal and state proposals.

Another evolutionary event occurred in December, 1972, when nine major automobile insurance companies reached a consensus on the following provisions for a no-fault plan that each would be willing to support:

- a range of benefits for the first party coverage between $5,000 and $25,000;
- realistic limitations on the right to recover for general damages through the tort system;
- physical damage should remain under the tort system;
- no-fault insurance should be compulsory for all motor vehicles;
- auto insurance should be the primary coverage for auto accident victims, except for workers' compensation or disability coverages;
- tort actions should be permitted if the threshold is crossed, if benefits paid to one person exceed $1,500 or if a commercial vehicle is involved in the accident.

As a culmination of the various reactions against the tort system, the first no-fault law in the U.S. was passed in Massachusetts in 1970 and went into effect in 1971. This was a compulsory plan for limited no-fault coverage for bodily injury. After that, Florida, Delaware and Illinois passed no-fault laws to be effective in 1972 (the Illinois law was eventually declared unconstitutional because it applied only to private passenger vehicles). No-fault laws also were passed in the same year by South Dakota, Oregon and Virginia. In the following years, no-fault plans were implemented in other states to reach a total of 24 states with no-fault laws in 1976. However, Nevada repealed its no-fault law in 1980. More recently, the District of Columbia enacted a no-fault law which became effective in September, 1983.

The Advantages of a No-Fault System

The alleged advantages of a no-fault system are associated with its potential ability to reduce some costs and to distribute benefit payments more equitably among accident victims.

Cost Reduction

The supporters of the no-fault system argue it would permit the following ways to reduce costs.

First, the potential savings from a limitation on non-economic losses would be available to reduce costs or increase benefits. According to State Farm [20], these damage payments represent on the average about 60 percent of the payments of automobile insurance companies for bodily injury liability claims.

Second, cost savings from reduction in duplication of recoveries. Under a tort system the accident victim can collect from the various insurance coverages, such as medical payments, health insurance and tort recoveries under liability policies. This is legal but increases the costs of the compensation system. Under no-fault, insurers are expected to offer policies at lower rates which exclude medical expenses if these expenses already are covered by other sources of policies. However, there is a primary issue between health and auto insurers here.

Third, cost reduction from the elimination of many investigation and litigation expenses could be substantial. These expenses have had a considerable impact on the costs under tort liability systems. It has been found that about 56 cents of the auto liability insurance dollar are consumed by insurance-related loss adjustment expenses and legal fees, and only 44 cents go to accident victims.[10]

An estimate of how no-fault automobile insurance could cut costs has been developed by Brainard and Fitzgerald [3]. These authors created a hypothetical illustration using 100,000 injuries that generated 50,000 compensable claims and imposed $100 million in incurred losses on insurers. In their example, the total loss costs under a tort system were distributed as follows: 67 percent or $67 million for general damages (non-economic losses) and 33 percent or $33 million for medical expenses and loss of wages (economic losses). With the implementation of a no-fault system, the projected costs showed a saving of $50 million in general damages and an increase in cost of $35 million for 38,000 additional claims which would be covered under a no-fault system. The result was a net sav

ing of $15 million, that is $85 million in total incurred losses against the $100 million under the tort system.[11] More victims were compensated for their economic losses because fault determination was not an issue. The savings from the elimination of pain and suffering payments made it possible to compensate more accident victims.

Redistribution of Insurance Costs

Automobile insurance class rates are determined by several factors, including age, sex, territory, type of car and driving record. A no-fault system could bring about a drastic change in the class rate structure because class rates will be influenced by a potential victim's income.

A tort system is a loss-causers' system, where the person more likely to cause an accident is charged a higher premium. In contrast, a no-fault system is a loss-sufferers' system. Therefore, under a no-fault system, premiums would be based to a larger extent on how much a policyholder could lose in an accident, especially with respect to wages. This approach would fundamentally change the current method for allocating costs for ratemaking purposes. Under a no-fault system, older and married motorists would represent a greater potential loss than an unmarried young driver primarily because of differences in income. Owners of small cars would also pay higher rates than drivers of large cars because of the greater chance of injury or death in a collision. Furthermore, owners of large commercial vehicles, such as trucks, would tend to pay relatively lower premiums because of less chance for serious bodily injury, unless costs were reallocated to these vehicles or strict liability were imposed on them. Cars used in rural areas might pay higher rates than those used in urban areas because collisions in rural areas tend to occur at higher speeds and cause more serious injuries.

These redistributions of accident costs usually are perceived as an advantage of a no-fault system because it provides a more socially desirable distribution of costs and benefits from an equity viewpoint.

Other Advantages

A no-fault compensation system also has been alleged to be more consistent with the purpose of insurance than a tort liability reparation system.

Professor Conard of the University of Michigan has argued "that the [fault] system overpays the small claimants who needs it least and underpays the large claimants who need it most."[12] No-fault, on the other hand, would help to eliminate payments for non-economic losses associated with smaller tort claims and would provide more adequate compensation for victims who suffered severe personal injuries.

It also has been argued that no-fault would bring about a quick and efficient method for claims payment because of the elimination of the need for fault determination and the associated legal delays and costs. Delays in claim payments are a real problem under a tort system. According to the 1970 DOT study, the average time period between an accident and the claim payment was 16 months.[13] Such a delay can impose a heavy financial burden on an accident victim and his/her family.

Additionally, some people feel no-fault would tend to encourage loss prevention through the production of safer cars and highways. Better car design could reduce the severity of bodily injuries.

Finally, a no-fault system might decrease the underwriting risk faced by insurers because it would be easier for them to predict income losses on a no-fault basis for their insureds than on a third party basis under a tort system. This fact might make insurance more available in the standard market and promote a more equitable distribution of loss costs among automobile users.

Criticisms of a No-Fault System

Criticisms of automobile no-fault laws focus on constitutional or legal problems, implications for reduced driver responsibility (supposedly less fear of a law suit would reduce the care exercised by drivers even though they still would be concerned with their personal safety), the partial loss of the right to recover for pain and suffering, and the possibility that loss costs and insurance rates might increase rather than decline if benefits were not limited. Moreover, some critics feel that the compulsory nature of a no-fault automobile insurance system could have adverse effect on the poor if deductibles were used to opt out of the system and on elderly retired people if they were forced to carry loss-of-income coverage. A more detailed discussion of legal and cost issues follows.

Legal Problems

The tort liability system gives an injured person the right to seek reparation from a negligent individual who has been the direct and immediate cause of his/her injury. Moreover, under this system the accident victim can recover for both economic and non-economic losses. In contrast, no-fault laws impose some restrictions on tort actions for non-economic losses. Pure no-fault laws, in exchange for no-fault coverage for economic losses, entirely abolish the right to recover for damages resulting from negligent actions; and pain and suffering payments are limited to cases of serious and permanent injuries. Consequently, no-fault compensation systems sometimes are alleged to violate the U.S. Constitution.

The Fourteenth Amendment to the U.S

Another undesirable effect of the no-fault system could be due to its compulsory nature...

Constitution provides that no state shall deprive any person of life, liberty or property without due process of law. Opponents of no-fault argue that these laws are unconstitutional because they limit or do not permit free access to the courts. The supporters of the system say that this is not the case because the right to tort recovery for injuries is provided by the common law and not by the Constitution, and that legislatures have the power to modify common law rights, as they did for workers' compensation laws earlier in this century. Supporters of no-fault agree that a true no-fault system would require some legislative changes in the common law.

The Fourteenth Amendment also provides that no state shall deny to any person the equal protection of the laws. Detractors argue no-fault violates this clause because it only allows suits for pain and suffering above a specified threshold. Defenders reply that the equal protection clause is not violated if there is not "invidious" discrimination.

Potential Cost Increases and Social Consequences

No-fault automobile insurance has been designed to assure that everybody injured in an auto accident will be reimbursed for medical expenses and wage loss by his/her own insurer. Consequently, the system increases the number of victims eligible for compensation, especially those accident victims who are not compensated under a tort liability system. Hence, the larger number of compensable claims would tend to increase costs under a no-fault system, other things being equal. On the other hand, savings from the elimination of many payments for pain and suffering would be available. However, since none of the current no-fault plans completely eliminates general damages for non-economic losses, the savings from restrictions on recoveries for pain and suffering is considerably less than the potential maximum of about 57 percent of benefit payments. Therefore, opponents of no-fault argue the increase in costs arising from the greater number of claims might overcome the savings from the reduction or elimination of general damages with a consequent increase in the total costs of the system and the associated premium rates of automobile insurance. Unfortunately, the critics of no-fault frequently do not consider the savings in legal and other transaction costs that would develop under a no-fault system.

The presence of deductibles on the first party coverage might have a socially negative effect under a no-fault system. It is alleged that high deductibles would impose a burden on the poor, who would have little chance to recover under the system because they might have the greatest incentive to take high deductibles.

Another undesirable effect of the no-fault system could be due to its compulsory nature, which could force the elderly to buy coverage that they do not need. They already have the protection of Medicare and health insurance. In addition, because the elderly usually have no earnings to lose, they would have no right to collect for loss of income. However, rate classifications for the elderly could be developed to handle this problem and have been in some states with no-fault plans.

Main Provisions of Current No-Fault Plans

No-fault plans were enacted and made effective in the years indicated for the following 24 states: Massachusetts (1971); Delaware, Florida, Oregon, South Dakota and Virginia (1972); Connecticut, Maryland, Michigan and New Jersey (1973); Arkansas, Colorado, Hawaii, Kansas, Nevada, New York, South Carolina, Utah and Texas (1974); Kentucky, Minnesota, Pennsylvania and Georgia (1975); and North Dakota (1976). As indicated earlier, Nevada repealed its law in 1980, but a new no-fault plan was implemented in 1983 by the District of Columbia.

These state no-fault plans differ substantially with respect to the extent and form of the plans and in the provisions related to the limits of coverage, benefits for property damage, collateral sources and subrogation. Only a brief review of the main provisions of current no-fault plans is presented below. An extensive description of the provisions of these no-fault plans is available in other sources.[14] An overview of the areas in which no-fault plans differ also can be found in a study conducted by Witt, Spurgin and Tomforde [28].

Extent of the Plan

The purchase of no-fault coverage is compulsory in 18 states: Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Oregon, Pennsylvania and Utah (Nevada also had a compulsory law). In these states every motor vehicle must be covered by no-fault insurance prior to its registration for operation. The purchase of add-on no-fault coverage is optional in Arkansas, South Carolina, South Dakota, Texas and Virginia. Under these plans, the insured can choose between no-fault and third party coverages.

Categories of No-Fault Laws

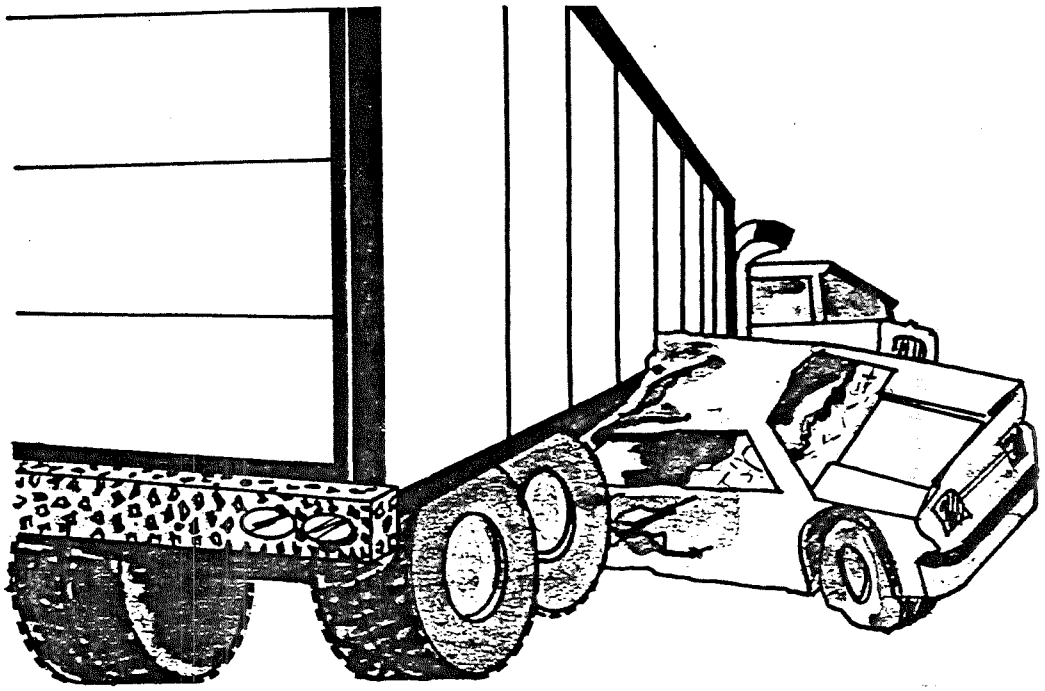
The actual no-fault laws, as specified earlier, fall into three basic categories: pure no-fault, modified no-fault and add-on no-fault laws. Only one state, Michigan, has a law close to pure no-fault, which has unlimited medical benefits and a stringent verbal threshold for non-economic losses. States with modified

no-fault laws include Colorado, Connecticut, Florida, Georgia, Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, Nevada (earlier), New Jersey, North Dakota, New York, Pennsylvania and Utah. Add-on laws have been implemented in Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas and Virginia.

