JOINT HEARING

Wednesday, February 28, and Thursday, March 1, 1973

SENATE COMMITTEE ON COMMERCE AND LABOR;

ASSEMBLY COMMITTEE ON COMMERCE

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HEARING ON "NO-FAULT" INSURANCE BILLS INTRODUCED IN THE 57th LEGISLATIVE SESSION:

ASSEMBLY BILLS 226, 227, 264;

SENATE BILLS 158, 255

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Senator Drakulich called the meeting to order at 3:10 p.m. in the Senate Auditorium, Room 131. He outlined the ground rules for the hearing and suggested that witnesses contain their remarks to pertinent facts relative to the proposals under consideration. He introduced Senator Carl Dodge, the sponsor of SB 158, who discussed the merits of this bill.

DODGE: The concept of insurance is based on the good social principle of the community pooling of risks so that a loss that could not be borne by any single member alone can be borne easily by the community as a whole. . . the fault system fails because it is the product of a time which bears no relationship to the motorized age we inhabit. . . . it is inequitable and untimely in its limited relief and its costs, which have increased 75% nationwide in the last 10 years. (See Addendum A for complete text of Senator Dodge' remarks.)

Senator Dodge then introduced Mr. Victor Slavin, representative of the American Insurance Association, San Francisco.

SLAVIN: I should like to say that the American Insurance Association is a insurance company which writes about 35% of the automobile insurance in the United States. We have supported the "no-fault" concept and made our opinion public in October of 1968. We have appeared before these committees at least once in previous years.. . . What Senate Bill 158 would do is to a large degree eliminate the tort system as it relates to automobile accident reparations. It would replace this system with a system of first party insurance and under this system, all registrants in the State of Nevada would be required to buy the coverage. The coverage would insure all registrants and all relatives residing with him against any and all economic loss that any of them might sustain anywhere in the United States and Canada as the result of an automobile accident. There are internal limits on the economic loss that would be paid and I assume that most of the witnesses that appear before you will use that term meaning "out of pocket expense, measurable loss, wage loss , and what we call replacement services, the cost to replace the injured party. The medical expense in SB 158, as to both time and amount, there is no limitation on the amount of medical that would be paid. There is one reservation in describing medical expense, that is, it would pay only for semi-private accommodations in a hospital unless the attending physician prescribes more intensive care.

With respect to wage loss, this bill would provide for up to $750.00 a month wage loss, again without limitation as

to time or ultimate result. The $750.00 was arrived at as an immediate wage and it is after taxes. The bill requires that at the option of the insured, the company must sell additional wage protection if the insured wishes to purchase it, so that if your income exceeds $750.00 a month and you want to insure your entire wage loss or if it's more than $750.00 a month, the company must sell it to you. With respect to replacement services in the home, this provision is made to reimburse the registrant for any out-of-pocket expenses that it is necessary for him to expend to replace the services of himself or any of his relatives which those people normally perform in the home. Now the only limitation that is placed on that amount is that it must be included in the wage loss. The total amount of wage loss includes not only this wage income but whatever is necessary to expend for replacement services in the home. The bill provides for survivor losses so that if the wage earner in the family is killed in an automobile accident, the bill would pay to his surviving dependents who are defined in the bill, the medical expenses necessary, necessarily and reasonably incurred prior to that, $1,000.00 funeral expenses and the wage loss which the injured party was covered for or the deceased party was covered for and this wage loss would go to his surviving dependents for the remainder of his life expectancy so that if he died at age 40 and his life expectancy was 65, the benefits would be paid until he would have reached age 65.

The bill provides for an assigned claims plan. Under the "no-fault" proposals including this one and most others which will be presented to you, there is a problem which these bills try to solve: that of reimbursing all injured parties who might be injured in accidents in this state. Because the insurance is specific as to whom it covers, for example, under this bill, the insurance, as I have told you, would cover all members of the family regardless of the car that they were occupying or regardless of where they were injured, as a pedestrian or a passenger. It would make no difference; they would be covered. But it also covers all other occupants of the car which was registered so that all guests in the car are protected by the policy of the registrant of that car. Similarly, all pedestrians injured by the car, if they are otherwise uninsured.

