Approved March 31, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Sen. Joe Harder
Vice-Chairperson at

9:00 a.m./~~p.m.~~ on March 30, 1987 in room 529-S of the Capitol.

All members were present except:

Senators Arasmith and Burke - Excused

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Ron Todd, Kansas Insurance Department
L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies
Larry Magill, Independent Insurance Agents of Kansas
Tim Alvarez, Kansas Trial Lawyers

The minutes of March 27 were approved.

The hearing began on HB 2147 which is a revision of the no-fault insurance law. First to testify was Ron Todd, Kansas Insurance Department. (See Attachment I.) Mr. Todd called special attention to page three of his testimony regarding two amendments the Department recommends that would allow increased benefits at no additional costs to the consumer.

L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies, testified further on HB 2147 and in support of the recommended amendments to keep rates down and keep the bill revenue neutral. (See Attachment II.) He also passed out copies of a booklet, "The Cost of No-Fault", prepared by Alliance of American Insurers, Schaumburg, Illinois, for the committee's information.

Larry Magill, Independent Insurance Agents of Kansas, testified in opposition to the bill in its present form. (See Attachment III.)

Tim Alvarez, Kansas Trial Lawyers, followed with his testimony. (See Attachment IV.)

Sen. Harder called the committee's attention to written testimony of Ron Smith, Kansas Bar Association, which had been passed out at Mr. Smith's request who was unable to appear to testify personally. (See Attachment V.)

Sen. Reilly said that he could not see how Mr. Alvarez could state that there is not a need for changes when the amount allowed for funeral expense is $1000 which is not enough at present for the expense of a funeral. Mr. Alvarez responded that he agrees $1000 would not be enough, but there is a small fraction of accidents which result in death, and an increase in rates makes everyone pay for it. He concluded that he does not think all should be required to purchase this.

Sen. Karr questioned Mr. Alvarez concerning his statements about a balance between PIP benefits and the monetary threshhold, however, time ran out, and the meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3/30	Steve Ortmeyer	O.P. Ks.	State Farm
"	L M Cornish	Topeka	Ks Assoc Prop Cas Cos
3/20	Mark L Bennett	Topeka	Am Ins Assn
3/30	Gary Poulton	Bloomington, Ill	State Farm
"	Rick Scott	O.P. Ks	State Farm
"	Rick Welbern.	McPherson, KS	Farmers Alliance
"	John W Smith	Topeka	Dept of Revenue
"	Timothy Alvarez	KC, KS	KTLA
	Richard Weston	Topeka	ICTA
✓	Bud Carlson	Topeka	KTLA
"	Dick Brock	"	Ins Dept
"	Alvie Price	Topeka	KBA

House Bill No. 2147
Testimony to Senate Committee on Financial Institutions & Insurance
By
Kansas Insurance Department

As evidenced by the fact that House Bill No. 2147 is the Department's Legislative Proposal No. 1 which the House Committee on Insurance introduced, Commissioner Bell and the staff of the Kansas Insurance Department have always and still remain a strong advocate of no-fault automobile insurance. No-fault automobile insurance is a means of providing more benefits more quickly to more traffic accident victims than was possible under the tort system. And, not only is no-fault a means of achieving this purpose, the Kansas legislature has enacted very few, if any, bills in its history where there was a greater guarantee of success. No-fault is simply another way of describing first party, contractual agreements an insurance company makes with its insureds. Thus, it eliminates the time, expense and uncertainty involved in determining who was at fault in an accident or how much someone was at fault before personal injury protection benefits are payable. In fact, there need not even be anyone at fault since payment of PIP benefits are a first party contractual obligation. So, in essence, all the insurance company needs to know is that one of their insureds has been injured in an automobile accident to know that benefits are payable. And, not only do they know benefits are payable, but they also know they must be paid within 30 days or interest at the rate of 18% will be attached which certainly encourages prompt payment.

However, the payment of more benefits to more people more promptly serves the purpose of no-fault better when those benefits are adequate. At the same time, since the purchase of automobile liability insurance that includes the personal injury protection benefits is mandatory, the minimum limits should not be excessive. In other words, the Kansas no-fault law was originally designed to require the purchase of minimum PIP benefits which would be adequate for the injuries sustained in the vast majority of automobile accidents but which would not burden the basic insurance rates with a charge for the relatively infrequent loss of a catastrophic size. In 1973 when no-fault was first enacted, the $2,000 medical payments coverage included in the defined PIP benefits would cover approximately 98% of all medical expenses attributable to automobile accidents and the other PIP benefits were derived using the same general philosophy.

I'm not sure but I seriously doubt that any of the conferees who appear on this bill will argue whether or not inflation has eroded the value of the benefits since the 1973 enactment of the original law. The following table vividly indicates how the value of these benefits has changed:

Attachment I
Senate F I & I - 3/30/87

PIP

Description	Benefit 1973 $	1973 Index	Current Index	Current Dollar Benefit Equivalent*
Medical	$2000/person	137.7[1]	435[4]	6318 (6500)
Funeral	$1000/person	133.1[2]	323.4[5]	2430 (2500)
Rehabilitation	$2000/person	137.7[1]	435[4]	6318 (6500)
Loss of Earnings	$650/person/mo	145.39[3]	305.02/wk[6]	1364 (1400)
Survivors Benefits	$650/person/mo	145.39[3]	305.02/wk[6]	1364 (1400)
Substitute Service	$12/day/person	145.39[3]	305.02/wk[6]	25 (25)
Tort Exemption	$1000	137.7[1]	435[4]	3159 (3000)
Tort Exemption	$500	137.7[1]	435[4]	1580 (1500)

*Amounts in parenthesis are "rounded" amounts included in House Bill 2147.

1 - Medical Care Annual CPI
2 - All Items Annual CPI
3 - Average Weekly Earnings of Production or Nonsupervisory Workers Nonagricultural Payrolls
4 - August 1986 CPI Detailed Report D.O.L.
5 - August 1986 CPI Detailed Report D.O.L.
6 - September 1986 Employment and Earnings D.O.L.

Based upon the figures reflected in this table, it does not appear there is any question that the benefits need to be raised and House Bill No. 2147 would change the minimum PIP benefits by the same amount as the CPI -- or, in the case of wage loss, the change in earnings -- since 1973.

However, the question of increasing benefits has never been the stumbling block to legislative change. The stumbling block has been increasing the threshold. This is unfortunate, because for there to be an increase in benefits, there must also be an increase in the tort threshold. This is necessary because the money saved by not having to determine fault, otherwise simplifying the claims handling process, and avoiding unnecessary litigation is used to fund these additional benefits. In essence, what this really does is return more of the premium dollar to the insured through claims benefits, rather than pay it out as a claims expense.

In this regard, you will note that House Bill No. 2147 as amended by the House Committee on Insurance increases the tort threshold from $500 to $1,750. Thus, in a purely mathematical sense, the bill includes a greater increase in the tort threshold than for the personal injury protection benefits. I mention this because it became evident that many members of the House and apparently some of the conferees who testified in opposition to House Bill No. 2147 erroneously believe there is some direct correlation between the dollar amount of the PIP benefits and the dollar amount of the tort threshold. There is no direct correlation -- there never has been -- and there never will be. While it is true that the tort threshold is based

on the value of medical services and thus becomes eroded by inflation the same as the PIP benefit for medical expenses, the real question that must be answered is what threshold amount or threshold provision is necessary to remove enough litigation and claims expenses from the system to pay for the additional first party personal injury protection benefits?

This is never an easy question to answer with a high degree of precision but it is made even more difficult by the very substantial amendments to House Bill No. 2147 by the House Committee on Insurance and the House Committee of the Whole. In its original form, with the exception of some noncontroversial housekeeping amendments, the proposal we recommended and the House introduced was simply an updated version of House Bill No. 2422 which the Kansas legislature placed on the Governor's desk last year.