Personal Injury Benefits

These benefits may be classified in the areas cited below.

1. **Medical, Hospital and Death Benefits.** Only three states, Michigan, New Jersey and Pennsylvania, provide unlimited benefits for medical and hospital costs. The no-fault plans of the other states establish limits to these benefits, generally in the form of a maximum amount per person. Florida establishes the limit as a maximum percentage of total medical costs (80 percent). In all states except Michigan, Pennsylvania and New Jersey, the right to tort liability for any amount in excess of the limit is retained. A death or funeral benefit is subject to a limit that varies widely among the states (from $1,000 in Colorado, Florida, Kansas, Kentucky, Michigan, Nevada, New Jersey and North Dakota, to $10,000 in Minnesota and South Dakota).
2. **Loss-of-Income Benefits.** These benefits are a fixed amount per week or month with a limit on the period of time the benefit is available (normally 52 weeks) in Colorado, Kansas, Kentucky, Minnesota, Nevada, New Jersey, North Dakota, South Dakota and Virginia. A fixed percentage of the salary with or without limit on the amount per week, month, or on the total amount is specified in Arkansas, Connecticut, Florida, Georgia, Massachusetts, New York, Oregon, Pennsylvania and Utah. The states of Delaware, Hawaii, Maryland and Texas provide an aggregate limit for medical and hospital costs, loss of income, loss of services and funeral expenses benefits (some of these benefits are subject to sublimits). Finally, Michigan provides lost wages up to a fixed amount per month, but this limit is adjusted annually to keep up with the cost of living.
3. **Substitute Services, Rehabilitation Costs and Survivor Benefits.** These benefits, which are provided by almost all plans are limited to a fixed amount per period of time or per person, or to a fixed percentage of actual losses, with or without limit on the period of time the benefit is available.[15]



General Damages (Non-Economic Losses)

Recoveries for pain and suffering benefits without restrictions are available in the add-on no-fault states (Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas and Virginia). Injured claimants can recover only if medical costs or economic losses exceed certain defined monetary or verbal thresholds in other no-fault states. Under some circumstances, the threshold does not apply, and general damages can be recovered without restriction in cases involving death, loss of a body member or permanent and serious disfigurement. In Florida, Michigan, New York and North Dakota, a claimant can recover only if injury results in significant and permanent loss of an important body function, permanent injury, permanent and significant disfigurement or death.[16]

Property Damage Benefits

All plans, except for Michigan's, keep vehicle damage under the tort system. In Michigan, tort liability is abolished except in some cases where property damage is less than $400.[17]

The right to subrogation is retained in all states, especially if a commercial vehicle is involved in the accident.

TABLE 1

REGRESSIONS OF AUTOMOBILE LIABILITY INSURANCE LOSS RATIOS BY STATE AND INSURER GROUP ON THE TYPE OF COMPENSATION SYSTEM

	ALL NO-FAULT LAWS			
	Direct Writers	National Agency	Regional Company	Total Industry
NF	7.70 (0.0)[1]	6.08 (0.0)	7.05 (0.0)	6.82 (0.0)
R^2	.29	.24	.29	.29
	ADD-ON NO-FAULT LAWS EXCLUDED			
	Direct Writers	National Agency	Regional Company	Total Industry
NF	9.90 (0.0)	6.91 (0.0)	8.21 (0.0)	8.82 (0.0)
R^2	.46	.31	.38	.41

[1]The numbers in parentheses indicate the probability that the corresponding coefficients are *not* significantly different from zero, the probability of a Type I error.

[2]In running these regressions, the following add-on no-fault states were excluded from the no-fault category: Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas and Virginia.

There has been much less public pressure for developing a no-fault compensation system in the automobile property damage area even though collision, comprehensive and property damage liability are relatively expensive coverages. According to the U.S. Department of Transportation, about 46 percent of compensable economic losses suffered in automobile accidents were for property damage.[18]

No-fault plans for property damage were initially enacted in Florida and Massachusetts but were later repealed. Originally it was assumed that no major differences existed in the problems associated with the compensation of automobile bodily injury and property damage liability losses. However, many of the problems associated with the tort liability reparation system for personal injury claims did not seem to exist with most property damage losses. Since most consumers already have collision and comprehensive insurance, which are no-fault coverages, the case for reforming the property damage liability system seems to be less compelling. Due to the fact that many property damage claims are already dealt with on a no-fault basis, the cost savings from a no-fault property damage reparation system could not be as great as those realized from a no-fault compensation system for bodily injury. Moreover, there has been little benefit duplication in the property damage area, and there are no general damage awards arising from property damage claims, which makes it much easier to settle such claims within the tort liability system. Without the monetary lure of general damages, there is less incentive for attorneys to become involved in property damage claims. Thus, legal costs have not been as important in this area. For these and other reasons, there has been little pressure to develop a no-fault property damage system. The cost savings under such a system compared to the tort liability system would tend to be relatively smaller. Thus, the case for eliminating the right to sue for property damage loss seems less compelling than the case involving bodily injury claims.

Collateral Sources

Automobile insurance usually is primary with respect to other sources, except for workers' compensation and Social Security. Health and accident and other coverage serve as excess coverages in most no-fault states, including Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Kentucky, Michigan, Minnesota, Nevada, New Jersey, New York, North Dakota and Utah.[19]

Cancellation and Renewal

Most no-fault plans contain no provisions covering cancellation and renewal rights.[20]

Subrogation

The right to subrogation is retained in almost all states, especially if a commercial vehicle is involved in the accident. Subrogation rights are subject to some litigation in Michigan, New Jersey, North Dakota and Pennsylvania.[21]

Economic Performance of No-Fault Systems

The economic performance of no-fault systems has been observed closely by the insurance industry, regulatory authorities and academicians. A summary of the main results of the various studies and surveys conducted is presented in this section in order to evaluate the effectiveness and efficiency of no-fault plans currently in effect in the various states.

Effectiveness of a No-Fault System

The effectiveness of a no-fault system can be evaluated on the basis of the bene-

fits provided to consumers of automobile insurance and accident victims in particular. In this regard, the opinion of some knowledgeable people is reflected in a survey of executives of property and casualty insurers, manufacturers and state insurance commissioners which was conducted by Busch [4]. The survey yielded the following results with respect to the statement that "no-fault automobile insurance has provided greater benefits to a larger number of policyholders than a system built on the fault concept."[22]

	Agree	Disagree	Uncertain
Manufacturers	29.3%	29.2%	41.5%
Insurers	48.6	28.5	22.9
Commissioners	61.8	20.6	17.6

It appears that the insurance industry and regulatory authorities have formed a very positive impression about the results under no-fault automobile insurance. These feeling are confirmed by other statistics presented below.

In Florida, which implemented a no-fault system in January, 1972, Professor Little [13] found that the benefits paid per registered vehicle increased by 31 percent by 1973 and that the benefits-to-premium ratio rose by 56 percent during the same period.[23]

According to the Nationwide Insurance Company, the loss ratio, which is a measure of the relative benefits provided to the public, increased under no-fault plans in various states. From the date of implementation of a no-fault plan until January, 1976, the loss ratio increased from 56 to 71 percent of the premium dollar in New York, from 70 to 81 percent in Florida, from 54 to 63 percent in Connecticut and from 76 to 112 percent in New Jersey.[24]

More general results have been obtained on a nationwide basis by the authors of this paper. The research analyzes the economic impact of no-fault plans on the relative benefits to consumers of automobile insurance. The data base used was based on dividend-adjusted annual loss ratios by state and insurer group for automobile liability insurance during the 1975-1980 time period. These loss ratios reflect the proportion of the premium dollar returned to consumers in the form of loss payments. Accordingly, they reflect some of the direct benefits that automobile insurance companies obtain in return for their premium payments.[25] Table 1 presents the results of regressing loss ratios on a no-fault dummy variable, NF, representing the kind of compensation system for four different insurer groups.

The regression coefficients of the no-fault variable, NF, are all positive and significantly different from zero. The results in Table 1 clearly indicate that a no-fault system does increase relative benefits to consumers. These results also suggest that add-on no-fault laws make little contribution to the economic effectiveness of a no-fault system. As can be seen, both the regression coefficient of the no-fault variable and the coefficient of determination, R^2, increase substantially when states with add-on no-fault laws are dropped from the no-fault category for each insurer group.

The positive impact of a no-fault system on the loss ratio also was confirmed by other results obtained by the authors from a different but related statistical analysis of the data presented in Table 2.[26] Here, it can be seen that the average loss ratios of no-fault states are significantly higher than the loss ratios of tort system states. Moreover, the states of Michigan, New Jersey and Pennsylvania, the three states with unlimited medical benefits and, in this sense, the states with no-fault plans closest to pure no-fault laws, exhibit the highest average loss ratio. Also, the mean loss ratio of these unlimited medical coverage states is significantly greater than the mean loss ratio of no-fault states when add-on and unlimited coverage states are excluded. These results suggest that the closer a law is to a pure no-fault compensation system, the higher are the ben-

TABLE 2

WEIGHTED AVERAGE LOSS RATIOS FOR TORT AND NO-FAULT STATES FOR THE AUTOMOBILE LIABILITY INSURANCE INDUSTRY, 1975-1980

	Mean Loss Ratio, μ	Alternative Hypothesis[1]	t	Significance Level[2]
1. Tort System States	62.83	—		
2. All No-Fault States	69.68	$\mu_2 > \mu_1$	4.70	.00
3. Add-On No-Fault States	64.36	$\mu_3 > \mu_1$	1.14	.14
4. No-Fault States[3]	67.88	—		
5. Unlimited Coverage States[4]	78.43	$\mu_5 > \mu_4$	3.37	.04

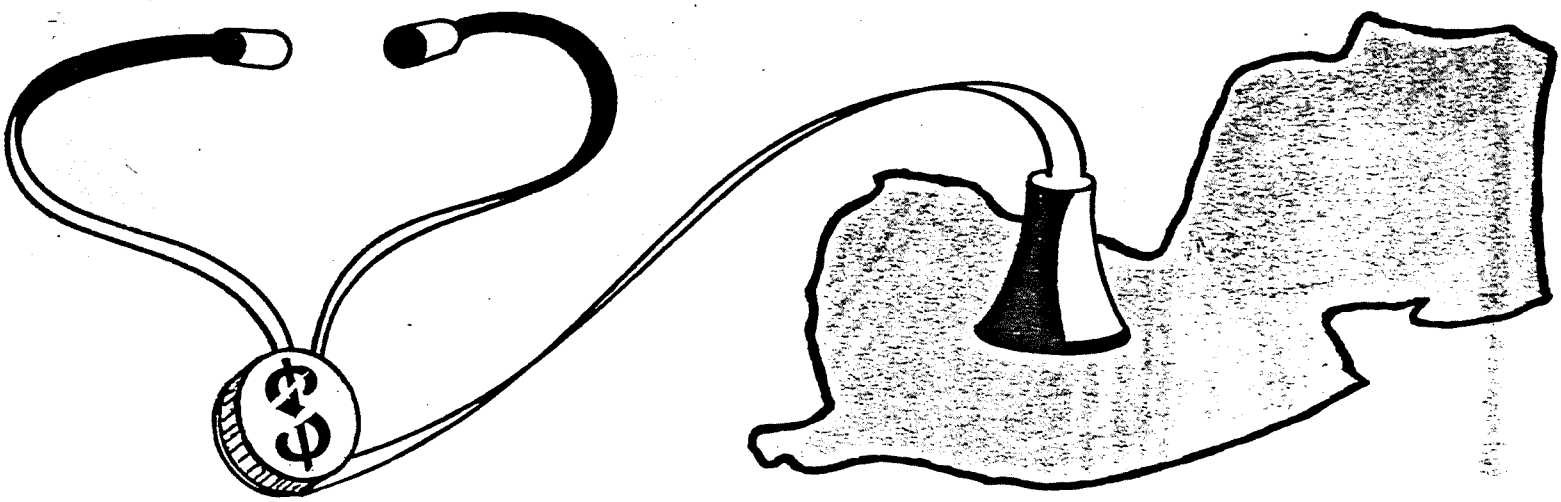
[1]The null hypothesis in each case is that the corresponding mean loss ratios are equal; that is, $\mu_i = \mu_j$ for $i \neq j$.

[2]The significance level indicates the probability that the two means are equal; that is, the probability the null hypothesis is confirmed by the data or the probability of a Type I error.

[3]Excludes states with add-on no-fault plans and the states with unlimited medical coverage.

[4]The states of Michigan, New Jersey and Pennsylvania, which have unlimited medical coverage.