Now this creates a problem in those cases where you have an uninsured pedestrian, but say a pedestrian who is a member of a non-car-owning family and therefore one who has none of these benefits available to him. If he is injured by a car whose owner is insured or whose operator is insured, the insurer of those persons will treat the injured pedestrian as though they were a named insured in the policy. But if the pedestrian is injured by an uninsured motorist or in the words of the bill, "if after the injury insurance to pay for the injury cannot be identified", then that injured pedestrian is placed in what is called the "assigned claims plan". Under this plan, the unin-

sured pedestrian's claim would be assigned to a company and that company must treat that insured as though he were insured under the mandatory provisions of this bill and at the end of each year, the losses paid by these companies would be apportioned to all companies doing business in Nevada in accordance with their penetration of the market so that a company that has 10% of the business in Nevada would pay 10% of those losses. This is what is called the "assigned claims plan" and it is attempt not only to take care of all persons injured, but is almost an essential part of the bill to make it constitutional so that injured parties are treated the same by the law. The bill requires that insurers of commercial vehicles be treated separately and differently from insurers of type passenger cars. This is necessary because if we form a no-fault bill which takes no cognizance of the commercial vehicle situation, the resulting rate reduction to commercial vehicles would be unconscionably high as compared with the rate reduction paid by private passengers. This is true because most commercial vehicles are already covered. That is, their owners are already covered; their employees by workmen's compensation. It is true also because large commercial vehicles, particularly, have a much greater loss-causing potential than they do loss-variable potential. The driver of a large semi truck on the highway is rarely injured in an accident if you compare it with accidents where he is injured with respect to those of the cars that he hits. In other words, he creates a lot more loss than he assumes. Therefore, under this bill, if you are a passenger in a vehicle for hire, the insurer for the vehicle for hire is responsible for the loss en toto.

If you are a driver of a car of your employer, the insurance of your employer must pay the loss. If you are injured by a commercial vehicle which is engaged in the business of transporting goods and merchandise on the highways, the insurer of the commercial vehicle must pay the entire loss of all injuries created by that accident up to a total of $1,000,000.00. And in spite of this burden which is shifted to commercial vehicles their rate will be reduced under what they are paying today and it will be reduced more than the comptometer rate for the private passenger cars.

This bill also requires that because there is a threshold. (again I refer to page 8, section 20) In this section, we permit suits in tort. That is, suits for pain, suffering and inconvenience, generally referred to as "general damages", in certain limited situations and this is a factor which is in almost all "no-fault" bills and more. There is some way of getting into the tort system for the injuries. The only difference is how the bills describe "serious injuries". This bill described the "serious injuries" as one who has suffered death, significant injuries,

serious permanent disfigurement, or more than six months of the injured person to work in an occupation. If an injured person sustains any of these problems, he has a right to sue the other party for pain and suffering. Keep in mind it is just a right to sue, not a right to collect. Depends who hits you whether you are going to collect under today's system and under this system with these provisions. If you are injured by a person who has no substance and no insurance policy, the right is worthless. If you are hit by a Greyhound bus, the right can be worth a great deal. It is as big a gamble as the major industry of this State. It is a slot machine. But we do provide that serious injuries may sue for pain, suffering and inconvenience. Other bills before you, I know, extend this description of what a serious injury is and most of them use about this same language, but they say,further, a serious injury is also a situation where the insured's medical expenses reach a certain figure, whether it is $1,000 or $2,500.00. It is just another way of describing a serious injury and they permit suits for tort beyond that.

This bill does permit tort suits in the serious injury cases. It does not permit the suit against any driver who is insured in this State except in the serious injury cases so that all motorists in this State, if they are insured, or self-insured, would be immune from a suit in court except under these conditions. They cannot be sued for pain, suffering and inconvenience if they are insured. This is what is generally referred to as the "tort exemption" or the "threshold". Now, the exceptions to this, and there are exceptions, of course, to all rules, the exception to the suit, or the tort immunity, is the uninsured driver, while he is driving his own car. Under the provisions of this bill, the uninsured driver creates an injury, he is subject to a suit in court by the person he injurs. But as I already stated, he probably doesn't have anything so that right is worthless. As I've already explained, we put that injured party in the "assigned claims plan" and take care of his immediate loss that way. But he does have the right to sue for pain and suffering if the motorist was uninsured. And the company that pays the assigned claim losses has a right of action against the uninsured motorist for whatever it's worth.

These generally are the provisions that cover this bill. It is the broadest bill in coverage before you. It restricts the tort system more greatly than any bill before you and this is not by accident. These two things that you have to put on a scale when you're deciding about "no fault", are the most important part of any "no fault" bill. The benefit structure must be related to the so-called threshold. The bills can be costed by actuaries; predictions can be made as to what the cost savings will be. But in order to know what we can predict in the way of cost savings in Nevada, we would like to know what this committee eventually decides it wants in the way of a threshold and in the way of first party benefits. And we offer our services to you on a continuing basis in any way we can help in answering any questions, supplying you with any information, particularly in costing any bill which you ultimately might want to put out.