However, the House amendments removed the provisions which would have included coverage for general benefits -- that is pain and suffering, inconvenience, and other noneconomic loss. In so doing, the amendments also removed the dual threshold provisions -- one threshold for general damages and another threshold for entry to the tort system. And, in addition to these significant changes, the House amendments restored the so-called "fracture language" to the verbal portion of the threshold provisions. In summary, all of these changes -- removal of general benefits, elimination of dual threshold -- and reinsertion of the fracture language were replaced by a $1,750 monetary threshold. Information received from an actuary employed by State Farm Mutual Insurance Company which writes in excess of 20% of the private passenger automobile insurance in Kansas estimates that these amendments will result in an 8% increase in automobile liability insurance premiums. This estimate relates only to the effect of the legislation. Any current inadequacy in liability premiums would require an increase sufficient to correct the inadequacy plus the 8% required to pay for the increased PIP benefits without a commensurate adjustment in the threshold provisions. As a result, the Department supports no-fault and continues to believe the no-fault law needs to be updated but we cannot support the bill that is now before you.

Despite the House action, we believe House Bill No. 2147 in its original form would have served Kansas citizens the best. The first party general damage benefit was new -- innovative -- and a very positive response to those who claim that no-fault insurance deprives injured parties of access to payment for nonpecuniary damages. However, we are also reconciled to the fact that the concept of first party general damage benefits does not have sufficient legislative support to be enacted.

Consequently, again relying on information submitted by the actuary, the threshold in the bill now under consideration should be increased to $2,250 from $1,750 in lines 507 and 518 on page 14 and the language reinserted in lines 510 and 511 of the same page should be removed to produce a bill that will not produce a legislatively created increase in automobile liability insurance premiums.

Attachment I
Senate F I & I - 3/30/87

Needless to say, you are going to be presented some arguments against changes in the no-fault law and particularly against significant changes in the threshold -- including the amendments I just mentioned -- that must be reached in order to bring a tort action for general damages. One argument is that the present law is working fine and does not need to be changed. They often point to figures showing that there has presumably been a reduction in litigation across the state and therefore, there does not need to be a change in the tort threshold in order to reduce the number of suits and thereby decrease court congestion. Frankly, this argument misses the point of the no-fault legislation in Kansas. The Kansas no-fault law was not designed for the purpose of decreasing court congestion. It was designed with a fundamental and primary purpose as stated in K.S.A. 40-3102 of providing prompt and adequate compensation to injured traffic victims. While a decrease in court congestion would, of course, be a benefit, it was never the thrust of the legislation. The thrust of the legislation was, as I indicated earlier, to provide more benefits to more people more quickly by reducing the costs associated with the claims process and litigation that had occurred as a result of the tort system. Therefore, the argument in regard to there being no need to change what we already have or at least not increase the tort threshold because there has been a reduction in litigation simply doesn't address a real issue.

A second argument that is often offered is that there is no need for a change in the no-fault law unless a significant rate increase is going to be avoided by the action or they will present information showing how automobile rates have increased in Kansas since 1973 despite the existence of no-fault. This too is an argument which misses the point. No-fault was never designed to reduce rates in Kansas and even if it was -- which, again, it wasn't -- the Supreme Court declared the state's guest statute unconstitutional and the legislature enacted a comparative negligence law which took effect at the same time as no-fault. Thus, while automobile insurance premiums, like everything else, have increased since 1973, inflation, comparative negligence, repeal of the guest statute, the energy crisis, and many other factors had an effect. Therefore to attempt to assess the impact of no-fault would be an exercise in futility. No-fault was never intended to reduce the rates, it was only intended to put more of the premium dollar the insured pays into the hands of the injured parties by paying more in first party benefits, rather than paying this money to handle the expenses associated with tort liability issues. The issue of a rate increase, is not totally irrelevant however. If the PIP benefits are increased but the threshold is not raised sufficiently, rates will have to be increased.

A third argument is that although the required personal injury protection benefits may not be adequate at this time, if someone wishes to purchase more, excess benefits are readily available in the open market. It is true that many companies have some type of increased benefits packages. However, they cost an additional premium and often times do not provide the same type of coverage that is provided for in personal injury protection benefits. For example, for a price, most Kansas insureds are able to purchase additional medical coverage in excess of that required as personal injury protection benefits. However, many are unable to purchase additional coverages for such

things as wage loss, funeral expense, rehabilitation loss, substitution services, etc. This represents a major problem for many insureds in that it requires them to purchase some other type of disability coverage at a substantially higher premium cost than it would take to buy these same benefits under an automobile policy. Furthermore, these persons who already purchase additional benefits beyond the minimums proposed by House Bill No. 2147 would -- if the amendments earlier suggested are included -- enjoy a premium decrease.

The argument that is most highly pursued by the opponents of no-fault is that under no circumstances should the threshold be increased regardless of what first party benefits are provided or at what cost because the restriction on the right to sue represents too great a cost to the injured victim.

An in-depth examination of the threshold and what rights to sue that are left for Kansas insureds is the best way to examine this argument. It cannot be overemphasized that Kansas has a limited threshold. It allows suits in the overwhelming majority of all cases involving any kind of injury sustained in an automobile accident. In fact, there is very little limitation on the right to sue. By raising the $500 medical treatment figure to another dollar figure will do little to change this result.

K.S.A. 40-3117 is the threshold provision of the Kansas no-fault law. The first observation that should be made is that it only applies to one type of damage, nonpecuniary losses for bodily injury. Nonpecuniary losses means those losses where there has been no direct out of pocket or identifiable monetary loss. Nonpecuniary losses are such things as pain and suffering.

However, this does not mean the injured person suffers any monetary loss or is out of pocket anything because of actual damages, for this is not true. Under the current threshold as well as those proposed in House Bill No. 2147, the injured party would be able to recover whatever expenses he or she has incurred from the personal injury protection coverage and also has a complete, unlimited right to sue the wrongdoer for all actual damages and monetary losses incurred or expected to be incurred in the future. To this extent, they will have the opportunity to be fully and completely compensated without any restriction of any kind. The injured party is able to recover past and future wage losses, expenses for past and future medical costs, etc. This is important to understand because the threshold at the current time or as proposed in House Bill No. 2147 does nothing to bar an injured person from being made whole from an economic standpoint. This applies to all cases and all injuries. The only limitation is upon the recovery for noneconomic damages, pain and suffering, etc.

So, the threshold allows suits in all instances for a person to recover actual damages and, in many, many, cases, the injured party can also recover the nonpecuniary losses.

The first way a person can bring an action for nonpecuniary losses is the most controversial and involves the injury having to be of a kind that requires $1750 or, under our proposed amendment $2250, in medical treatment.

The other conditions that permit an action to be brought involve specific types of injuries that can be used as a basis for suit for nonpecuniary damages regardless of whether the injury has reached the threshold dollar amount for medical treatment. So, suits for nonpecuniary losses can be brought for injuries which:

(1) consist in whole or in part of a permanent disfigurement;
(2) loss of a body member;
(3) permanent injury within a reasonable medical probability;
(4) permanent loss of a bodily function;
(5) death;
(6) consist of a fracture to a weightbearing bone (unless the language is removed by amendment).

Again, in all the cases which involve the above classification of injuries in addition to the medical expense threshold, there is an "unlimited right" to sue for nonpecuniary damages.