...these authors mention catastrophic cases reported in New Jersey, where the unlimited medical benefits resulted in insurance companies paying for an extraordinary range of services.



efits provided to consumers of automobile liability insurance.

The proportion of total claims paid also has increased under no-fault plans. The 1977 DOT study [25] has reported the following statistics based on data from State Farm. In Colorado for 1972 and 1973, the two years prior to the enactment of its no-fault plan, 9.2 and 7.8 claims were paid per 1,000 cars insured, while for 1974 and 1975, 13.5 and 12.9 no-fault claims were paid per 1,000 insured cars (if bodily injury tort claims paid are included these figures increase to 15.8 and 14.6, respectively). In Michigan, prior to no-fault, the figures for 1971 and 1972 were 12.7 and 13.5 claims paid per 1,000 cars insured; whereas, for 1973, 1974 and 1975, the no-fault benefits paid were 17.1, 14.7 and 14.4 per 1,000 cars insured, respectively (these figures increase to 26.6, 16.1 and 15.9, respectively if tort benefits paid are added). In Kansas, the no-fault benefits were 11.4 claims paid per 1,000 cars insured in 1974 compared with the 6.8 average for the period 1971-1973 under the tort system. In Utah, 12.2 claims were paid per 1,000 cars insured for no-fault in 1974; whereas, only 9.5 claims were paid on the average for bodily injury prior to the no-fault system during 1971-1973.[27]

The 1978 Michigan Insurance Bureau Report [14] has pointed out that no-fault has been successful in compensating accident victims for their economic losses at a higher level than the tort system. In fact, the report indicates that, after being discounted for inflation, payments for economic losses for the first three years under the state's no-fault plan were about 65 percent higher than those during the three years immediately prior to no-fault. The distribution of the payments also changed. For the three years prior to no-fault, only 45 percent of total payments were for economic losses and 55 percent were for non-economic losses or general damages; whereas, for the three years of operation under the no-fault plan, the distribution of payments were 63 percent for economic losses and only 37 percent for non-economic losses.

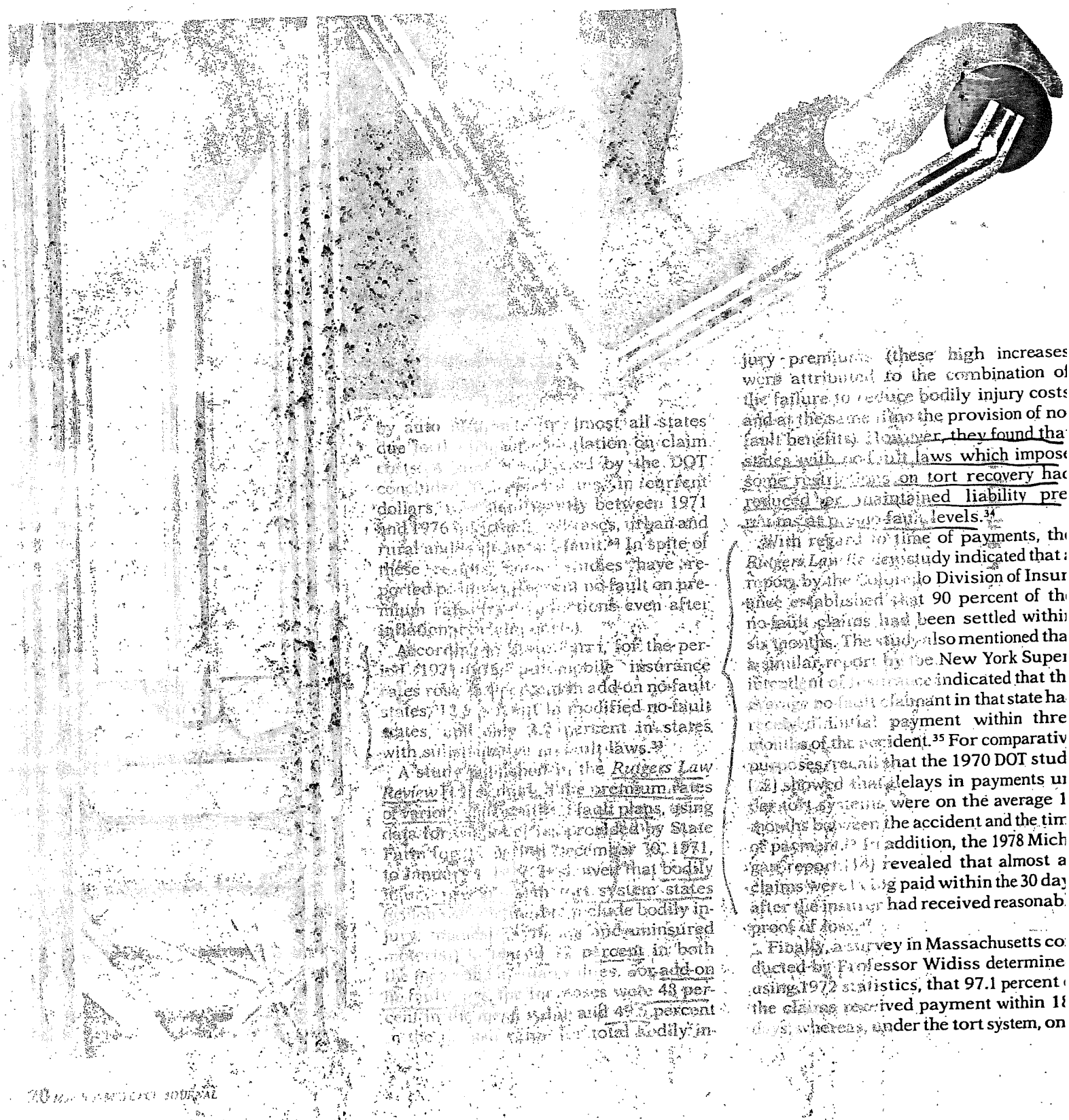
Finally, as O'Connell and Beck [18] have indicated, the quality of the insurance purchased is another important factor to take into consideration in evaluating the effectiveness of a no-fault system. For instance, these authors mention catastrophic cases reported in New Jersey, where the unlimited medical benefits resulted in insurance companies paying for an extraordinary range of services. In addition, it was reported that no-fault has played an important role in encouraging the use of rehabilitation therapy.[28]

Efficiency of a No-Fault System

One of the main arguments in favor of a no-fault system is its potential for compensating more accident victims and reducing payments for non-economic losses and transaction costs, such as legal expenses. It also has been argued that the reduction of these costs could produce a decrease in relative premium rates and in the delays associated with claim payments. Several studies have confirmed these assertions.

Professor Widiss of the University of Iowa Law School has reported that the reduction in the use of attorneys was from 80 percent of the cases prior to no-fault to 15 percent of the cases under no-fault.[29] Moreover, statistics compiled by the Michigan Insurance Bureau showed that the number of auto negligence cases filed in the Michigan Circuit Court decreased by nearly 20 percent between 1973 and June, 1976.[30] With respect to liability payments, the 1978 Michigan Insurance Bureau Report indicated that no-fault reduced liability payments in the first year after an accident from $20 million under the liability system to about $2 million under Michigan's no-fault plan with a verbal threshold.[31]

The real impact of no-fault on absolute premium rates has been hidden by rapidly rising prices of services purchased



by auto ... most all states ... due ... lation on claim ... by the DOT ... in current dollars, ... between 1971 and 1976 ... releases, urban and rural auto ... fault.[32] In spite of these ... studies have reported ... no fault on premium ... even after inflation ...

According to ... for the period 1971 ... automobile insurance rates rose ... with add-on no-fault states, ... modified no-fault states, ... only 3.5 percent in states with ... no-fault laws.[33]

A study published in the *Rutgers Law Review* ... that the premium rates of various ... fault plans, using data for ... provided by State Farm ... January 1, 1971, to ... found that bodily ... tort system states ... include bodily in- ... and uninsured ... percent in both ... lines, for add-on ... fault ... the losses were 48 percent ... and 49.5 percent ... total bodily in- ... jury premiums (these high increases were attributed to the combination of the failure to reduce bodily injury costs and at the same time the provision of no-fault benefits). However, they found that states with no-fault laws which impose some restrictions on tort recovery had reduced or maintained liability premiums at pre-no-fault levels.[34]

With regard to time of payments, the *Rutgers Law Review* study indicated that a report by the Colorado Division of Insurance established that 90 percent of the no-fault claims had been settled within six months. The study also mentioned that a similar report by the New York Superintendent of Insurance indicated that the average no-fault claimant in that state had received initial payment within three months of the accident.[35] For comparative purposes, recall that the 1970 DOT study [32] showed that delays in payments under tort systems were on the average 1 ... months between the accident and the time of payment. In addition, the 1978 Michigan report [14] revealed that almost all claims were being paid within the 30 days after the insurer had received reasonable proof of loss."

Finally, a survey in Massachusetts conducted by Professor Widiss determined, using 1972 statistics, that 97.1 percent of the claims received payment within 18 days, whereas, under the tort system, on

...it was reported that no-fault has played an important role in encouraging the use of rehabilitation therapy.

TABLE 3

REGRESSIONS OF STANDARD DEVIATIONS OF AUTOMOBILE LIABILITY INSURANCE LOSS RATIOS BY STATE AND INSURER GROUP ON THE TYPE OF COMPENSATION SYSTEM

	Direct Writers	National Agency	Regional Company	Total Industry
NF	4.50 (0.00)	2.10 (0.02)	2.50 (0.00)	3.30 (0.00)
R^2	.34	.08	.11	.22

[1]For running these regressions, add-on no-fault states were excluded from the no-fault category.

TABLE 4

REGRESSIONS OF BETAS BY STATE AND INSURER GROUP ON THE TYPE OF COMPENSATION SYSTEM[1]

	Direct Writers	National Agency	Regional Company	Total Industry
NF	.51 (.12)	.12 (.68)	.25 (.41)	.33 (.26)
R^2	.03	.00	.01	.01

[1]For running these regressions, add-on no-fault states were excluded from the no-fault category.

57.6 percent of claims received payment within the same time period.[38] Reports to the Department of Transportation from the Insurance Departments of Colorado, Connecticut and New Jersey have exhibited similar statistics.[38]

Another important argument in favor of a no-fault system is its potential to reduce the underwriting risk faced by insurers. Indeed, one would expect a no-fault system to increase the predictability of losses because it would eliminate much uncertainty associated with the payment of loss-of-income benefits. In this respect, the research conducted by the authors found that no-fault automobile insurance does not decrease underwriting risk, as is indicated in table 3.

Table 3 presents the results of regressing the total underwriting risk, as measured by the standard deviation of the state's loss ratio, on the dummy variable NF, which again represents the type of compensation system. The regression coefficients for the no-fault variable are positive and statistically significant at 2 percent or better. In other words, the no-fault system tends to increase the underwriting risk faced by insurers instead of reducing it. However, the standard deviation might not be the appropriate measure for determining differences in underwriting risk among states because it includes the unsystematic component as well as the systematic component of underwriting risk. The beta or systematic component, on the other hand, reflects the sensitivity of the loss ratio in a state to changes in the national loss ratio. In this regard, it captures economic factors that are common among states.[40] Therefore, a better way to determine the impact of a no-fault system in the variability of the loss ratio is by regressing the betas by state on the type of compensation system. The results of these regressions are shown in Table 4.

In Table 4, the regression coefficients for the no-fault variable are positive, but they are not statistically different from zero at any reasonable level of statistical significance. This seems to indicate that the no-fault system has no effect on the predictability of losses. This conclusion is confirmed by the results exhibited in Table 5, which show that the average systematic underwriting risk for the no-fault and tort liability systems are not significantly different in a statistical sense.[41]

However, these adverse effects of the no-fault system on the variability of losses should not be taken as definitive because the joint existence of both no-fault and tort systems makes it difficult to determine the direct effect of no-fault plans (there is residual tort liability in all no-fault states). In addition, for the period under study, most states with no-fault plans were in a period of transition and adjustment to the new system. Interestingly, the unlimited coverage states have the smallest beta in Table 5. This suggests that, in the long run, the predictability of losses might be easier under substantive no-fault plans.

Public Reaction to No-Fault System

As Kahane and Lange [9] have suggested, a more appropriate way to evaluate a no-fault system might be on the basis of its social merits.[42] In this respect, the public reaction to a no-fault system is highly relevant.

According to O'Connell, most people show a strong preference for certainty of benefits as compared to the risks and benefits associated with a tort suit.[43] This assertion has been confirmed by public support for the Michigan no-fault law, which is one of the closest to a pure no-fault plan. In the 1978 Survey by the Michigan Insurance Bureau [14], people were

asked to answer several statements. The responses to some statements are presented below.[44]

To provide more money for medical and wage loss benefits, the right to sue for pain and suffering resulting from an injury which is not permanent should be limited.

Strongly agree	27.6%
Agree	51.1%
Sub-Total	78.7%
Neither agree or disagree or don't know	11.9%
Disagree	6.0%
Strongly disagree	3.5%
Sub-Total	9.5%

Michigan residents were also asked to answer the following question:

Would you give up the right to sue for pain and suffering in all cases but the most serious in return for prompt, complete payment of all medical bills and your loss of wages?