The third element in here in the cost factor is the liability element. As I said the liability element is open in this state. If you're seriously injured you can always sue the other man. Therefore the bill requires that we sell to all registrants of motor vehicles liability insurance in addition to first party insurance, so that if you cause an accident, if you are at fault in an accident, you can protect your liabilities if the person who is injured sustains one of these very serious injuries and therefore can sue you for pain and suffering. The bill requires that we insure you up to the financial responsibility limits of this state and that at your option, we sell up to $500,000.00 in single limits of liability, if you should choose. This would also protect you in any other state you might be driving where you might incur the liability. The bill also requires that all insurance companies doing business in the State of Nevada must certify to the Commissioner of Insurance of the State of Nevada that all policies issued by that company wherever they are issued, in whatever state, must treat their insureds in the State of Nevada as though the mandatory protection provided by this bill were included in the policy. So that all insureds, from whatever state, who enter this state, who are insured by a company doing business in this state, will be treated as this bill treats residents of Nevada.

There are numerous ramifications of the bill; I'm sure there will be questions arising in your mind, whether you choose to ask them now or later is your pleasure, sir. I have finished an exposition of what the bill tries to do.

Chairman Drakulich then introduced Mr. Hayes.

HAYES: Mr. Chairman and members of the committees: I shall be very brief this afternoon. There are a number of people who are very well prepared to speak this afternoon in behalf of this bill. The bill which I am relief-sponsor of is Assembly Bill 264. This is the bill which has the approval of the State Bar Association and is a "no fault" insurance bill. It preserves what I consider to be a precious right and that is the right to make a claim. The pure, so-called, "no fault" bill would relieve and take away from an injured person a very precious right, a right that has been developed and protected over hundreds of years, and that is the right to look to a person who wronged him for restitution for out-of-pocket expenses, for his pain and suffering, and I think it preserves a very basic concept of our society, that is that the wrongdoer should pay for his wrongs. We are going to be here for a long time, we are going to hear from a lot of people, and I will close my comments with this, Mr. Chairman, and we will hear from other people who have signed to speak on this bill. Thank you.

Chairman Drakulich then called upon Mr. Leonard Ring.

RING: Mr. Chairman, members of the committee. I want to thank you for inviting me here to speak on behalf of your bills. I do not have any prepared statements. Unfortunately I didn't know until last night that I was coming and only after I arrived here did I have a chance to review your bills. Actually I came here to talk to you about the unconstitutionality of many, if not all of these bills and I should tell you that I was the lawyer, I tell you this only because I am going to talk on constitutionality, but I was the lawyer who handled the Illinois case where the statute there was held unconstitutional. Most of what I have learned and what I will say here was learned in obtaining the evidence for that particular case and what will develop in that trial.

Before I begin, however, in view of some of the remarks made by my predecessors, I would like to tell you, I would like to begin, if I may, to tell you how I see the present system because frankly, from hearing what has transpired thus far, I'm not so sure we're all talking about the very same thing. I might also say, before I even get into that, that I am for "no fault", I have been for "no fault" for about thirty years and I have handled fault insurance for about thirty years and that's about how long I've been driving a car. And I marvel at all the confusion I hear, and I've been around to about 20 legislatures, committees, and insurance commissions, about the confusion, and quite frankly, I've been on these panels, if we may call it that, and have had the privilege of speaking to committee such as yourselves with Mr. Slavin who has just preceded me and Mr. Thomas O'Malley who I highly regard, who I think will follow me and I might tell you that in some areas, while we probably are in agreement, and some we are far apart, but let me tell you what the present system is about so you'll understand what you have today.

To begin with, in addition to automobile "no fault" insurance which we shouldn't lose sight of because I've heard it said here and in guarded terms, that you may not be covered in some instances under your automobile insurance policy. I suppose that may be true for a small percentage of the people. But what you really have, when you're talking about "no fault" insurance, you're talking about cheap accident and health insurance. And when I say "cheap", it's cheap because you are talking about medical pay and wage loss and limited to recovery only if the loss results from an automobile accident. ..... Hardly anyone here is without Blue Cross, Blue Shield, Travelers, The Hartford, The Aetna, and all the other plans. As a matter of fact, I have Blue Cross, Blue Shield, then major medical with $500.00 deductible, and I just signed up for unlimited medical coverage for $80.00 for a whole year for my whole family that will take up over the $15,000.00 that I had before. This coverage is for any type of occurrence, and, by the way, as of the end of 1969, and I knew that year because this is the evidence in the "Grace" case, Grace vs. Illinois, the Illinois case, about 93% of the American public had sur-