I should also address the position espoused by some to completely do away with the no-fault law. How, can the insureds in Kansas be benefited by such a position to do away with no-fault when one considers the numerous benefits it has, does and will provide all injured traffic victims at no greater cost than the tort system? If the no-fault system was scrapped, it would not only increase the delay in payments but would leave a large percentage of people without any means of compensation. The people injured in one car accidents and who themselves caused or in part contributed to the accident would be unable to recover anything because the tort system would not benefit them. A return to the strict tort system would be catastrophic to these people. A closer look at these victims is necessary. This is so because these people represent a majority of injured traffic accident victims in Kansas. They would not be benefited in anyway whatsoever by eliminating the tort threshold. For example, people would be unable to recover under the strict tort system if they were injured in:

(1) one person/one car accidents;
(2) accidents where they are completely at fault;
(3) accidents where they are more at fault than the other party;
(4) accidents where they are equally at fault with the other party;
(5) accidents where they are not at fault but are unable to recover from the wrongdoer because they cannot find him or her (i.e. phantom motorists or hit and run drivers, etc).

In all, the above listed situations the threshold would have absolutely no effect. However, on the other hand, an increase in the personal injury protection benefits would help the injured victims in all these situations because the personal injury protection benefits could be recovered regardless of fault. This is why the increase in personal injury protection benefits is so much more important to the majority of Kansas than keeping the threshold at a lower level.

Finally, earlier in my testimony I indicated that some housekeeping changes dealing primarily with self-insurers are included in House Bill No. 2147 that were not included in House Bill No. 2422. These specific changes and the reasons therefore are itemized below.

Page 4, lines 124 through 127 -- K.S.A. 40-3103(u) -- The definition of "self-insurer" is amended to include "qualified non-resident self-insurers) (i.e., non-residents recognized in other states as self-insurers that have filed the Declaration of Compliance forms as authorized by and pursuant to K.S.A. 40-3106(b)). This change also clarifies that qualified non-resident self-insurers must provide Personal Injury Protection (PIP) benefits as required by K.S.A. 40-3107(f) and pay PIP benefits in accordance with K.S.A. 40-3109.

Page 5, line 193 -- Page 6, lines 194 through 197 -- Page 8, lines 302 and 303 -- K.S.A. 40-3104 -- The change to subsection (a) clarifies that owners of vehicles included in qualified non-resident self-insurance plans are exempted from the mandatory motor vehicle liability insurance requirement. In the absence of this change, a non-resident self-insurer could possibly be held in violation of K.S.A. 40-3104(a) even though it had filed the Declaration of Compliance under K.S.A. 40-3106(b). This same purpose also applies to the amendment to subsection (i), Paragraph (3).

Page 10, line 344 -- K.S.A. 40-3105(d) -- The proposed change corrects the out-of-date cross-reference to K.S.A. 8-198(f). This subsection currently appears as K.S.A. 8-198(g).

Page 10, line 366 -- K.S.A. 40-3109(a)(3) -- The deletion and insertion of a comma clarifies that a Kansas owner injured in a non-owned vehicle is not entitled to PIP from the insurer or self-insurer of the non-owned vehicle. The owner would be eligible for PIP only from his own insurer. This technical change is consistent with Farm and City Insurance Company v. American Standard Insurance Company, 220 Kan. 325, 328, 331, 333, 334, 335, 552 P.2d 1363 (1976).

Page 11, lines 383 and 384 -- K.S.A. 40-3113a(a) -- This amendment provides express statutory authorization for PIP insurers to subrogate duplicative tort recoveries effected in jurisdictions other than Kansas. The Department's current position is consistent with this clarification.

Page 13, lines 487, 489, 490, 492 and 493 -- K.S.A. 40-3116 -- The proposed change corrects the typographical error and updates cross-references. The penalty provision is expanded to include Kansas self-insurers which are required to participate in the Assigned Claims Plan.

This concludes my testimony which, though rather lengthy, can be summarized by the rather simple observation that we believe the increase in the personal injury protection benefits, and an adequate increase in the tort threshold will serve the insuring public of the state of Kansas much better than the current outdated law.

Attachment I
Senate F I & I - 3/30/87

House Bill No. 2147 (No Fault)

Presentation by
L.M. Cornish
Kansas Association of Property & Casualty Insurance Cos.
before the Senate Financial Institutions &
Insurance Committee
March 30, 1987

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present the views of the Kansas domestic casualty insurance companies on House Bill No. 2147, a bill which updates the current no fault insurance laws.

The Kansas No Fault Law became effective January 1, 1974; about 13 years ago. Its purpose was, and still is, to:

PAY MORE MONEY - TO MORE PEOPLE - MORE QUICKLY

To understand the need for the No Fault concept it is necessary to recall the problems of the personal injury reparations system as it existed prior to 1974:

1. The Cost of Litigation for Minor Injury Cases was too expensive.

2. It was necessary for injured persons to first prove fault, before they were paid Medical and Wage loss expense. Frequently, the court system took months or years to determine fault. This was a very time consuming, expensive process.

Attachment II
Senate F I & I - 3/30/87

To solve these problems, the Kansas legislature reached a compromise solution which is sometimes called the Quid Pro Quo solution.

1. The "Quid": Litigation Expense and Time Delay for minor injuries are eliminated by the use of Medical Tort Threshold.

2. The "Quo": Medical and Wage Benefits are paid to injured persons without regard to fault.

It is the balance of this "Quid" and "Quo" which makes the no-fault concept work.

The No-Fault Law passed in 1974 and which we have today:

1. Mandated motor vehicle liability insurance coverage.
2. Required all liability insurance policies to provide Personal Injury Protection (PIP) benefits which are paid without regard to fault by the motorist's own insurance company.
3. Limited the right to sue in minor injury cases. (Those with medial expenses less than $500.)

However, after 13 years and because of the "galloping inflation" of the 1970's and early 1980's, the injured Kansas

consumer no longer receives adequate medical and wage benefits, and this same inflation has eroded the effectiveness of the $500 threshold to restrict the number of small personal injury lawsuits.

In other words, the benefit package is not providing adequate medical and wage benefits for the consumer; and the threshold is not removing a sufficient number of expensive law suits from the tort system.

Skyrocketing health care costs have caused even the most minor auto injuries to produce medical bills of $500 or more. As this tort threshold "disappears" the small cases find their way back into the tort system and the no-fault concept becomes less efficient.

Increase in Benefits

HB 2147 will substantially increase the personal injury protection (PIP) benefits provided by the No-Fault law for Kansas motorists.

These benefits have not been changed since the law was enacted in 1974. HB 2147 is a better product and will double and triple these benefits and increase wage, medical and other payments in accordance with inflationary increases as follows:

Medical - from $2000 per person to $6500 per person

Rehabilitation - from $2000 per person to $6500 per person

Wages - from $650 per month to $1400 per month

Survivors - from $650 per month to $1400 per month

Funeral - from $1000 per person to $2500 per person

Substitution Services - from $12 per day to $25 per day

This increases the total per person package of PIP benefits from $17,180, to $41,425.

Present Bill Will Cost Kansas Motorists $9 Million Dollars

Please note the attached actuarial report dated March 2, 1987 which states that placing the Tort Threshold at $1750 and use of "fracture language" will increase the avearage cost of minimum liability coverage by 8%.

Assuming the average premium to be $56.80 x .08 = $4.54 $4.54 x 2,000,000 insured Kansas motor vehicles = $9,080,000, say $9 Million Dollars.

As noted in the attached actuarial report if the Tort Threshold remains at $1750 and the "fracture language" is removed, there would be a 2% increase, or an increase in premium to Kansas motorist's of $2,250,000.

Either increase is too much at a time when Kansans are calling for a halt to the increase in insurance premiums.

The requested amendments to the No-Fault Law are: (1) Increase Tort Threshold to $2250; (2) Remove "fracture language" - this will cause the bill to be

Revenue Neutral

Attachment II
Senate F I & I - 3/30/87

The injured party always has the right to sue for economic damages, regardless of the amount of medical expense.