They responded as follows.

Yes	53.1%
Don't know	28.9
No	18.0

The public also favored by 62 to 23 percent the idea of providing full medical and rehabilitation benefits to all accident victims.

Although the above statistics make clear that a no-fault system was preferred by Michigan's residents, only 17 percent of the people polled agreed that the Michigan no-fault plan was a "good system." This negative response is probably due to discontent associated with recoveries for property damage and with problems more related to the automobile insurance industry as a whole than to the no-fault compensation system.

Alleged Adverse Cost Results

Some studies have found some adverse results under no-fault systems. Some have suggested that such systems have increased, instead of reduced, the cost of automobile insurance. As a result, insurance rates had to be increased. Moreover, the no-fault system was alleged to have had a negative effect on small companies. Brainard and Lord [2] have suggested that no-fault for price-containment purposes has been refuted by the experience in New Jersey, even though they did not adjust for inflation in claim costs or recognize the extremely low threshold in this state. In essence, they reported some results, shown in Table 6, based on data from the Insurance Department of New Jersey (the data were based on statewide average pure premiums developed to 39 months for 1972 and 1973, to 27 months for 1974, and 15 months for 1975).[45]

They found that even though bodily injury liability, BI, pure premiums fell 13 percent between 1972 (the year immediately preceding the no-fault system) and 1973, the overall cost (including medical payments and PIP) rose 12 percent. Moreover, the no-fault personal injury protection coverage, PIP, increased from $19.09 in 1973 to $25.70 in 1975. Thus, they argued that Blue Cross could deliver PIP benefits at a much higher efficiency rate of 96 percent (for each premium dollar, $.96 go to the public as benefits) than could a private automobile insurance system which delivered only 64 percent. However, the authors did not note or seem to appreciate that health insurance benefits provided by Blue Cross are not based on a fault system and Blue Cross has special tax advantages. They also argued that the major contact between motorists and insurers lies in the property damage sector (property damage liability and collision) and not in the personal injury sector (BI liability and PIP).

Another study conducted by the National Association of Independent Insurers concluded that in Florida, Connecticut, New Jersey and Nevada the cost of no-fault coverage was higher than that under the tort system.[46] Again, inflation and the nature of expanded benefits were not recognized.

According to the New York State Insurance Department, the cost of automo-

TABLE 5

WEIGHTED AVERAGE BETAS FOR TORT AND NO-FAULT STATES FOR THE AUTOMOBILE LIABILITY INSURANCE INDUSTRY, 1975-1980

	Average Beta, μ	Alternative Hypothesis[1]	t	Significance Level[2]
1. Tort System States	.587	—		
2. All No-Fault States	.902	$\mu_2 > \mu_1$	1.29	.10
3. Add-On No-Fault States	.798	$\mu_3 > \mu_1$	1.51	.07
4. No-Fault States[3]	1.357	—		
5. Unlimited Coverage States[4]	.102	$\mu_4 > \mu_5$	2.10	.04

[1]The null hypothesis in each case is that the corresponding mean loss ratios are equal; that is, $\mu_i = \mu_j$ for $i \neq j$.

[2]The significance level indicates the probability that the two means are equal; that is, the probability the null hypothesis is confirmed by the data or the probability of a Type I error.

[3]Excludes states with add-on no-fault plans and the states with unlimited medical coverage.

[4]The states of Michigan, New Jersey and Pennsylvania, which have unlimited medical coverage.

The efficiency and effectiveness of no-fault plans have been closely observed...

TABLE 6

EXPERIENCE PURE PREMIUMS IN NEW JERSEY

	1972	1973	% change	1974	1975
BI Liab.	$52.87	$45.80	−13%	$39.29	$35.65
Med. Pmt.	5.34	—	—	—	—
PIP	—	19.09	—	20.79	25.70
Sub-Total	$58.21	$64.89	+12%	$60.08	$61.35
PD Liab.	22.98	25.65	+12%	25.25	27.19
Total	$81.19	$90.54	+12%	$85.33	$88.54
PD Total	28%	28%		30%	31%

Source: Brainard and Lord [2]

bile insurance in New York had more than doubled during 1975 for many state residents.[47] These absolute cost comparisons are somewhat misleading because of the impact of inflation on costs. At a minimum, absolute cost comparisons should be adjusted for inflation so comparisons are between real costs rather than nominal costs.

Another problem attributed to no-fault systems has been the reduction in investment income received by insurance companies because of faster payment of the claims, as compared to a tort system. It also has been pointed out that in states such as Michigan, New Jersey and Pennsylvania, where the unlimited exposures are mandatory, the cost of reinsurance has increased, which allegedly has had an adverse effect on the ability of small insurers to obtain reinsurance and to compete.[48]

Conclusions

The no-fault plans enacted in 24 states (including Nevada until 1980) and the District of Columbia vary widely in form and benefits provided. Differences also are found in external aspects of the plans, which include collateral sources, subrogation and other provisions.

In regard to form, current no-fault plans may be classified as follows: those approaching pure no-fault, which impose severe restrictions on recoveries for pain and suffering; modified no-fault plans, which impose some restrictions on non-economic losses; and add-on no-fault plans, which impose no restrictions on non-economic losses or general damages.

Personal injury benefits exhibit significant differences among plans. Medical and hospital benefits are provided without limit only in three states (Michigan, Pennsylvania and New Jersey). The other states establish upper limits that vary from state to state, whether in the form of a maximum amount or maximum percentage of total real loss. Loss of income benefits are provided as a fixed amount per week or month, with or without limit during the period of time the benefit is available (these limits vary—broadly among states). Other benefits, such as substitute services, rehabilitation costs and survivor benefits, are provided subject to limits that vary among plans.

In regard to compulsion or the extent of the plans, there exists a greater consensus. No-fault plans were made compulsory in 19 states and optional in only five states. Also, most plans specify that no-fault auto insurance is primary with respect to other collateral sources, except for workers' compensation and Social Security. All state plans allow subrogation by insurers. In some states, however, subrogation is subject to certain restrictions.

The efficiency and effectiveness of no-fault plans have been closely observed by the public, legislators, academicians and the insurance industry. The performance of no-fault has been evaluated on the basis of the benefits provided to all accident victims, its capacity to reduce insurance costs and legal expenses, its impact on premium rates and its potential for reducing delays in claim payments.

Several studies and surveys have reported that the no-fault system has increased the relative benefits to consumers of automobile insurance. These benefits were measured relative to premiums through the use of a loss ratio, or as proportion of claims paid. These studies also have shown the efficiency of a no-fault system in reducing the use of attorneys, decreasing recoveries for non-economic losses, enhancing prompt claim payments and moderating the increasing trend of insurance rates. However, other studies have reported some adverse cost results under no-fault. Unfortunately, the impact of inflation was not adequately recognized in these studies.

It also has been argued that a no-fault system has reduced the investment income of automobile insurance companies and has increased the cost of reinsurance. Finally, some results suggest that a no-fault system does not increase the predictability of losses in the short run.

The confusion created by the differences in no-fault plans, the dubious performance of some no-fault plans in the cost containment area, the opposition of some insurance companies to true no-fault insurance with unlimited medical benefits, and the arguments of trial lawyers with respect to the alleged unconstitutional character of no-fault laws resulted in no new no-fault plans being passed between 1976 and 1983 (the Dis-

trict of Columbia enacted a plan in 1983). Moreover, all these factors have promoted a long debate about the desirability of leaving no-fault insurance under state control or whether it should be instituted with federal legislation. Indeed, several proposals for federal no-fault insurance or establishment of national standards have been developed. The most important was the Hart and Magnuson Bill, which was passed by the Senate on May 1, 1974.[49] This proposal would have required every state to enact a no-fault law that provided certain medical benefits, loss-of-income benefits, restrictions on general damage recoveries, vehicle damage benefits and constraints on collateral sources.

In spite of all the difficulties associated with the no-fault concept, Professor Jeffrey O'Connell, a prominent supporter and pioneer of the no-fault system, has said, "On the issue of no-fault auto insurance, ... America stands first as a model," and that the American experience is being copied all over the world.[50] Furthermore, some reports have continued finding that no-fault is a successful system. The 1978 Michigan report concluded that the Michigan plan (the closest law to a pure no-fault plan) has been successful "in meeting the real needs of the people."[51] A study conducted by the DOT stated that the implementation of no-fault had not presented problems for which the solutions had not been developed. Moreover, the study categorically concluded that "no-fault automobile insurance works."[52]

Footnotes

[1]Keeton and O'Connell [12, p.3].

[2]U. S. Department of Transportation [22, p.3].

[3]U. S. Department of Transportation [22, p.47]. According to another DOT study, only about 44 percent of the auto-bodily-injury premium dollar is paid for benefits of victims [24, p.51].

[4]DOT study [24, pp. 42-43].

[5]According to a DOT study [24, p.35], only about 45 percent of auto accident victims who were killed or seriously injured received payment from auto liability insurance.

[6]DOT study [24, p.52].

[7]Some proposals in this area would also abolish liability suits for automobile property damage.

[8]State Farm Insurance Companies [20, p. G120].

[9]State Farm Insurance Companies [20, pp. G121-G124].

[10]DOT study [24, pp. 51-52].

[11]Brainard and Fitzgerald [3, pp. 26-29].

[12]Conard [6, p.14].

[13]U. S. Department of Transportation [22, p. 52].

[14]State Farm Insurance Companies [20] and General Adjustment Bureau [7].

[15]State Farm Insurance Companies [20, pp. E101-E106].

[16]State Farm Insurance Companies [20, pp. E101-E106].

[17]State Farm Insurance Companies [20, pp. E101-E106].

[18]U. S. Department of Transportation [24, p.6].

[19]State Farm Insurance Companies [20, pp. E101-E106] and General Adjustment Bureau [7, pp. 2-33].

[20]General Adjustment Bureau [7, pp. 2-33].

[21]General Adjustment Bureau [7, pp. 2-33].

[22]Busch [4, p.20].

[23]Little [13, p. 49].

[24]*Wall Street Journal*, January 21, 1976.

[25]A justification for using loss ratios as a relative measure of benefits to consumers can be found in Witt and Urrutia [29].

[26]A complete empirical analysis of the effect of the no-fault system on the benefits provided to consumers of automobile insurance (as measured by the loss ratio) and the differential impact of the no-fault system on the loss ratios according to the type of rate regulatory law in effect in the various states is presented in Witt and Urrutia [30].

[27]U. S. Department of Transportation [25, pp. 27-28].

[28]O'Connell and Beck [18, pp. 136-137].

[29]U. S. Department of Transportation [23, p. 78].

[30]Michigan Department of Commerce [14, p. 10].

[31]Michigan Department of Commerce [14. p. 42].

[32]U. S. Department of Transportation [25, pp. 66-69].

[33]Henderson [8, p. 63].

[34]*Rutgers Law Review* [19, pp. 961,964].

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[36]U. S. Department of Transportation [22, p. 52].

[37]Michigan Department of Commerce [14, p.37].

[38]Widiss [26, p. 42].

[39]U. S. Department of Transportation [25, pp. 36-37].

[40]The reader interested in the procedure for computing the systematic underwriting risk by state can consult Witt and Miller [28].

[41]A detailed analysis of the impact of the no-fault system on the predictability of losses and loss ratios is presented in Witt and Urrutia [30].

[42]Kahane and Lange [9, p. 28].

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DOT REPORT FOCUSES ON IMP. :T OF NO-FAULT AUTO

Washington Correspondent

WASHINGTON—A draft of a major follow-up report on state no-fault auto insurance experience is on the desk of Transportation Secretary Elizabeth Hanford Dole.

She is expected to send it to Congress before long, now that she has finalized the Department of Transportation's passive restraint standard for automobiles.

The report, "Compensating Auto Accident Victims," is an update of a 1977 DOT report which summarized the available data and evaluations of experience in states where "no-lawsuit" automobile insurance laws were in effect.

Rep. James J. Florio (D.-N.J.), chairman of the House Commerce Subcommittee on Commerce, Transportation and Tourism that has jurisdiction over insurance, asked Secretary Dole for an update of the 1977 report last year.

The report assesses the impact and effectiveness of the auto insurance systems of all 50 of the states, plus the District of Columbia and Puerto Rico. It pays particular attention to the 16 states that currently have "no lawsuit" no-fault auto insurance to the eight with "add-on" no-fault auto insurance systems.

"It is a very careful study of what has happened in state no-fault auto insurance" from Jan. 1, 1976, when North Dakota enacted the first no-fault law, to October 1983 when the latest no-fault auto insurance law was enacted by the District of Columbia, the National Underwriter was told.

Major conclusions of the draft report, sure to be of great interest to state insurance regulators, legislators, and insurers, include:

- "Significantly more auto accident victims receive auto insurance compensation in no-fault states than in other states."