gical benefits in force. I think 83% had hospital insurance and 78% had other medical insurance. Some of this was total coverage and the rate was increasing at 4% per year since then. And wage loss, the other benefit that's worth even talking about, 81.1% of the American public, as of the end of 1969, according to the evidence in the Grace case, had coverage. 81% of the work force. Now, admittedly, some of that coverage was not complete, but 15% or 20% had total coverage. In other words, what you had in the case of disability, no matter what source, your wages continued. Most of the 85% of the figure I gave you had coverage up to two years. And again, to make it even more complex, some of those plans were $50.00 a week, some $100.00, some had a waiting period or whatever you want to call it, and there were no statistics, at least there were none, in November of 1961, when we put the evidence in in this case, and these statistics, by the way, are interesting figures. There were no statistics about the breakdown in the coverage for work loss for those who had coverage up to two years and for that reason, I say, and for that reason because there is some lack, for some people do not have total wage loss coverage. Some do not have sufficient medical coverage and because only 80% according to the evidence in this case had medical pay coverage on their car at the time we tried the case, at least for Illinois, (this is about a national average), then I say that there is no harm, and I am for it, "no fault" insurance that will pay medical and wage loss. But don't leave here thinking for a moment that there's a real problem as exaggerated as was suggested here earlier about medical and wage loss coverage. I have yet to see a case in my office where there wasn't some wage loss continuation benefits on the injured person.

And I have not seen a person who did not receive his medical care as the result of an accident neither has any of you. Also there is talk about a million dollars recovery by truckers. And all the coverage that we need. And yet the insurance industry, testifying in Washington, just a few weeks ago, February 7, 1973, and that's as current as you can get, testified before the Commerce Committee, this is Mr. Landsman,Kemper Insurance, and he produced, he came prepared with charts. You've all heard about the Camelback meeting that was being investigated just recently by the Commerce Committee. He came with charts and the charts are not too much different from the DOT study except that as Mr. Landsman pointed out, the charts he had prepared were prepared meticulously by the insurance industry from actual cases; about 23,000; whereas the DOT study we've heard so much about, is really a history of 1365 cases which they extrapolated into something like 551,000 seriously injured and which the people who prepared the studies warned everybody against the inaccuracies in that study. Never-

the less, as Mr. Landsman points out, here are the figures and this will give you an idea of how much coverage you really need: The total economic loss, meaning wage loss and medical loss, 80%, (79.9%, to be exact), of all plaintiffs in automobile accidents, is $500.00 or less; 89.1% had a total economic loss of under $1,000.00; 93.1% had a total economic loss, again we're talking about both medical and wage loss, of $1,500.00; 96.3% had a total loss not exceeding $2,500.00; 98.5% had a total loss of $5,000.00 and under; 99.6% had a total economic loss of $10,000.00 and under, and you know, this group of seriously injured that I heard was so under compensated and there is some truth in that, they are; 99.9% had a loss of under $25,000.00, so we're talking about 1/10th of 1% of all people involved in automobile accidents that had a total economic loss of over $25,000.00. And as Mr. Slavin pointed out, he said, the reason "they" don't recover, and doesn't tell you that it's only 1/10th of 1%, but I'm sure he'll agree with this figure, the reason that they don't recover is that the party who causes the injury doesn't have the money to pay for it. In other words, you have some uninsureds on the street or you don't have sufficient tort liability coverage and if you had a 25-50 liability policy, that would take care of them. And even under the tort system, and I want to say again, I'm not against paying the first party benefits, because it is cheap and I'll tell you some more about that in just a moment. But if you had a 25-50 mandatory policy of liability, I don't know what the financial responsibility law is here, I think it's about 10-20, but if you had 25-50 and if you had comparative negligence, about 75% of that 1/10th of 1% would recover that and the rest of them would still recover some of their economic losses.