The language regarding fractures should be removed as lawsuits concerning simple, non-permanent fractures have brought about protracted and expensive litigation.

While only experience will determine with exactness the premium rate resulting from the amendments of HB 2147, it is generally considered by the insurance industry and the Kansas Insurance Department that the amendments to the No-Fault Law will probably result in a premium "wash."

State Farm Mutual Automobile Insurance Company

One State Farm Plaza
Bloomington, Illinois 61710

Actuarial Department
Dale Nelson
Asst. Vice President and Actuary
Phone: (309) 766-2072

March 2, 1987

The Honorable Fletcher Bell
Commissioner of Insurance
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS. 66612-1678

Re: No-Fault Legislation, HB 2147

Dear Commissioner Bell:

Dick Scott, State Farm's legislative liaison officer, asked that I provide our cost estimates for the HB 2147 revisions to the Kansas No-Fault law.

Assuming the current insurance premiums are adequate, the proposed revisions, including the increased PIP benefits, would have the following estimated effects on the average cost for 25/50 BI Liability, Uninsured Motor Vehicle, and Basic PIP coverage, depending on the Tort Threshold:

Medical Threshold	w/o Fracture Exclusion	w/Fracture Exclusion
$1,750	+ 2%	+ 8%
2,000	+ 1	+ 7
2,250	0	+ 6
2,500	- 1	+ 6
3,000	- 2	+ 5

For example, the average cost for this package of coverage would increase by an estimated 2% under the Bill as presently amended by the House Insurance Committee. Increasing the threshold to $2,250 would place the plan in approximate cost balance with the present one. Putting the Fracture exclusion back in the Threshold would increase these costs by an estimated 6 to 7%.

As you realize, of course, to the extent current rates may be inadequate, the actual effect of these alternatives could

Attachment II
Senate F I & I - 3/30/87

be generally larger increases (or smaller savings) than those shown. For example, if current rates needed to be increased by 10%, the rates for the $3,000 Threshold version would need to be 8% higher than at present.

I hope this information will be helpful in the current deliberations.

Sincerely,

Dale Nelson

Dale Nelson
Ass't. Vice President & Actuary

DN:mc

cc: Dick Scott
Gary Pauley
Merlin Lehman

Attachment II
Senate F I & I - 3/30-87

Testimony on No-Fault Reform - HB 2147
Before the Senate Financial Institutions and Insurance Committee
March 30, 1987
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you, Mr. Chairman, and members of the committee for the opportunity to appear today in opposition to HB 2147 as it now stands. State legislatures across the country and the press have given a lot of attention in the last year and a half to tort reform. No-fault is tort reform at the other end of the scale - it attempts to addresss the small claim and the less seriously injured victim rather than huge headline-grabbing awards.

The Independent Insurance Agents of Kansas' interest in the no-fault issue is simply to provide Kansas consumers with the most efficient, effective and reasonably priced auto insurance product possible.

Unfortunately, we must oppose HB 2147 as amended on the House floor because it is a badly out of balance no-fault proposal. We urge the committee to adopt our amendments, avoid a massive increase in premiums for all Kansas insureds and bring Kansas' no-fault law into a truly balanced proposal.

Goals

The goals of no-fault are quite simply: 1) To pay compensation to more accident victims. 2) To pay more of the economic loss (primarily lost wages and medical expenses) - particularly to the more seriously injured victims. 3) To pay that compensation to accident victims faster. 4) To provide an auto insurance system (policy) that is more efficient - more of the premium dollar paid out in direct, first-party benefits to the victims. 5) To provide lowered public costs from fewer lawsuits. 6) To accomplish all of this at hopefully no increase in

c to the consumer of auto insurance.

Have The Goals Been Met?

The answer is an unequivocal and emphatic yes where the benefits of no-fault have been balanced with the threshold for suits. Attached to my testimony is the Executive Summary of the U. S. Department of Transportation's study of no-fault completed in May of 1985 and a copy of Consumer's Union's Consumer Reports article of September, 1984.

The DOT study found that, "Almost twice as many victims per hundred insured cars received PIP benefits in no-fault states as received BI liability payments in traditional states."

The DOT study further found that, "In general, accident victims in no-fault states have access to a greater amount of money from auto insurance than victims in traditional states." This conclusion was based on the combination of first-party PIP benefits and the mandatory auto liability coverages in the state study. According to a March, 1984, CPCU Journal article, a 1970 DOT study, "found that automobile accident victims with losses of less than $500 recover more than four times your actual economic losses, while victims with economic losses of more than $25,000 recover only 30% of their losses."

Compensation is paid faster under no-fault. Conclusion number 5 of the recent DOT study found that, "Compensation payments under no-fault insurance are made far more swiftly than under traditional auto insurance."

No-fault is more efficient. According to the Consumer Reports article, "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 40-50 cents goes back to victims, to pay for such

Attachment III
Senate F I & I - 3/30/87

things as medical care and rehabilitation." The DOT study found that the average no-fault state returned 50.2 cents in personal benefits compared to 43.2 cents in the traditional, tort states.

The DOT study concluded under number 8 that, No-fault has led to reductions in the number of lawsuits and, thus, to significant savings in court and other public and legal costs paid by the taxpayer."

It would be nearly impossible to accomplish these first five goals and also reduce auto insurance costs. For that reason, most no-fault laws have been designed as a "wash" - no net increase in the total auto insurance premium. According to the Consumer Reports article, "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 Need For Balance

The term "balance" refers to the balancing of the added cost of the personal injury protection (PIP) benefits against the savings generated from the threshold. According to the Consumer Reports article, "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."

The 1985 DOT study concluded under number 3 that, "The average auto insurance premium rose 54% in the average no-fault state with a law that is in balance, and 126% in the average no-fault state with a law that is not in balance." The DOT study went on to state in conclusion number 4 that, "balance" in no-fault systems seems to be

closely linked to the presence of an exclusively verbal or high medical expense dollar threshold."

The DOT study on page 95 specifically found that, "A low threshold, such as $500, results in balance in a very low-benefit state, such as Massachusetts ($2,000 maximum), but not in higher benefit states like Georgia, **Kansas**, Utah or Colorado." (emphasis added).

We believe HB 2147 does not provide this much needed balance between an equitable personal injury protection benefit package and a reasonable threshold. There is no way of telling with certainty for each auto insurance company doing business in Kansas what the ultimate impact on losses will be of HB 2147. Indications from State Farm's actuaries are that the increase in PIP benefits coupled with the arbitrarily low increase in the threshold to $1,750, will cause an across the board average rate increase of 8% for all Kansas insureds.

There is no direct correlation between the increase in PIP benefits and the increase in a given state's threshold. The more lawsuits are eliminated, the more savings should be generated to pay for PIP benefits. As the threshold is increased, fewer and fewer lawsuits are eliminated from the tort system to generate the needed savings.

On the other hand, PIP (personal injury protection or "first-party") benefits are paid to every Kansas driver, regardless of fault, regardless of whether there is a deep pocket defendant to sue and regardless of the seriousness of the injury. Thus it is irrelevant to a discussion of balance to consider the percentage increase in PIP benefits compared to the percentage increase in the threshold. The two

are totally unrelated. A given increase in PIP benefits costs much more because of the substantially larger number of injured accident victims who receive the first-party benefits than the savings generated by the same percentage increase in the threshold. This is supported by State Farm's figures.