The report finds that no-fault auto insurance, whether of the no-lawsuit or add-on type, compensates many more personal injury victims of auto accidents than does traditional or liability auto insurance.

Although comprehensive data on actual no-fault benefit payments are not available, "it is clear that close to 100 percent of auto accident victims are eligible for 'Personal Injury Protection' benefits in no-fault states," according to the report. In addition, almost twice as many victims per thousand receive PIP benefits in no-fault states than receive bodily injury payments in traditional states.

- "In general, accident victims in no-fault states have access to a greater amount of benefits than victims in traditional states . . . no-fault states offer upwards of double the potential recovery available in the traditional states.
- "Typical auto insurance benefits in both no-fault and traditional states fall far short of the needs of catastrophically injured victims."

A 1982 study, based on review of 410 catastrophically injured auto accident victims in the unlimited-benefit, no-fault states, found that the average projected total cost of each of these cases would be $408,700.

"Only the no-fault laws of Michigan and New Jersey, which provide for unlimited medical benefits, meet the needs of the catastrophically injured," according to the report. New York's law, which provides for $50,000 maximum total PIP benefits, and Colorado's law, which provides for $50,000 in medical and rehabilitation benefits, come the closest to meeting this standard.

"None of the traditional auto insurance states comes even close," the report said. "The minimum required coverage for bodily injury liability insurance of one individual is never more than $25,000, compared to the average cost of $400,000 for the treatment of the catastrophically injured victim.

- "Compensation payments under no-fault insurance are made far more swiftly than under traditional auto insurance."

One year after notification, 97.9 percent of the PIP claimants, but only 78.2 percent of the BI claimants, had received some payment from auto insurance, according to one study.

- "No-fault insurance systems appear to be more cost-efficient than traditional systems."

For each premium dollar collected under a no-fault system, claimants received a higher proportion in personal benefits than did claimants under the traditional system, the report found.

- "Balance in no-fault system seems to be closely linked to the presence of a tightly drawn verbal threshold."

A system is defined in the report as being in balance if it provides no-fault benefits to all auto accident victims at a cost that is more or less equal to or less than the savings produced by restrictions on the payment of third-party benefits.

All of the states which permit recovery of third-party benefits only upon satisfaction of a verbal threshold are in balance, according to the report.

- "Shifting to a complete no-lawsuit, no-fault system would cut auto insurance premiums for the average driver while at the same time raising his or her potential for recovering all economic losses."

The report concludes that "no-fault insurance with sufficiently high benefit levels to take care of catastrophically injured victims is not now available in the marketplace in most states."

Noting that "the information collected for this report indicates that the no-lawsuit form of no-fault insurance has significant advantages over traditional liability insurance," the drafters of the report said "it should therefore be available generally in the marketplace."

Two proposals were offered to make no-fault available on a voluntary basis, either by state or by Congress.

A voluntary state no-fault bill might allow, but not compel a motorist to purchase a no-fault policy that would provide up to a million dollars to all the covered victims of an auto accident.

Or, Congress might consider making such complete no-lawsuit insurance with very high benefits available on a voluntary basis, "as a way to ensure that the private sector, not government, pays the full cost of auto accident compensation (for) catastrophically injured victims." ◆

CHANGES - HB2422

	Current Law On PIP Benefits		New PIP Benefits
Disability (Loss of Earnings)	$650	to	$1,200
Survivors Benefit	$650	to	$1,200
Medical Expense	$2,000	to	$5,000
Funeral Expense	$1,000	to	$2,500
Rehabilitation Expense	$2,000	to	$5,000
Substitute Service Expense	$12/day	to	$22/day

NEW GENERAL BENEFIT - $1,250 THRESHOLD

FOR AUTOMATIC PAYMENT FOR PAIN & SUFFERING FOR ALL INJURED

MEDICAL	PAIN & SUFFERING	TOTAL
$100	0	
$250	0	
$500	0	
$750	0	
$1,000	0	
$1,250	0	

THRESHOLD FOR AUTOMATIC PAYMENT

OF PAIN & SUFFERING TO ALL INJURED

$1,251	500 + 1	$1,751
$1,500	500 + 250	$2,250
$1,750	500 + 500	$2,750
$2,000	500 + 750	$3,250
$2,500	500 + 1,250	$4,250
$3,000	500 + 1,750	$5,250

Even if your medical is less than $3,000 you can enter Tort System if injuries are permanent injuries or disfigurement, loss of a body member or permanent loss of a body function or death.

you can always enter the Tort System for almost anything else - loss of income, financial loss, or loss of use.

3/29/85
Attachment V

EXAMPLE OF POTENTIAL NO-FAULT BENEFITS AND SAVINGS

UNDER TORT		HB 2422	
$ 3,000	Medical Expense Benefit	$ 3,000	Medical
$ 2,000	Wage Loss Benefit	$ 2,000	Wage Loss
$ 6,000	General Damages	$ 2,250	General Damages
$11,000		$ 7,250	Injured Party's Recovery
.66	(1/3 attorney fee at least)		
$ 7,260			
- 400	Court Costs (plus witness & deposition costs)		
$ 6,860	Injured Party's Recovery		

Savings to the System (to Consumers)

Plaintiff's Attorney's fees	$3,630	
Defense Attorney's fees	$3,600	
Court Costs	$ 400	
(Assumes other party is 100% negligent)	$7,630	(Plus savings in company claims department overhead)

3/29/85
Attachment VI

PROFESSIONAL INSURANCE AGENTS PIA OF KANSAS, INC.

James R. Oliver, Executive Director ■ 627 Topeka Ave., Topeka, Kansas 66603-3296 ■ Phone (913) 233-4286

March 29, 1985

TESTIMONY TO THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

Mr. Chairman, Members of the Committee:

My name is Jim Oliver, Executive Director of the Professional Insurance Agents of Kansas, an association of some 650 independent insurance agents across the state.

Our members strongly support the passage of this bill.

The benefits afforded persons injured in auto accidents under our present No-fault law are grossly inadequate in todays environment. The need to update those benefits was recognized by the legislature last year, but the legislation passed was vetoed by the Governor who expressed the need of those with minor injuries to have something for general damages (pain and suffering).

This bill provides first party benefits for general damages for those minor injuries and does not restrict access to the courts for those with serious injuries.

Our members feel now is the time to have a meaningful No-fault law in Kansas and we urge you to pass this important legislation.

Thank you.

3/29/85
Attachment VII

State Farm Mutual Automobile Insurance Company

State Farm Insurance Claim Office
11661 College Boulevard
Overland Park, Kansas 66210

March 28, 1984

Senate Committee of Financial Institutions and Insurance
Chairman: Neil H. Arasmith
State Capitol Building
Topeka, Kansas

RE: House Bill 2422 - No Fault Automobile Insurance

Mr. Chairman and Members of the Committee:

State Farm Insurance Companies are the largest automobile insurer in Kansas, providing coverage to some 425,000 vehicles. Obviously, our company has a keen interest in legislation affecting the automobile insurance industry, hence our interest in House Bill 2422.

State Farm has long been an advocate of No-Fault Insurance.

1. No-Fault provides a better system of delivering benefits to injured parties. More of the premium dollar goes to the injury and less to adjustment and investigation expense (attorney's fees).

2. Benefits are paid promptly to all victims of highway accidents whether the victim has a claim against another driver or not.

To fund No-Fault benefits, it is necessary to restrict general damages (pain and suffering) on the less severe injuries where payment of out-of-pocket expenses (medical and lost wages) is acceptable compensation.

Everyone recognizes the need to update the 1973 Kansas No-Fault Law. The present Kansas Law is based on figures that have been subject to 250% to 300% inflation.

State Farm applauds the efforts of this legislature in 1974 in passing a No-Fault revision. We further applaud the efforts of the interim study committee in attempting to find a workable and acceptable solution to No-Fault revision.

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Although we are strong advocates of the Verbal Threshhold - because it endures time and inflation and it does not present a target for unscrupulous claimants - we believe the present form of House Bill 2422 is a definite improvement.

State Farm endorses the present form of House Bill 2422 and requests your favorable consideration.

Sincerely,

Richard W. Scott
Divisional Claim Supt.

RWS/eh

Testimony on behalf of The Topeka Bar Association
In Opposition to House Bill 2422
Before the Kansas Senate Committee on Financial Institutions
and Insurance

9:00 A.M., Friday, March 29, 1985

The Topeka Bar Association is a professional association of lawyers admitted to practice law in Kansas living or practicing in Topeka, Shawnee County, Kansas. The Association has in excess of 500 regular members.

The Association has authorized Ralph E. Skoog, Chairman of its Amendments to Laws Committee to appear before the appropriate bodies of the Kansas Legislature in opposition to House Bill 2422, and in support of the position previously announced of the Kansas Bar Association on the issues presented by the Bill.

The significant portions of the Bill are that there are some increases in the first party accident and health insurance provisions to which we have no objections. The Legislature previously determined that mandatory accident and health coverage, the so-called personal injury protection benefits, should be required to be carried by motor vehicle operators. The issues as to what that coverage is and the amount of it is not a matter in which The Topeka Bar Association has any particular concern.

The next provisionsof significance and those which The Topeka Bar objects are contained in Section 2, Lines 206 through 233. All of the records of litigation indicate that there have been no substantial increase in late years of tort law litigation related to automobiles. In fact the analysis of cases filed would indicate that there continues to be a reduction. In addition, the evidence before the Interim Committee, as we understand it, is that there is no substantial need for the proposed legislation unless it is the purpose of the Legislature to leave injured persons without full recovery for their injury and to immunize wrong-doers from the consequences of their acts. There is no relationship between the amount of accident and health insurance required to be carried under the term PIP benefits and the responsibility of wrong-doers for injury to claimants. There certainly is no justification that has been shown to any one justifying a 600% increase in the threshold or justifying the proposal that injured parties may suffer fractured weight bearing bones, compound comminuted displaced or compressed factures without compensation for the pain, anguish and discomfort which necessarily accompanies such severe injuries, even, in the event that the cost paid for health care is not significant. In the event that the Legislature proposed merely to make some inflation adjustment to a threshold of not to exceed $1,000, while it would not be justified by any evidence that has been submitted to this Legislature, The Topeka Bar Association would not object. Any proposed and peculiar equating of the amount of payment one is

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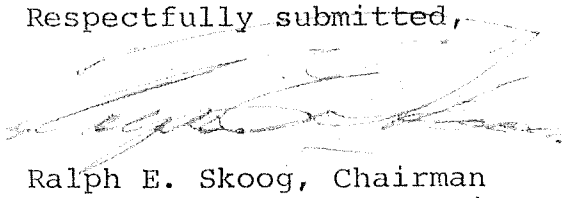
Attachment IX

entitled to for pain, suffering, inconvenience and mental anguish with the number of dollars charged by a health care provider appears to be beyond any rational or empirical reason or logic.

For the above and foregoing reasons, The Topeka Bar Association respectfully requests that in accordance with the Kansas Legislature's Interim Judiciary Committee Recommendation, that the proposal to increase the threshold and further restrict the rights of injured citizens be rejected.

Respectfully submitted,



Ralph E. Skoog, Chairman
Amendments to Laws Committee
Topeka Bar Association

TESTIMONY OF THE
KANSAS TRIAL LAWYERS ASSOCIATION

H.B. 2422
March 29, 1985

HISTORY OF NO FAULT

Between 1971 and 1975 twenty-six states passed bills enacting No Fault Auto Insurance. One state, Nevada, has repealed the legislation. In two others, New Mexico and Illinois, the bills never became law. No state has passed a no fault bill since 1975.

The only recent statute became effective in the District of Columbia in 1983. In December 1984, the $5,000 threshold in D.C. was struck down as unconstitutional by the U.S. District Court for the District of Columbia.

The Kansas Automobile Injury Reparations Act (no fault law) was enacted in 1973. The purpose of the Act, according to K.S.A. 40-3102, is "to provide a means of compensating persons promptly for accidental bodily injury arising out of the ownership, operation, maintenance or use of motor vehicles in lieu of liability for damages to the extent provided herein."

The Kansas law provides for mandatory insurance with liability limits of $25,000/$50,000 per accident; Personal Injury Protection (PIP) benefits for disability, survivor's benefits, medical expenses, funeral benefits, rehabilitation expenses and substitute service expenses. The PIP benefits provide "first

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party coverage" and pay expenses for persons injured in accidents.

There is a two-part "threshold" in the no fault law. Although the term is deceptive, the threshold is a bar or prohibition from court unless the injured person meets the statutory test. In the Kansas law the threshold is $500 in medical expenses or "permanent disfigurement, fracture of a weight bearing bone; a compound, comminuted, displaced or compressed fracture; loss of a body member; permanent injury or loss of a body function or death."

As the handout indicates, the current Kansas law has, by comparison, extremely low PIP benefits and an average threshold.

Since the enactment of the Kansas no fault law in 1973, the insurance industry has pushed for alterations. Almost yearly there have been bills introduced proposing raises in the PIP benefits and raises in the tort threshold. A bill finally was passed by both Houses of the Legislature in 1983, but was vetoed by Governor John Carlin. The subject was referred to an interim study.