A second important element in balancing the proposed increase in PIP benefits is the elimination of the fracture language found on lines 510 and 511 of the bill. Under current wording, these fractures constitute an automatic breech of the threshold. Under the proposed wording of our amendment, the individual would have to incur $2,250 of medical expense before they could sue for non-economic losses or reach the verbal threshold of permanent disfigurement, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function or death. If a serious bone break should occur that would not breech the $2,250 threshold, a person could still claim under the "verbal" threshold of permanent disfigurement or a permanent injury. In this respect, our amendment is exactly the same as HB 2422 passed by the legislature last year, but vetoed by Governor Carlin.

The Issue of Fraud

We were pleased to see the traditional opponents concern with the potential for fraud by accident victims by inflating their medical expenses to reach the original general damages benefit for pain and suffering that was struck from HB 2147 by the House Insurance Committee. We are pleased because we have argued for years that a low threshold encourages fraud by providing an easy target to reach the courts. If fraud is a real concern, we urge this committee to set as high a dollar threshold as possible or go to an entirely verbal

to reach it. If nothing else, it will be a significant inconvenience to accumulate sufficient doctors visits.

Number of States Have Improved Laws

The opponents of no-fault reform have pointed to the lack of new states to pass no-fault laws in recent years. This is probably the case because both proponents and opponents have realized that no-fault, in the absence of extremely high thresholds and extremely low PIP benefits, will not reduce premiums. What it clearly does is provide more money, to more people, faster than a fault based system. In fact, consumer advocates like Consumers Union and Bob Hunter of the National Insurance Consumers Union have been critical of the insurance industry for not pushing enactment of no-fault laws in more states. In the absence of the threat of federal intervention that existed in the mid 70's, why should insurance companies beat their heads against the "wall"? Insurance companies can adequately price any auto insurance product state laws require - efficient no-fault or inefficient tort.

But, among those states that already have no-fault laws, Florida went to verbal in 1976, New York went to verbal in 1978, Minnesota increased to a $4,000 threshold in 1978, Hawaii's threshold can be adjusted annually by their insurance department and is now $4,500, New Jersey allowed an optional $1,500 threshold in 1984 and Colorado increased theirs to $2,500 in 1985. The District of Columbia enacted their no-fault law in 1983. Thus, of the 15 states that have a threshold, 7 of them have improved their laws <u>substantially</u> since enactment.

On Mandatory Benefits

The opponents of no-fault reform argued against mandating higher

PIP benefits on the assumption that all injured accident victims had adequate insurance elsewhere and because it was "wrong" to take away their freedom of choice. This ignores the fact that many people are not adequately insured for lost wages, medical or rehabilitation expenses.

The objection to mandating insurance coverages is interesting since the same association has supported higher minimum auto liability limits and mandatory minimum uninsured/underinsured motorists coverage in the past.

We generally do not support mandatory insurance of any kind, but the current mandatory aspect of our no-fault law was essential to make the concept constitutional and part of the original compromise.

Conclusions

All the research supports the fact that a good, balanced, no-fault law meets its goals for the consumers of auto insurance. Insurance companies can price any auto insurance product; my members can sell any auto insurance product, but it's up to you to decide how good a product you want to provide the consumers of Kansas. We urge you to amend HB 2147 by increasing the threshold to $2,250 and eliminating "fractures" from the verbal threshold and report the bill favorably for passage. Only with a balanced (no cost increase) no-fault law can you meet all the goals of no-fault.

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

f 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 pe year in New York from 1974 to 1

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-

Attachment III
Senate F I & I 3/30/87

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?

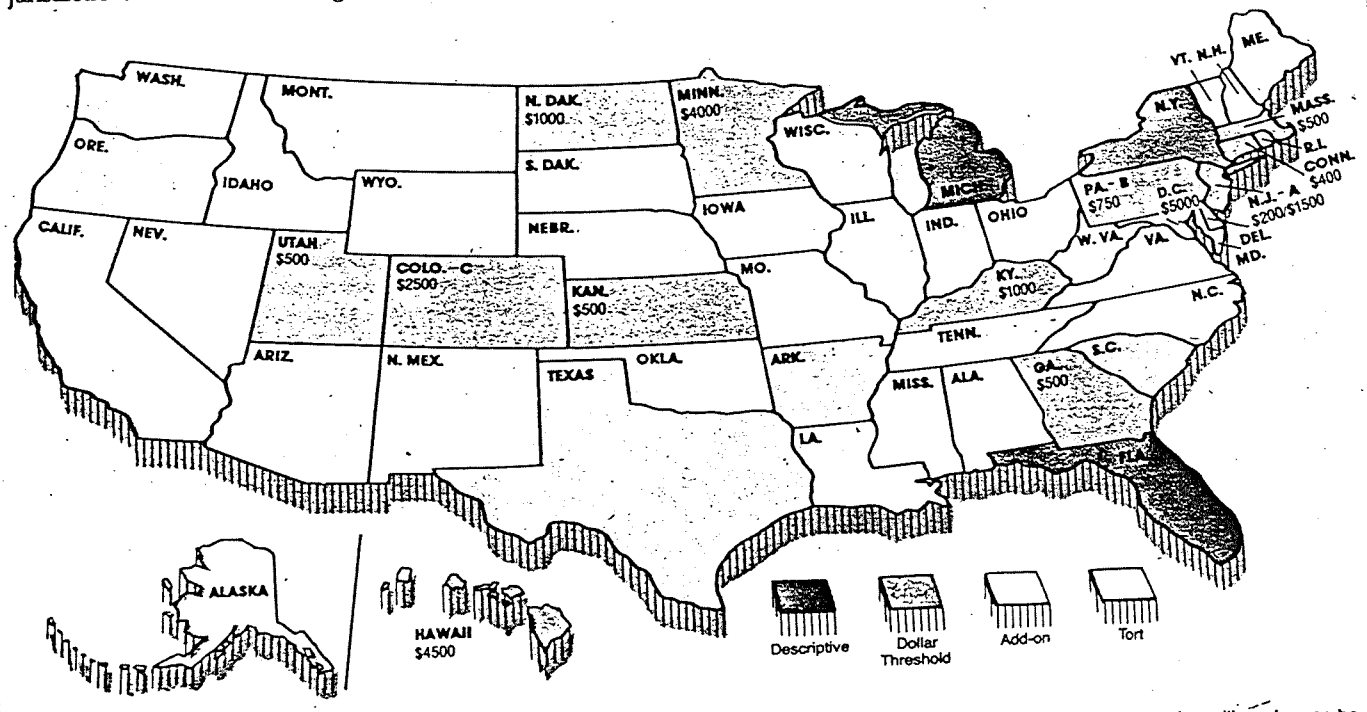
The map below shows the kinds of auto-insurance laws that prevail in the 50 states and the District of Columbia.

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. ■

Attachment III
Senate F I & I - 3/30/87

EXECUTIVE SUMMARY

No-fault auto insurance is a form of insurance that provides compensation to virtually all personal-injury victims of motor vehicle accidents.

Traditional liability auto insurance is a form of insurance that provides compensation to victims of motor vehicle accidents only if they can prove that some other person or persons were at fault in causing the motor vehicle accidents in which they were injured.

Today, no-fault auto insurance exists only as a part of a "mixed" compensation system, that is, a system that contains both no-fault and traditional insurance. This mix varies in each of the 24 jurisdictions which today have some form and degree of no-fault auto insurance.

This study examines the performance of the no-fault systems in these jurisdictions and compares them with each other and with the auto insurance systems in the States that are exclusively traditional.

Dimensions of the Problem:

In 1982, 1,269,000 people suffered motor-vehicle-accident-related injuries for which they were taken to a medical facility. Of this number, 156,000 were seriously injured and 43,945 died. One-third of all motor vehicle accident victims were 15 to 24 years of age, and more than an additional one-fifth were 25 to 34 years of age. A large number of these youthful victims did not have a comprehensive health insurance plan or more than the minimum required amount of auto insurance.

Personal injury auto insurance is the major single source, although not the only source, from which motor vehicle accident victims recover compensation for the losses they suffer as a result of motor vehicle accidents. Society gives recognition to its importance by the fact that every State requires or strongly encourages the purchase of auto insurance through compulsory or financial responsibility laws.

Categories of Personal Injury Auto Insurance:

Personal injury auto insurance can be divided into traditional liability auto insurance and no-fault auto insurance. No-fault can in turn be divided into no-lawsuit no-fault and add-on no-fault.

No-lawsuit is the form of no-fault under which a motor vehicle accident victim can always receive no-fault benefits but cannot always bring a lawsuit against the person whose fault caused the accident and injury, on the ground that lawsuits are unnecessary in some cases, where victims have a right to no-fault benefits. The term "no-lawsuit" is not totally accurate because each of the States that today restricts lawsuits by recipients of no-fault benefits does allow some such lawsuits under certain circumstances. The term is nevertheless appropriate because it emphasizes the primary distinguishing feature of this category: lawsuit restriction in exchange for assured no-fault benefits.

Add-on is the particular form of no-fault that does not restrict a victim's right to bring a lawsuit against any other person believed to be at fault, while at the same time providing assured no-fault benefits to that victim. Under

add-on auto insurance, lawsuits and no-fault benefits are both always allowed. In the States that have this kind of auto insurance, the right to recover no-fault benefits is always a supplement to, rather than a substitute for, the traditional right to sue the wrongdoer.

The auto insurance which is sold exclusively in the other 28 States and which is sold in addition to no-fault in all of the no-fault jurisdictions is called traditional or liability auto insurance. Traditional auto insurance consists primarily of bodily injury liability insurance (BI). BI liability is insurance that protects a policyholder against the obligation to defend and pay damages to an accident victim who is injured through the negligence of that policyholder. It applies only to accidents where there is both a wrongdoer/policyholder and an accident victim, which means that it does not provide compensation to the victims of the approximately two-fifths of injury accidents which involve only a single car.

Background of this Report:

In 1977, the U.S. Department of Transportation published a report entitled "State No-Fault Automobile Insurance Experience 1971-1977," that summarized the available data and evaluated experience under no-fault personal injury auto insurance laws in the States in which such laws were in effect at that time.

In 1983, the Secretary of Transportation was asked by Chairman James J. Florio of the House Subcommittee on Commerce, Transportation, and Tourism to update the 1977 report. An updated report was needed because the data available in 1977 were limited and the full impact of no-fault auto insurance was not yet known. Since 1977 additional data have become available, and there have been significant changes with respect to a number of the auto insurance laws that were then in effect.

Terminology Used in this Report:

Technical legal and insurance terms that are not generally understood are not used in this report, to the extent possible. Where such use is unavoidable, the term is defined before it is first used. Terms that are used in the conclusions are defined here:

A first-party insurance coverage is one in which the insurance company (the second party) pays its own policyholder (the first party) when the event occurs that the insurance covers. A third-party insurance coverage is one in which the insurance company (the second party) on behalf of its own policyholder (the first party) pays a person not named or specifically described in the policy (the third party) who sustains damage for which the first party is legally responsible. Health insurance, which pays the policyholder for his or her medical expense, and fire insurance, which pays the policyholder for damages by fire to his or her residence, are examples of first-party insurance. Workers' compensation insurance, which pays an employee of the policyholder (the employer) for work-related injuries, is an example of third-party insurance. The term PIP insurance means personal injury protection insurance, the name generally given to the form of first-party insurance that is no-fault personal injury auto insurance. The term PIP benefits means benefits under PIP insurance.

The term lawsuit means a lawsuit in tort. A tort is a civil (as opposed to a criminal) wrong, other than a breach of contract, for which a court will award

damages or other legal relief to the injured party, if that party brings a lawsuit. Damages (or their equivalent) are often paid to a claimant who does not obtain a court award or who may not bring a lawsuit, on the basis of a settlement of that person's tort claim based on the action a court would probably take if there was a lawsuit and court award. The term collateral source rule means a legal doctrine under which a defendant is prohibited from introducing evidence that the claimant has already recovered compensation from another source for an item of loss claimed as damages.

The term threshold means the kind or level of injury that must have been sustained by a motor vehicle accident victim, or the dollars of medical expense such a victim must have incurred after the accident, in order for that victim to be allowed to bring a lawsuit in a no-lawsuit no-fault State.

The term balance refers generally to the trade-off between the savings from restrictions on lawsuits and the added costs of providing new no-fault benefits. More specifically, to have "balance" in a no-lawsuit system, the system must have effective restrictions on lawsuits such that the savings generated by limiting lawsuits and thus constraining third-party damages will "pay for" the cost of first-party benefits. To have balance in an "add-on" system, where there are no restrictions on lawsuits, the average amount of the third-party payments must be lower than the average amount of the third-party payments in traditional States by such an amount that the "savings" will equal the cost of first-party no-fault payments.

Conclusions of this Report:

The following general conclusions about no-fault auto insurance are made on the basis of over a dozen years of experience in two dozen jurisdictions.

1. Significantly more motor vehicle accident victims receive auto insurance compensation in no-fault States than in other States. No-fault auto insurance, whether of the no-lawsuit or add-on type, compensates many more personal injury victims of motor vehicle accidents than does traditional or liability auto insurance. Almost twice as many victims per hundred insured cars receive PIP benefits in no-fault States as receive BI liability payments in traditional States. The paid claim frequency (number of claims paid per 100 insured cars) averages 1.8 for PIP insurance in 22 no-fault States compared to only 0.9 for BI liability insurance in 28 traditional States.

2. In general, accident victims in no-fault States have access to a greater amount of money from auto insurance than victims in traditional States. The average amount of compensation available for payment to a personal injury victim in a no-fault auto insurance State is greater than that in a traditional State. Although some no-fault States, particularly the add-on States, provide only relatively modest amounts of no-fault benefits, those amounts are sufficiently large to ensure more adequate medical treatment, on the average, than in traditional States. No-fault States require or permit insurance providing an average of $15,000 of medical costs for each victim. (This average does not include Michigan and New Jersey, both of which offer unlimited medical and rehabilitation benefits. Their inclusion would, obviously, raise this figure significantly.) Since both no-fault States and traditional States require approximately the same amount of liability insurance coverage (an average of $18,000 for one individual), no-fault

States, on average, offer nearly double the total potential recovery available in the traditional States.

3. Although no-fault States, on average, have higher total insurance premiums than traditional States, this seems to be due to the inclusion in the average of no-fault States with laws that are out of balance. From 1976 to 1983, the average auto insurance premium in the average traditional State rose 50%. During the same period, the average auto insurance premium rose (a) 54% in the average no-fault State with a law that is in balance, and (b) 126% in the average no-fault State with a law that is not in balance.

4. "Balance" in no-fault systems seems to be closely linked to the presence of an exclusively verbal or a high medical-expense dollar threshold. Some systems which provide no-fault benefits to all motor vehicle accident victims do so at a cost which is more or less equal to (or less than) the savings which are produced in those systems by having a threshold. In fact, the appropriateness of the threshold is likely to be the principal factor in determining whether a system is in balance.

All of the States which permit recovery of third-party benefits only upon satisfaction of a verbal threshold are in balance. Three out of four of the States which permit recovery of third-party benefits upon satisfaction of a high-dollar threshold ($1,000 or more in medical expenses) are in balance. Three out of eight of the States which permit recovery of third-party benefits upon satisfaction of a low-dollar threshold (less than $1,000 in medical expenses) are in balance. Only one out of the three States that have no threshold at all is in balance. Both of the States that repealed their no-lawsuit no-fault auto insurance laws (Nevada and Pennsylvania) had laws that were not in balance.