1984 INTERIM STUDY

The Special Committee on Judiciary was directed to study the no fault law and "determine whether changes are needed in the tort threshold, the level of personal injury protection benefits, and other aspects of the law." For the first time in

this lengthy debate, the industry was asked to submit data on the Kansas no fault experience. (A copy of the questionnaire is enclosed). The Committee heard extensive testimony from the insurance industry and the legal community and made the recommendations included in H.B. 2011.

They are to enact the increases in PIP benefits proposed in 1984 H.B. 2833 as summarized below:

PIP Benefits	Current	Proposed
Disability (loss of earnings)	$650/person/month	$1,200/person/month
Survivor's benefit	$650/person/month	$1,200/person/month
Medical expense	$2,000/person	$5,000/person
Funeral expense	$1,000/person	$2,500/person
Rehabilitation expense	$2,000/person	$5,000/person
Substitute service expense	$12/day/person	$22/day/person

The Committee also unanimously rejected the concept of "indexing", a feature which appeared in the 1983 and 1984 proposals. The index would automatically adjust PIP benefits and the threshold according to the Consumer Price Index. The Judiciary Committee felt that any changes should remain within legislative discretion.

After lengthy debate, the Judiciary Committee recommended no change be made in the tort threshold. A significant factor in the Committee's decision was the testimony of two major

insurers on the premium increases which would result from a raise in PIP benefits without an increase in the threshold.

State Farm Insurance told the Committee that premiums would increase $3.10 per six-month period and Western Insurance quoted a $2.50 per six-month increase. The majority of the Committee felt that the increase was negligible considering the overal premium costs and was justified to insure those who experience pain and suffering as a result of an automobile accident. (Page 388 "Report on Legislative Interim Studies to the 1985 Legislature").

KANSAS TRIAL LAWYERS POSITION ON H.B. 2011, H.B. 2422.

KTLA wholeheartedly supports the recommendation of the Interim Committee on the tort threshold. The Association opposed the imposition of the initial $500 bar to the courts and strongly objects to raising or making more restrictive the threshold provision.

Eight of the states with no fault laws (Oregon, South Dakota, Delaware, Maryland, Arkansas, Texas, South Carolina and Pennsylvania) have no restrictions to an injured victims right to full recovery of damages. The no fault system provides for payment of various tangible expenses, but no compensation for "pain and suffering". It is not difficult to comprehend that the medical bills may not fully demonstrate the injuries received in an auto collision.

Citizens can spend the rest of their lives in pain or with a limited lifestyle due to a crash. The PIP benefits pay for only tangible expenses and do not compensate for other real injuries.

Currently, many Kansas citizens have coverage which duplicates PIP benefits. They have health insurance, disability insurance, workers compensation and a variety of insurance coverages which would pay bills. Raising PIP benefits, even to the relatively modest level suggested in H.B. 2011, forces all Kansans to purchase extra coverage which may duplicate their current insurance.

Although the data submitted by insurance companies this summer was incomplete and somewhat incomprehensible, the responses indicate that more than half of Kansas drivers currently voluntarily purchase increased PIP benefits. The increased benefits, far in excess of H.B. 2011, are very inexpensive (from $2.00 to $6.00 per year). These drivers would receive no direct benefit from H.B. 2011 and would be required to share the costs of mandatory increased coverage for other Kansas drivers.

KTLA feels that it is an appropriate public policy choice for the Legislature to weigh the merits of increased benefits. Even though the costs are relatively modest (approximately $.50 per month), it may be too expensive for some citizens. Since many Kansans already carry higher PIP benefits, and have other

insurance which duplicates the benefits, it might be better to leave the existing system in place. If more citizens were driven out of the insurance market because of minor increases, the net effect would be negative.

H.B. 2422 is one more demonstration of the insurance industry's attempt to convince the Legislature that it is good public policy for people to be forced to buy insurance, to be forced to purchase increased protection and to suggest that they pay for the coverage by releasing their legal rights to adequate compensation if they are injured.

For the first time, we have some specific insurance data about no fault. According to their responses, approximately 71% of the auto claims fall under the existing $500 threshold. Consequently, the threshold is effective in keeping small claims and the vast majority of claims out of the court system.

The bill vetoed last year by the Governor had a $1,500 medical threshold and no change in the "verbal" language. In his message the Governor said "H.B. 2833 would eliminate access to the courts for certain Kansas citizens. There is little evidence to indicate that our courts are unduly burdened by automobile law suits. I am reluctant to restrict rights of all citizens of this state unless there is compelling evidence that the benefits received outweigh any potential harm. There is no demonstration that H.B. 2833 would enhance protection for Kansas drivers."

H.B. 2422 suggests that PIP benefits be increased by the same level suggested in H.B. 2011 (about 2.5 times the existing level) and that the threshold be drastically altered. The dollar threshold would be raised to $3,000 (6 times the current level) and there would be further restrictions in the verbal threshold.

The removed language, including fractures to various bones, is intended to further eliminate awards for pain and suffering in these injuries. Anyone who has ever suffered a break of a bone fitting into this definition can readily understand that pain and suffering are an enormous part of these injuries."

The tremendous increase in the monetary threshold is justified by the authors due to the addition of new section (bb) on page 5. The "general benefits" provision does not exist in any law in the country, perhaps with good reason.

The formula automatically pays injured drivers additional money in exchange for losing their access to court. Unfortunately, it is the worst of all worlds. Anyone with a serious and debilitating injury would be grossly undercompensated for pain and suffering under the general damages scheme. If an injury results in $1,500 of medical bills and a lifetime of pain, an injured person would receive an additional $750.

On the other hand, the "general damages" payment would automatically go to injured drivers, regardless of fault. If a drunk driver injured others and hit a tree resulting in a personal medical bill of $1,500, he would be entitled to receive the additional payment of $750. This is not a cost saving measure and is basically not fair.

Is $.50 per month too much to pay to allow citizens their full legal rights? If it is, isn't the better choice to leave the law alone and not force people to buy more coverage in exchange for giving up access to the courts?

No one has to hire a lawyer; victims seek legal counsel when they feel that they are not being treated fairly by insurance companies. A new law penalizing delay in settling cases, and awarding costs and expense to victims when companies resist paying property damage claims would provide constitutents with reasonable consumer protection.

The two tables from a 1979 national study by the All-Industry (insurance) Research Advisory Committee shows that only 12.5% of PIP claimants are eligible for a tort claim under the existing Kansas law (far smaller than the 23.2% national average). Table 8-12.

Table 8-15 indicates that of the very small number of injured citizens in Kansas who now have access to the courts, 10.5% meet the "fracture" definition and 39.5 meet the "medical expenses" threshold to qualify for court. These two groups,

approximately 51% of those citizens who are now able to seek full recovery for their injuries, would be barred from court by H.B. 2422.

CONCLUSION.

The Kansas Trial Lawyers Association urges the Legislature to reject this blatant special interest legislation by the insurance industry. If it is desirable to mandate that more Kansas drivers have increased PIP benefits, we urge your favorable consideration of H.B. 2011, the recommendation of the Special Judiciary Interim Committee.

Please do not trade citizens rights for 50 cents. There is no compelling public policy to require that additional victims should lose their rights to full recoveries. The monetary costs of increased protection are extremely low, either mandated as PIP benefits or voluntarily purchased on the open market. We urge the Legislature to resist the argument that the only way to purchase more protection for Kansas drivers is to restrict their access to the courts. Please vote to defeat H.B. 2422.

RE: PROPOSAL NO. 28 — NO-FAULT AUTOMOBILE INSURANCE*

Proposal No. 28 directed the Special Committee on Judiciary to:

> study the Kansas Automobile Injury Reparations Act (the "no-fault" law) and determine whether changes are needed in the tort threshold, the level of personal injury protection benefits, and other aspects of the Act.

Background

Although there are many definitions of "no-fault" automobile insurance, it is basically a form of insurance in which a person's financial losses resulting from an automobile accident are paid by that person's own insurer, regardless of who was at fault. Because the benefits are paid by one's own insurance company, the insurance is said to be "first-party," and the package of various benefits is usually called personal injury protection or "PIP" benefits. PIP benefits typically include reimbursement for items such as the cost of medical treatment, rehabilitation expenses, and the loss of wages.

A total of 26 jurisdictions have enacted no-fault plans since 1970. No-fault legislation is currently in effect in 23 states plus the District of Columbia; the Illinois legislation was declared unconstitutional in 1972 and Nevada repealed its law in 1979, effective in 1980. North Dakota was the last state to enact a no-fault law, in 1975, and Washington, D.C. became the newest no-fault jurisdiction with the passage of its act in 1982, effective in 1983.

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* H.B. 2011 accompanies this report.

Eight states have "add-on" plans, that is, statutes that provide for no-fault benefits without imposing restraints on lawsuits. Five of the eight states — Arkansas, South Carolina, South Dakota, Texas, and Virginia — mandate the offering of no-fault benefits, but do not require their purchase. The three other states — Delaware, Maryland, and Oregon — require the purchase of specified no-fault benefits.

Sixteen jurisdictions have "modified" no-fault plans which add first-party benefits, make the purchase of insurance mandatory, and impose some limits on a person's ability to sue in court for damages. These jurisdictions are: Colorado; Connecticut; District of Columbia; Florida; Georgia; Hawaii; Kansas; Kentucky; Massachusetts; Michigan; Minnesota; New Jersey; New York; North Dakota; Pennsylvania; and Utah. All 16 jurisdictions have some type of "verbal" threshold, that is, a person may sue for nonpecuniary loss if their injury is of a type listed in the statutes. In addition, 13 of the 16 jurisdictions also have a medical expense threshold which allows a person to sue if the injury requires treatment, the cost of which exceeds a stated dollar amount. No restriction is placed on the right to sue for economic losses.

No state has enacted a "pure" no-fault plan, which would abolish all tort liability and substitute an exclusive insurance remedy in its stead.

The Kansas Automobile Injury Reparations Act (the Kansas no-fault law) was enacted in 1973, with the passage of Substitute for H.B. 1129, effective January 1, 1974. The Act was quickly challenged, however, by a plaintiff seeking a judgment declaring the Act unconstitutional and enjoining the defendant state officials from implementing and enforcing it. The Shawnee County District Court on January 4, 1974, found Substitute for H.B. 1129 to be unconstitutional upon the grounds that (1) the title of the Act was defective because it made no mention of first-party coverage; (2) the reimbursement provisions violated equal protection; and (3) the tort threshold denied due process and equal protection under the federal and state constitutions. That decision was stayed, however, by both the District Court and the Kansas Supreme Court.

While the appeal of the District Court opinion was pending, the 1974 Legislature passed S.B. 918, which was signed by the Governor on February 19, 1974, and became effective upon publication in the official state paper on February 22, 1974. Thus, S.B. 918 became the effective no-fault law of Kansas on that date, repealing the original no-fault law, although the latter statutes had been effective for 53 days —from January 1, 1974 through February 22, 1974.

The Supreme Court, in Manzanares v. Bell, 214 Kan. 589 (1974), decided the constitutional issues raised against both laws, and upheld the provisions of each Act. The public policy recognized by the Court was stated as follows:

> It is evident the Legislature was concerned with the possible burden on society occasioned by inadequate or nonexistent compensation for economic loss suffered by motor vehicle accident victims, particularly when viewed in the context of the large number of persons and total financial loss involved. By requiring motor vehicle liability policies to include first party PIP benefits, the Legislature may have eliminated the former necessity of resorting to litigation in many cases. The requirement of PIP coverage bears a reasonable relation to the subject of reparation for losses arising out of the ownership and operation of motor vehicles. Hence, the Kansas no-fault insurance plan being reasonably directed toward problems that affect the public welfare, including the economic welfare of the state and its citizens, the Act represents a proper and legitimate exercise of the police power of the state (214 Kan. 589, at page 608).

The Court summarized its opinion by stating:

> The court is of the opinion that the provisions of S.B. 918 containing basic no-fault concepts as set forth and discussed above, are not unconstitutional for any of the reasons urged by the parties upon

the grounds they violate the due process and equal protection clauses of the Kansas Constitution or the Fourteenth Amendment to the Constitution of the United States, or any of the other provisions of the state or federal constitutions urged (214 Kan. 589, at page 618).

Since that decision there have been at least 47 other appellate court decisions interpreting or applying the Kansas Act.

As stated above, the Kansas Act is a modified no-fault law. According to K.S.A. 40-3102, the purpose of the Act is "to provide a means of compensating persons promptly for accidental bodily injury arising out of the ownership, operation, maintenance, or use of motor vehicles in lieu of liability for damages to the extent provided herein." Thus, sections of the Kansas no-fault law require insurance with specified coverages, provide PIP benefits, and limit tort actions to recover for pain and suffering to cases where the medical treatment received or injuries sustained are of a particular magnitude.

The compulsory insurance requirement is contained in K.S.A. 1983 Supp. 40-3104. Accordingly, all motor vehicles in Kansas must be insured, unless they are exempt or owned by an authorized self-insurer (when one person owns more than 25 vehicles). Four narrow classes of vehicles exempt from the Act are listed in K.S.A. 40-3105. In addition, K.S.A. 40-3106 extends the insurance requirement to nonresidents driving in Kansas.

Another section of the law prescribes the contents of the required motor vehicle liability policies. K.S.A. 40-3107 and 40-284 require the following insurance coverages: minimum bodily injury liability limits of $25,000 per person and $50,000 per accident; a PIP benefits package containing disability benefits of $650 per person, per month, survivor's benefits of $650 per person, per month, medical expense benefits of $2,000 per person, funeral expense benefits of $1,000 per person, rehabilitation expense benefits of $2,000 per person,

and substitute service expense benefits of $12 per day, per person; and uninsured motorist coverage equal to the bodily injury liability limits in the policy, (but the insured may reject uninsured motorist limits in excess of the minimum liability limits), with the uninsured motorist coverage containing underinsured coverage equal to the uninsured motorist coverage. The uninsured motorist coverage allows a person to recover from his or her own company damages for bodily injury resulting from the actions of an uninsured motorist. The underinsured portion of such coverage allows a person to recover from his or her own company damages in excess of the liability limits of the party at fault, up to one's own liability limits. Motorcycle drivers are authorized to reject the PIP benefits coverage.

The Kansas tort threshold is contained in K.S.A. 40-3117. It requires that an injured party sustain one of the following before suing for nonpecuniary loss: medical expenses of $500 or more; permanent disfigurement; the fracture of a weight-bearing bone; a compound, comminuted, displaced, or compressed fracture; the loss of a body member; permanent injury or loss of a body function; or death. The importance of the tort threshold in the no-fault plan is seen in K.S.A. 40-3121, which declares that K.S.A. 40-3117 is nonseverable.

In 1983 the Insurance Commissioner requested introduction and passage of H.B. 2248. That bill would have amended the no-fault law to increase both the minimum PIP benefits and the medical expense portion of the tort threshold. The PIP benefits were increased by application of the increases in various components of the Consumer Price Index for all Consumers (CPI-U) since 1973 to the dollar amounts enacted by the no-fault law in 1973. The medical expense portion of the tort threshold was also similarly increased, but the base used was $1,000, rather than the existing $500 amount; the 1973 Actuarial Report by Nelson and Warren, Inc., estimated that a $1,000 medical expense tort threshold should keep premiums under no-fault approximately the same as those for the former bodily injury and uninsured motorist coverages. H.B. 2248 was recommended by the House Committee on Insurance, but was referred back to the Committee in 1983 and died there at the end of the 1984 Session.

In 1984 a bill on the same subject, H.B. 2833, was considered and passed by the Legislature, but was vetoed by the Governor and did not become law. Thus, the amount of required PIP benefits and the tort threshold have remained unchanged since the original 1973 legislation.

Committee Activity

The Committee spent a considerable amount of time on the proposal, devoting portions of five meetings to the topic. Testimony was presented at two of the meetings, and the Committee received additional information from survey responses. The Committee debated issues relative to the proposal at three other meetings. A summary of the testimony follows.

Staff. Staff presented a memorandum on the concept of no-fault insurance, the types of no-fault plans, a summary of other states' no-fault acts, a brief history and summary of the Kansas law, and a review of recently proposed amendments to the law. At the Committee's request staff also prepared survey letters which were sent to selected insurance companies to solicit more information on claims experience, the estimated impact of legislative changes on insurance premiums, and reactions to various proposals for changes in the Kansas law. The responses to the survey letters were presented by staff. Finally, staff also presented a list of policy issues for Committee discussion. Copies of all staff memoranda and the survey responses are available in the Legislative Research Department.

Kansas Insurance Department. A representative of the Insurance Department testified in support of no-fault and advocated an increase in both PIP benefits and the medical expense portion of the tort threshold to reflect the inflationary spiral that has occurred since the passage of the Act in 1973.

Insurance Industry. The Committee heard testimony from representatives of the following insurance organizations: the Western Insurance Companies; the Independent Insurance

Agents of Kansas; Farm Bureau Insurance; the Alliance Insurance Companies; the Kansas Association of Property and Casualty Insurance Companies; the Alliance of American Insurers; State Farm Insurance; and the Professional Insurance Agents of Kansas. All of these representatives supported increases in the PIP benefits, and said that the tort threshold should also be raised to keep the law "in balance."

Legal Profession. A representative for the Kansas Bar Association supported the application of a common inflation factor to both the PIP benefits and the medical expense portion of the tort threshold if the current amounts are used as the starting points for such increases; the Association opposed use of only a verbal tort threshold. A spokesman for the Kansas Trial Lawyers Association opposed any increase in the tort threshold.

Committee Conclusions and Recommendations

After extensive debate, the Committee voted to make the following recommendations.

PIP Benefits. The Committee recommends increasing the minimum PIP benefits specified in K.S.A. 40-3103 to the levels proposed in 1984 H.B. 2833, as summarized below.

PIP Benefits	Current	Proposed
Disability (loss of earnings)	$650/person/month	$1,200/person/month
Survivor's benefit	$650/person/month	$1,200/person/month
Medical expense	$2,000/person	$5,000/person
Funeral expense	$1,000/person	$2,500/person
Rehabilitation expense	$2,000/person	$5,000/person
Substitute service expense	$12/day/person	$22/day/person

Indexing. The Committee recommends that no provision be added to the no-fault law which would index, or automatically adjust for inflation, the dollar amounts of the PIP benefits or the tort threshold. The Committee believes that amendments to these crucial portions of the no-fault law should be made only by the Legislature.

Tort Threshold. The Committee by a majority vote after a strenuous debate decided that no change should be made in the tort threshold. The main focus of the debate was whether the $500 medical expense portion of the tort threshold should be raised. The Committee was made aware that the medical care portion of the CPI-U index (for all urban consumers) had changed from 137.7 in 1973 to 357.3 in 1983. The 1983 figure is 259 percent of the 1973 figure, which indicates serious erosion of this portion of the threshold. The Committee was also told by insurers that the medical expense portion of the tort threshold would have to be raised to $2,500 to offset premium increases which would be necessitated by the PIP benefit increases recommended.

On the other hand, the Committee was advised by two major insurers that the PIP benefit increases recommended without any threshold change, would only increase premiums by $3.10 per six-month period by State Farm Insurance Companies and by $2.50 per six-month period by the Western Insurance Companies. This clarification of written materials submitted to the Committee was obtained by phone from Mr. Homer Cowan, Vice-President of Public Affairs. The $2.50 per six-month increase was based on a $1,000 medical expense threshold. Mr. Cowan said the same premium increase amount, however, would apply based on the current $500 medical expense threshold. He noted the current rate structure was inadequate and would require a 15 percent rate increase. The majority of the Committee felt that this premium increase was negligible considering the overall premium costs of automobile insurance and was justified to insure those who experience pain and suffering as a result of an automobile accident be fully compensated.

The Committee did consider raising the medical expense portion of the tort threshold to $1,000, but the majority felt

the insurance premium relief, if any, which would be afforded would be so slight so as not to justify such an increase.

Enactment of H.B. 2011 would carry out the above recommendations.

Respectfully submitted,

November 30, 1984

Rep. Joe Knopp, Chairperson
Special Committee on
Judiciary

Sen. Paul Burke,
Vice-Chairperson
Sen. Paul Feleciano, Jr.
Sen. Jeanne Hoferer
Sen. William Mulich
Sen. Wint Winter, Jr.

Rep. Wanda Fuller
Rep. Vic Miller
Rep. John Solbach
Rep. Dale Sprague

AUTOMOBILE INJURIES AND THEIR COMPENSATION IN THE UNITED STATES

VOLUME I

March, 1979

Insurance Industry Studies
by the
All-Industry Research Advisory Committee

The study procedure followed in the auto injury closed claim study was to have each of the participating companies complete the detailed questionnaire (Appendix A) for each bodily injury liability, uninsured motorist liability, medical payments and personal injury protection claim closed during 10 consecutive work days between October 2 and November 20, 1977.

Table 8-11 reveals the effect of such thresholds on the distribution of BI claims in the no-fault states, where only 37.8 percent of the BI claims arose from injuries involving economic losses of $500 or less. By contrast, these small claims accounted for 67.4 percent of BI claims in the tort states and 70.1 percent in add-on states, neither of which have thresholds.

Another way of measuring the impact of tort thresholds is presented in Table 8-12. It shows, for each no-fault state, the percentage of PIP claimants judged by file reviewers to be eligible for a tort claim in addition to their PIP payments. The question was posed in two dif-

TABLE 8-11
Distribution of Claimants By Size of Economic Loss

BI COVERAGE						
Size of Economic Loss	Tort States		No-Fault States		Add-On States	
	Number	%	Number	%	Number	%
$ 0- 500	9,028	67.4%	1,601	37.8%	2,997	70.1%
501-1,000	1,713	12.8	697	16.4	500	11.7
Over 1,000	2,652	19.8	1,941	45.8	777	18.2
Total Valid Responses	13,393	100.0%	4,239	100.0%	4,274	100.0%

TABLE 8-12
Percentages of PIP Claims Eligible for Tort Claim and Estimated Effect of No-Fault Thresholds

State	Total Number of Claimants	% of PIP Claimants Judged Eligible For Tort Claim Under Prior Tort Law	Total Number of Claimants	% of PIP Claimants Judged Eligible For Tort Claim Under No-Fault Law	% of PIP Claimants Made Ineligible For Tort Claim By Threshold
Colorado	469	54.6%	463	15.8%	38.8%
Connecticut	640	65.3	636	18.7	46.6
Florida	1,984	68.5	1,912	30.9	37.6
Georgia	953	56.0	947	24.1	31.9
Hawaii	220	58.6	216	3.2	55.4
Kansas	325	52.9	321	12.5	40.4
Kentucky	451	52.8	443	10.4	42.4
Massachusetts	680	65.6	670	26.3	39.3
Michigan	1,053	56.1	994	6.0	50.1
Minnesota	577	62.9	556	10.1	52.8
Nevada	95	70.5	92	21.7	48.8
New Jersey	2,070	68.7	2,058	35.2	33.5
New York	3,115	71.5	3,084	27.2	44.3
North Dakota	89	53.9	89	3.4	50.5
Pennsylvania	2,101	64.3	2,079	19.1	45.2
Utah	156	44.9	155	19.4	25.5
	14,978	64.7%	14,715	23.2%	41.5%

TABLE 8-15
HOW THRESHOLD OVERCOME
Two-Week BI

State	Effective Date of Law	Medical Threshold Limitation	Death	Permanent Dismemberment Disfigurement	Permanent Injury	Loss of Bodily Function	Disability Period	Fracture	Medical Expense	Other
			% of Total	% of Total	% of Total	% of Total	% of Total	% of Total	% of Total	% of Total
New Jersey (467)*	1/1/73	$ 200	.6%	6.2%	6.0%	—	.4%	8.8%	74.7%	3.2%
Connecticut (118)	1/1/73	400	6.8	11.9	11.0	—	.8	12.7	53.4	3.4
Colorado (66)	4/1/74	500	7.6	12.1	10.6	3.0%	1.5	—	57.6	7.6
Georgia (179)	10/1/74	500	4.5	10.1	5.0	—	39.7	9.5	19.0	12.3
Kansas (38)	1/1/74	500	5.3	18.4	13.2	—	2.6	10.5	39.5	10.5
Massachusetts (162)	1/1/71	500	6.2	16.7	6.2	.6	1.2	32.7	30.9	5.6
New York (564)	2/1/74**	500	3.0	10.5	7.4	1.1	3.5	11.3	61.0	2.1
Utah (32)	1/1/74	500	6.2	12.5	6.2	3.1	3.1	12.5	40.6	15.6
Nevada (26)	2/1/74	750	7.7	3.8	3.8	3.8	—	7.7	57.7	15.4
Pennsylvania (142)	7/19/75	750	3.5	4.2	7.7	.7	6.3	11.3	64.1	2.1
Florida (552)	1/1/72**	1,000	3.8	12.5	38.6	2.4	8.3	3.3	26.3	4.9
Kentucky (22)	7/1/75	1,000	9.1	4.5	13.6	—	—	27.3	40.9	4.5
North Dakota (3)	1/1/76	1,000	—	—	—	—	66.7	—	33.3	—
Hawaii (6)	9/1/74	1,500	—	16.7	16.7	—	—	—	66.7	—
Minnesota (27)	1/1/75	2,000	3.7	29.6	25.9	—	18.5	—	14.8	7.4
Michigan (57)	10/1/73	—	19.3	24.6	14.0	24.6	1.8	7.0	—	8.8

*Figures in parentheses show the number of BI claimants subject to the no-fault law. The claim count is less than in some other tables, in part because some BI claims in this study were filed prior to the effective dates of the various no-fault laws, and therefore were not subject to the tort thresholds.