5. Compensation payments under no-fault insurance are made far more swiftly than under traditional auto insurance. According to one study, no-fault claimants received 33% of the benefits they would ever receive within 30 days of the date on which they notified an insurance company of their accident and injury; by contrast, traditional claimants received only 8.3% of the benefits they would ultimately receive within 30 days of notification. One year after notification, the PIP claimants had received 95.5% of the money they would ever receive; by contrast, the BI liability claimants had received only 51.7% of the money they would ever receive.

6. No-fault insurance systems pay a greater percentage of premium income to injured claimants than do traditional liability systems. For each premium dollar collected under the average no-fault system, claimants received a higher proportion in personal injury benefits than did claimants under the average traditional system. An analysis found that out of each personal injury premium dollar the average no-fault State returned 50.2 cents in personal benefits to claimants whereas the average traditional State returned 43.2 cents. One of the highest rates, 55.1 cents, was reached by the State of Michigan, the State which provides the greatest amount of no-fault benefits to accident victims and which puts the strongest restrictions on lawsuits and third-party benefit recoveries.

7. State auto insurance laws which provide high no-fault benefits would appear to better facilitate the rehabilitation of seriously injured motor vehicle accident victims than traditional laws, although the lack of good data on

rehabilitiation experience under traditional laws precludes a good quantitative estimate of the difference. Under the former, payments can be made quickly to all motor vehicle accident victims, which facilitates rehabilitation because it is generally more effective if introduced soon after a traumatic event. The absence, under no-fault insurance, of controversy about entitlement to recovery enables a victim to concentrate, on personal restoration, energies that might be misdirected to retribution via a lawsuit under the traditional system. Moreover, auto insurance funded rehabilitation is available to single-car accident victims under no-fault but not under the traditional system because the latter does not recognize their claims.

No-fault laws which provide high PIP benefit levels are particularly helpful in facilitating rehabilitation because rehabilitation treatment is expensive. While larger awards may be intermittently made under traditional insurance, the average amount generally available under traditional insurance is less than the average amount generally available in a no-fault State.

8. No-fault has led to reductions in the number of lawsuits and, thus, to significant savings in court and other public legal costs paid by the taxpayer. The evidence is clear that each no-fault auto insurance statute has led to some reduction in the number of motor vehicle accident lawsuits. According to Chief Justice Warren Burger, each jury trial tort case costs the taxpayer approximately $8,300 in court and other public costs. While the precise level of savings in each State is not known, nevertheless, the amount of savings for public entities is substantial.

9. Typical auto insurance benefits in both no-fault and traditional States fall short of the needs of catastrophically injured victims. The amount of auto insurance compensation available, in most no-fault and all traditional States, is not sufficient to meet all the economic-loss needs of the average catastrophically injured victim of a motor vehicle accident. A 1982 study, based upon review of 410 motor vehicle accident victims with economic losses expected to exceed $100,000, found that the average projected total medical and rehabilitation costs for each would be $408,700.

Each year, approximately 20,000 people receive severe to critical injuries in motor vehicle accidents. Only the no-fault laws of Michigan and New Jersey, which provide for unlimited medical benefits, meet the medical needs of all of these victims. Of the rest, New York's law, which provides for $50,000 maximum total PIP benefits, the District of Columbia's law, which provides for $100,000 in medical and rehabilitation benefits, and Colorado's law, which provides for $50,000 in medical and rehabilitation benefits and will provide for $100,000 after January 1, 1985, come the closest to meeting this need. None of the traditional auto insurance States provides anywhere near the needed amount of insurance for the most seriously injured victims. In the most generous traditional State, the required or strongly encouraged amount payable to any one accident victim under BI liability insurance is $25,000. Although many motorists and the corporate self-insurers that operate commercial vehicles can pay larger amounts or carry high limits liability insurance coverage, there is no assurance that the average seriously injured victim will be struck by such a motorist or vehicle.

10. The percentage by which the cost of payments to accident victims in no-fault States exceeds the cost of such payments in traditional auto insurance States has increased from 1976 to 1983. In 1976, $2,897 was paid per 100 insured

cars to claimants in traditional States compared to $4,445 (or 54% more) in no-lawsuit no-fault States. In 1983, $4,843 was paid to claimants in traditional States compared with $8,679 (or 79% more) in no-lawsuit no-fault States. The increase, from 54% more to 79% more, was accompanied by an equivalent increase in the percentage by which payments to claimants in add-on no-fault States exceeded payments to claimants in traditional States. These increases in the additional cost of payments to claimants in no-fault States over those to claimants in traditional States suggest that the legislatures in no-fault States may wish to consider new ways to reduce costs, such as repealing the collateral source rule and/or putting a ceiling on the amount of pain and suffering damages that an accident victim can receive if that victim was also eligible to receive no-fault benefits.

II. No-fault auto insurance laws do not lead to more accidents. More than 10 years of motoring and accident experience in about two dozen States indicate that the highway fatality and injury rates in no-fault States exhibit no significant difference from those in traditional States.

TESTIMONY OF THE
KANSAS TRIAL LAWYERS ASSOCIATION

H.B. 2147
(As Amended by House Committee of the Whole)
March 31, 1987

HISTORY OF NO FAULT

Between 1971 and 1975 twenty-seven states and the district of Columbia 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 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, operaiton, 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 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 presently $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."

Attachment IV
Senate F I & I - 3/30/87

The current Kansas law has, by comparison, relatively low PIP benefits and an average threshold. Threshold levels for the twenty-three states and the District of Columbia are shown in the chart below.

9 States/D.C.	No threshold, verbal or monetary, restricting the right of a person to assert a claim.
3 States	Verbal only
1 State	Verbal/$200 monetary
1 State	Verbal/$400 monetary
5 States	Verbal/$500 monetary (includes Kansas)
1 State	Verbal/$750 monetary
2 States	Verbal/$1,000 monetary
1 State	Verbal/$3,600 monetary
1 State	Verbal/$4,000 monetary

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 the Governor. The subject was referred to an interim study. That bill contained a $1,500 monetary threshold.

1984 INTERIM STUDY

A Special Interim Judiciary Committee 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. The Committee heard extensive testimony from the insurance industry and the legal community and made recommendations to raise PIP benefits.

Ultimately, the Interim 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 overall premium costs and was justified to insure those who experience pain and suffering as a result of an automobile accident.

1985 - 1986 LEGISLATION

The '84 Interim Committee's study resulted in legislation being introduced in 1985. The bill was continued to the '86 session, taking many forms during the two year process. Late last year, the Legislature narrowly passed a bill with a $3,000 tort threshold. The vote in the House was 6755. H.B. 2422 was vetoed, and because of the closeness of the House vote, no attempt was made to override it.

1987 - KTLA'S POSITION ON H.B. 2147 (As Amended by the House Committee of the Whole)

KTLA opposes H.B. 2147 to the extent this bill provides for a monetary threshold in excess of $1500. The bill as amended by the House Committee of the Whole provides for a threshold of $1750. KTLA's position in coming to a $1500 threshold figure is clearly one of compromise based upon the belief that a $1500 monetary threshold bears a reasonable relationship to the increase in the consumer price index from and since the initial enactment of the No Fault law in 1973. With respect to the other aspects of the bill, as amended by the House Committee of the Whole, namely

the restoration of the language "a fracture to a weight bearing bone, a compound, comminuted, displaced or compressed fracture" found at page 14 lines 510 and 511 (the so-called "bones" language) and the elimination of the "general benefits" provision at page 5 lines 186 through 190 by the House Insurance Committee, KTLA supports these changes to the bill as originally proposed. They are consistent with good public policy in this state, protecting the rights of injured motorists to seek fair and adequate compensation in court when they are unable to otherwise resolve their dispute with insurance carrier. It is clear the raising of monetary thresholds, while at the same time eliminating some verbal thresholds will unfairly restrict the right of injured Kansas to recovery justifiable compensation for damages. This position was heavily debated and understood by members of the House and bears its seal of approval in the bill that is submitted to you for your consideration.