**On 7/5/77 Florida changed to a days-of-disability threshold and on 6/20/78 changed to a verbal threshold. New York changed to a days-of-disability threshold on 8/11/78.

Table 8-16 shows the average payment received per $1 of economic loss by PIP claimants in no-fault states and by MP claimants in tort states. Most injured persons had these coverages available whether or not they were eligible for a tort recovery. The table shows that the PIP coverage provided substantially higher reimbursement than the MP coverage, particularly for injuries involving large economic losses. Extent of reimbursement declined as economic losses increased in size, in part because of coverage limits (see Tables 4-21 and 8-25).

An adjusted indication of the extent of reimbursement provided by MP is found in column three, which shows the average payment per $1 of economic loss for MP claimants after taking into account estimated wage losses. Since MP does not cover wage loss, the claims presented to MP insurers generally do not include this element of loss, and as a result the reimbursement ratios shown in column two are not comparable to those shown for PIP. The missing wage loss was estimated from comparable data collected on PIP claims in no-fault states.

The reimbursement received by individuals collecting BI payments also differed by state

Public Relations Department, State Farm Insurance Companies

TABLE OF STATE "NO-FAULT" LAWS

Index To State Listings

PROVISIONS OF STATE "NO-FAULT" LAWS

State	No-Fault Benefits	Limitation on Damages For Pain and Suffering	Vehicle Damage	Effective Date
Massachusetts	$2,000 in benefits for medical, funeral, wage loss, and substitute service expenses. Wage loss and substitute service benefits are limited to 75% of actual loss.	Can recover only if medical costs exceed $500, or in case of death, loss of all or part of body member, permanent and serious disfigurement, loss of sight or hearing, or a fracture.	Stays under tort system after Jan. 1, 1977. Prior to then, no tort liability for vehicle damage.	Jan. 1, 1971.
Delaware	$15,000 per person and $30,000 per accident. Covers medical costs, loss of income, loss of services, and funeral expenses (limited to $3,000).	None. But amount of no-fault benefits received can't be used as evidence in suits for general damages.	Stays under tort system.	Jan. 1, 1972.
Florida	$10,000 per person. Pays 80% of medical costs; 60% of lost income; replacement services; and funeral costs (limited to $1,750). Deductibles of $250, $500, $1,000, and $2,000 available.	Cannot recover unless injury results in significant, permanent loss of important body function; permanent injury; significant and permanent scarring or disfigurement; or death.	Stays under tort system.	Jan. 1, 1972, for original law. Provisions at left effective Oct. 1, 1982.
Oregon	$5,000 medical benefits. 70% of wage loss up to $750 month. $18 a day substitute services. Wage loss and substitute services paid from first day if disability lasts 14 days; are limited to 52 weeks.	None.	Stays under tort system.	Jan. 1, 1972. Jan. 1, 1974, for benefits at left.
South Dakota	Purchase is optional. $2,000 in medical expense. $60 week for wage loss, starting 14 days after injury, for up to 52 weeks. $10,000 death benefit.	None.	Stays under tort system.	Jan. 1, 1972.

State	No-Fault Benefits	Limitation on Damages For Pain and Suffering	Vehicle Damage	Effective Date
Virginia	Purchase is optional. $2,000 for medical and funeral costs. $100 week for wage loss with limit of 52 weeks.	None	Stays under tort system.	July 1, 1972.
Connecticut	$5,000 benefits for medical, hospital, funeral (limit $2,000), lost wages, survivors' loss, and substitute service expenses. Wage loss, substitute service, and survivors' benefits limited to 85% of actual loss.	Cannot recover unless economic loss exceeds $400, or there is permanent injury, bone fracture, disfigurement, dismemberment, or death.	Stays under tort system.	Jan. 1, 1973.
Maryland	$2,500 in benefits for medical, hospital, funeral, wage loss, and substitute service expenses.	None.	Stays under tort system.	Jan. 1, 1973.
New Jersey	Unlimited benefits for medical and hospital costs. Wage loss up to $100 a week for one year. Substitute services up to $12 a day for maximum of $4,380 per person. Funeral expenses of $1,000. Survivors' benefits equal to amount victim would have received if he had not died. Motorist may exclude all benefits except medical and hospital. Medical coverage may be bought with deductibles of $500, $1,000, or $2,500.	Motorist selects one of two optional limitations. Option 1: Cannot recover if injuries are confined to soft tissue and medical costs, exclusive of hospital, x-ray and other diagnostic expenses, are less than $200; unless injury causes death, permanent disability, permanent significant disfigurement, permanent loss of a bodily function, or loss of a body member. Option 2: Cannot recover if medical expenses, excluding hospital, x-ray and other diagnostic costs, are less than $1,500 (adjusted annually to reflect inflation); unless injuries cause death, permanent disability, permanent significant disfigurement, permanent loss of a body function, or loss of body member.	Stays under tort system.	Jan. 1, 1973, for original law. July 1, 1984, for this version.
Michigan	Unlimited medical and hospital benefits. Funeral benefits up to $1,000. Lost wages up to $1,475 per month, adjusted annually to keep up with cost of living, and substitute services of $20 a day payable to victim or survivor.	Cannot recover unless injuries result in death, serious impairment of body function, or permanent serious disfigurement.	Tort liability abolished, except in cases where damage is not over $400.	Oct. 1, 1973.
New York	Aggregate limit of $50,000 for medical, wage loss, and substitute service benefits. Wage loss: 80% of actual loss with benefit limited to $1,000 per month. Substitute services benefits: $25 a day for one year. In fatal cases, estate gets $2,000 in addition to above benefits.	Cannot recover unless disabled for 90 of the 180 days after accident, or injury causes dismemberment; significant disfigurement; fracture; loss of a fetus; permanent loss of use of body organ, member, function, or system; permanent consequential limitation of use of body organ or member; significant limitation of use of body function or system; or death.	Stays under tort system.	Feb. 1, 1974, for original law.

State	No-Fault Benefits	Limitation on Damages For Pain and Suffering	Vehicle Damage	Effec Date
Arkansas	Purchase is optional. $5,000 per person for medical and hospital expenses. Wage loss: 70% of lost wages up to $140 a week, beginning 8 days after accident, for up to 52 weeks. Essential services: up to $70 a week for up to 52 weeks, subject to 8-day waiting period. Death benefit: $5,000.	None.	Stays under tort system.	July 1, 1974.
Utah	$2,000 per person for medical and hospital expenses. 85% of gross income loss, up to $150 a week, for up to 52 weeks. $12 a day for loss of services for up to 365 days. Both wage loss and service loss coverages subject to 3-day waiting periods that disappear if disability lasts longer than two weeks. $1,000 funeral benefit. $2,000 survivor's benefit.	Cannot recover unless medical expenses exceed $500, or injury results in dismemberment or fracture, permanent disfigurement, permanent disability, or death.	Stays under tort system.	Jan. 1, 1974.
Kansas	$2,000 per person for medical expenses. Wage loss: up to $650 a month for one year. $2,000 for rehabilitation costs. Substitute service benefits of $12 a day for 365 days. Survivor's benefits: Up to $650 a month for lost income, $12 a day for substitution benefits, for not over one year after death, minus any disability benefits victim received before death. Funeral benefit: $1,000.	Cannot recover unless medical costs exceed $500, or injury results in permanent disfigurement, fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury, permanent loss of a body function, or death.	Stays under tort system.	Jan. 1, 1974.
Texas	$2,500 per person overall limit. Covers medical and funeral expenses, lost income, and loss of services. Purchase optional.	None.	Stays under tort system.	90 days after adjournment of 1973 regular session.

State	No-Fault Benefits	Limitation on Damages For Pain and Suffering	Vehicle Damage	Effective Date
evada **The Nevada no-fault law was repealed June 5, 1979**	Aggregate limit was $10,000. Paid for medical and rehabilitation expenses; up to $175 a week for loss of income; up to $18 a day for 104 weeks for replacement services; survivor's benefits of not less than $5,000 and not more than victim would have gotten in disability benefits for 1 year; and $1,000 for death.	Could not recover unless medical benefits exceeded $750 or injury caused chronic or permanent injury, permanent partial or permanent total disability, disfigurement, more than 180 days of inability to work at occupation, fracture of a major bone, dismemberment, permanent loss of a body function, or death.	Stayed under tort system.	Feb. 1, 1974. Repeal effective Jan. 1, 1980
Colorado	$25,000 for medical expenses. $25,000 for rehabilitation. Lost income: up to $125 a week for up to 52 weeks. Services: up to $15 a day for up to 52 weeks. Death benefit: $1,000.	Cannot recover unless medical and rehabilitation services have reasonable value of more than $500, or injury causes permanent disfigurement, permanent disability, dismemberment, loss of earnings for more than 52 weeks, or death.	Stays under tort system.	April 1, 1974.
Hawaii	Aggregate limit of $15,000. Pays for medical and hospital services; rehabilitation; occupational, psychiatric, and physical therapy; up to $800 monthly for income loss, substitute services and survivors' loss; and up to $1,500 for funeral expenses.	Cannot recover from 9-1-74, to 8-31-76, unless medical and rehabilitation expenses exceed $1,500. Thereafter, must exceed a floating threshold established annually by the insurance commissioner. Can also recover if injury results in death; significant, permanent loss of use of body part or function; or permanent and serious disfigurement that subjects injured person to mental or emotional suffering.	Stays under tort system.	Sept. 1, 1974.
Georgia	Aggregate limit of $5,000. Up to $2,500 for medical costs. 85% of lost income with maximum $200 week. $20 day for necessary services. Survivors' benefits same as lost income benefits had victim lived. $1,500 funeral benefit.	Cannot recover unless medical costs exceed $500, disability lasts 10 days, or injury results in death, fractured bone, permanent disfigurement, dismemberment, permanent loss of body function, permanent, partial or total loss of sight or hearing.	Stays under tort system.	Mar. 1, 1975.

State	No-Fault Benefits	Limitation on Damages For Pain and Suffering	Vehicle Damage	L
Kentucky	Aggregate limit of $10,000. Covers medical expense; funeral expense up to $1,000; income loss up to $200 weekly, with as much as 15% deducted for income tax savings; up to $200 a week each for replacement services loss, survivors economic loss, and survivors replacement services loss. Motorist has right to reject no-fault.	Cannot recover unless medical expenses exceed $1,000, or injury results in permanent disfigurement; fracture of weight-bearing bone; a compound, comminuted, displaced or compressed fracture; loss of a body member; permanent injury; permanent loss of a body function; or death. But limitation does not apply to those who reject no-fault system or to those injured by driver who has rejected it.	Stays under tort system.	July 1, 1975.
Minnesota	$20,000 for medical expense. $10,000 for other benefits, including 85% of lost income up to $200 weekly; $200 a week for replacement services, with 8-day waiting period; up to $200 weekly in survivors economic loss benefits; up to $200 weekly for survivors replacement service loss; and $1,250 for funeral benefits.	Cannot recover unless medical expenses (not including X-rays and rehabilitation) exceed $4,000; or disability exceeds 60 days; or the injury results in permanent disfigurement; permanent injury; or death.	Stays under tort system.	Jan. 1, 1975.
South Carolina	Aggregate limit of $1,000. Covers medical and funeral costs, loss of earnings (if desired), loss of essential services. Purchase is optional.	None.	Stays under tort system.	Oct. 1, 1974.
Pennsylvania	Up to $10,000 for medical and rehabilitation costs. Up to $5,000 for income loss, limited to $1,000 per month and 80 percent of actual lost income; includes benefits for hiring substitute to perform self-employment services and hiring special help to enable victim to work. A funeral benefit of $1,500. Motorists can buy optional coverages with aggregate limit up to $277,500. The Pennsylvania Catastrophic Loss Trust Fund provides up to $1 million of coverage for medical and rehabilitation expenses exceeding $100,000.	None.	Stays under tort system.	Oct. 1, 1984.

State	No-Fault Benefits	Limitation on Damages For Pain and Suffering	Vehicle Damage	Effective Date
North Dakota	Overall limit of $15,000 per person. Covers medical and rehabilitation costs, up to $150 a week for income loss, up to $15 a day for replacement services, up to $150 a week for survivors income loss, up to $15 a day for survivors replacement services loss, and up to $1,000 for funeral expenses.	Cannot recover from insured person unless injury results in more than $1,000 in medical expenses, more than 60 days of disability, serious and permanent disfigurement, dismemberment, or death.	Stays under tort system.	Jan. 1, 1976.
District of Columbia	Medical and rehabilitation benefits up to $100,000. Up to $2,000 per month for work loss, maximum $24,000. Up to $50 per day, limited to three years, for replacement services (maximum of $24,000). Funeral benefits up to $2,000.	Cannot recover unless medical expenses exceed $5,000 (to be adjusted annually to reflect cost-of-living changes); medically demonstrable impairment disables victim for more than 180 continuous days; victim has substantial permanent scarring or disfigurement; victim has medically demonstrable permanent impairment that disables him; or injury is fatal.	Stays under tort system.	Oct. 1, 1983.