One other aspect of the bill which requires comment is the increase in PIP benefits coverage. At the present time, we know of no groundswell of interest by Kansas citizens to pass a law mandating additional PIP benefits coverage. Those persons who want extra coverage are voluntarily purchasing it today. Who besides the insurance companies are asking for these changes?

EXPLANATORY COMMENTS

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 medical bills. Raising PIP benefits forces all Kansans to purchase extra coverage which may duplicate their current insurance, and, therefore, provides no actual benefit to the insured.

Although the data submitted by insurance companies does not allow a full and complete analysis, it does indicate that more than half of Kansas drivers currently voluntarily purchase increased PIP benefits. The increased benefits, far in excess of H.B. 2147, are very inexpensive (from $2.00 to $6.00 per year). These drivers would receive no direct benefit from H.B. 2147 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 may be relatively modest, 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 would 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. 2147 is one more demonstration of the insurance industry's attempt to convince the Legislature that it is appropriate 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 seek adequate conpensation if they are injured.

For the first time, we have some specific information about No Fault. According to industry data, approximately 71% of the auto claims fall under the existing $500 threshold. Consequently, the threshold is effective in keeping small claims (the vast majority) out of the court system. It would, therefore, follow that an increase of the threshold in the range of $1500 will more than assure the disposition of small claims without litigation.

H.B. 2147 suggests that PIP benefits be increased by as much as 2.5 times the existing level and the monetary threshold be raised 350%. Based upon prior language in the bill, which has been excluded by the House vote, we suspect it will be argued there should be further restrictions in the verbal threshold, by eliminating the "bones" language. There is simply no basis in fact or credible data that can be supplied in this hearing which will demonstrate the necessity for any further restrictions in the verbal threshold and, we respectfully request that any such amendments be rejected.

The tremendous increase in the monetary threshold was originally argued by the insurance industry in the House Insurance Committee to be justified by the addition of the "general benefits" provision found in new section (bb). After considerable discussion with the House Insurance Committee, it was determined the general benefits provision was not only unworkable, but unrealistic, and should be removed from the bill. The committee's foresight is consistent with No Fault laws throughout the country when no such provision exists and, perhaps, for good reason. Now that the "general benefits" provision has been defeated, it is anticipated the industry will attempt to support the tremendous increase in monetary threshold by claiming there are not sufficient expenses taken out of the system to avoid premium increases to support the additional PIP benefits being proposed. Once again, there is no clear, convincing or even credible evidence or data to support this proposition other than threatened future premium increases. We respectfully suggest that you consider seriously looking at the issue of whether the increased PIP benefits are necessary and truly accomplish what is being suggested, or whether those, as well, should be rejected and a modest increase in the threshold adopted.

No one has to hire a lawyer. Victims seek legal counsel when they feel they are not being treated fairly by insurance companies. A new law penalizing delay in settling cases, and awarding costs and expenses to victims when companies resist paying property damage claims would provide constitutents with reasonable consumer protection, part of the original purpose of No-Fault insurance.

CONCLUSION

The Kansas Trial Lawyers Association urges the committee to resist the argument that the only way to provide more protection for Kansas drivers is to restrict their access to the courts through the reduction or elimination of their right to obtain fair and adequate compensation where justified. Although the Kansas Trial Lawyers Association opposes a monetary threshold of $1750, we agree that a modest increase in the threshold to a maximum of $1500 is justified in light of the economic realities existing today. Finally, there is no factual basis or data capable of being presented that justifies the elimination of the bone fracture language which is presently in the bill and which KTLA strongly urges that be retained.

(SZ2142)

Attachment IV
Senate F I & I - 3/30/87

KANSAS BAR ASSOCIATION

1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601
(913) 234-5696

March 30, 1987
HB 2147

Mr. Chairman. Members of the Senate Financial Institutions Committee. I am Ron Smith, KBA Legislative Counsel.

KBA supports a modest, inflation adjusting change to the tort threshold and PIP benefits under Kansas No Fault. KBA opposes changes to the verbal threshold.

The version of the no fault bill that came from the House of Representatives indicates a desire to simply adjust the 1973 Kansas no fault concept for inflation and not make major new policy changes in this 1973 law.

KBA supports a modest inflation-adjusting change. According to testimony in the House Insurance committee, if the 1973 tort threshold was adjusted by the CPI-Medical inflation index, the tort threshold should be about $1,580. The House version approved a $1,750 threshold. Clearly, the threshold should be not more than $1,750.

The Medical Expense Threshold

The reason for caution is that even raising the tort threshold from $500 to $1,580 or $1,750 keeps some people from being able to sue if they are injured. Because of §18 of the Kansas Constitution, the legislature must have a "rational basis" for making any change in our law that denies a legal remedy to Kansans. The rational basis must be real, not imaginary. Simply a desire to exclude more and more people from the tort system is not a rational basis for legislative action.

(a) Nor do we have an "insurance crisis" in auto insurance. There is no "affordability" or "availability" crisis in automobile insurance. Kansas currently ranks about 41st in the nation in average costs of auto insurance.

(b) Under the 1974 case of Manzaneres v. Bell, the state supreme court found a rational basis existed in 1973 to justify the limited action the 1973 legislature took. However, Manzaneres does not automatically apply for any further change in

Attachment V
Senate F I & I - 3/30/87

1987. Any change in 1987 will have to be justified based on what is happening in 1987. You might be able to justify an "inflationary adjustment" to PIP benefits and the tort threshold. Anything beyond an inflationary adjustment raises new questions.

(c) We believe that raising a tort threshold higher than $1,750 in order to have the bill be "premium neutral" will have a difficult time passing constitutional muster.

(d) Eliminating the fracture language solely to affect premium cost also raises constitutional questions.

Premium Neutrality

The excuse of raising the medical expense threshold, or removing fracture language, so HB 2147 is "premium neutral" is a strawman argument.

1. KSA 40-3102 sets forth the purposes of Kansas no fault. It was to provide prompt and adequate compensation to injured traffic victims. Nowhere in 40-3102 does it state the purpose of no fault insurance is to save premium dollars. Thus to adjust the medical expense threshold or the verbal threshold to accomplish this purpose is contrary to previous legislative purpose.

2. Dick Brock stated on February 17, 1987 to the House Insurance committee: "No fault was never intended to reduce rates; it was only intended to put more of the premium dollar the insured pays into the hands of the insured parties by paying more in first party benefits, rather than paying this money to handle the expenses associated with tort liability issues."

3. As introduced, HB 2147 was going to cause an 8% increase in premium. There was no concern by the proponents of the bill at that time for premium increases. The proponents of the original bill included the major auto insurance companies. Now that the bill is changed language, but costs no more premium than what the proponents originally envisioned, suddenly the proponents are worried about premium costs.

4. In a February 19, 1987 memo to the House Insurance committee, Dick Brock indicated that the increase in PIP benefits would be an average $4.20 cost per policy per six months. An increase to a $3,000 tort threshold -- the most radical change suggested -- would have saved only $2.80 per six months. Thus if you raised PIP benefits to these levels and install a clearly excessive $3,000 tort threshold, premiums will still increase.

The "premium neutral" argument is just that -- an excuse to further increase the medical expense tort threshold beyond what is necessary to make inflationary adjustments. We hope you will reject such attempts and support HB 2147 as it came from the House.