Quite frankly, under the DOT studies as I recall,if you were going to pay the total economic loss of that 1/10th of 1%, you would probably have to double the premiums in this country and no plan, not even the Federal plan, or anything submitted to you, will totally pay the economic loss of that small 1/10th of 1%. So that you wonder why, then, is the total economic loss so little. Well, stop to think about it: You know, wage loss is important and I agree we ought to provide for it on a primary and first party coverage. But if your school children have a wage loss, your housewife, your grandparents or your fathers, or those unemployed, according to the DOT studies and the evidence we introduced in the Grace case, about 30% to 35% of the people do have a wage loss. If we stop looking at the realities of life, you can see why. Because, frankly, there's only a small percentage who are working. And so now I'm for paying that small percentage, but, at any rate, this explains why the total economic loss of most accident victims is low because most of them do not have any wage loss. When you consider these facts, what are you talking about when you get into these threshold bills? $1,000 threshold, according to all studies, would eliminate about 98%, 97%, of all automobile cases. And while all of these plans have

some exceptions, they are somewhat similar to the one we had in Illinois, and it was admitted by the insurance industry on cross-examination, that even with all the exceptions, the exclusions of death, dismemberment, and all the others, and the Illinois exceptions were more liberal than what we have here with significant, permanent injury: I have a war injury; I cannot close my right hand; but in any event, would this be a significant permanent injury? If I hadn't pointed it out, you wouldn't even have known about it. Or serious disfigurement, is that serious disfigurement? Of course not. You're talking, even under the Illinois plan which didn't have significant and serious to make it arduous to recover, the industry admitted that 94.6% of all cases would be wiped out. And there isn't a plan that you have here, except the one that I want to call the Oregon Plan, that wouldn't eliminate more than that from the system. What does that mean? You're talking about people who would have broken arms who do not have any permanent disability; they would recover; persons who might have punctured lungs, fractured ribs, fractured jaws, you don't have any permanent, significant disability from any of these injuries. Oh, you suffer quite a bit and maybe for a long time, but you'll recover. These are the kind of cases that would be swept aside with the nuisance cases, the small little bumps and bruises that we would all like to see evaporate from the system. And no one tells you about that. And yet to provide these economic loss benefits, what do you think you could get that for now if you went to buy it now as we do in Illinois and other states on the open market? For example, Continental Insurance Company, when the "no fault" craze, if you want to call it that, became evident that it was going to be rather popular, they decided that they were going to go into business on a national scale and they offered "no fault" benefits to every state where a "no fault" law had not been enacted. They were the same kind of benefits that we had in the Illinois plan. If you had $2,000 medical coverage, which as I said about 80% carry anyway and covers about 98% of the victims for their total medical, they would add another $500 to medical coverage and they would give you $150.00 a week in wage loss for a cost of $4 to $5 per car per year. In Delaware, they have a plan, oh, they don't arbitrarily take away the rights of all these people; they provide $10,000 in economic benefits, which as I say will cover 99.6% of all victims without increasing the premium dollar and without taking away the rights of the people one iota, nevertheless because most people recover their economic loss. They've had reduction in claims of 73%, according to Bob Short, the Commissioner of Insurance in that State, which accounts for the fact that they could give you the "no fault" benefits without an increase in premiums. I came back from the State of Washington a few weeks ago where one company volunteered to provide wage loss or medical coverage of $2,000, free, because he felt there would be a sufficient claim reduction, that's Pemco, to justify giving it free and there's some companies in Iowa that are giving it free, I think with a one week elimination of waiting period, $200 a week if you pay for $2,000

in medical. $2,000 in medical will cover 97%-98% of the victims. So this is what you're talking about; what you should provide for your people or nothing. Now, then, I don't think anyone has any great delight in taking away these rights unless you have to, and quite frankly, all the opinion polls, where the people are asked and told what this is all about, they are against taking away the rights.

Now you have two bills, the medical bills differ from one place to another. Before, as we established in the Illinois case, and this was the heart of the Circuit Court's decision, which the court called discrimination of the rankest kind, the proof of the medical expense of the poor was about 1/4th of that of the rich and obviously they were denied equal protection because when you get to a threshold, you can see that the poor have to have a far more severe injury to recover. One of your bills, for example, which is AB 227, has a $2,500 threshold that would knock out 98% or 99% of the claimants, or $5,000 of other loss. I assume that the drafter means wage loss. That means the few fortunate people who make $5,000 a month or more, would, within one month of disability, be able to sue, but all the other victims, which would be about 99.8% wouldn't have any right to recover at all. And the $1,000 threshold, which I believe is AB 227, the drafter of that particular bill, comes up with what I believe is an attempt to cure the Illinois case when they suggest that the Commissioner of Insurance is going to go around to the most populous area of your State and there determine what the medical expenses are for the different medical services, arrive at the mean cost and this is going to be considered the cost in order to make everybody equal. The only trouble with that is, if I may tell you, it's unreal, it's unrealistic; no two people have the same type of injury; no two doctors render the same type of treatment; one doctor will treat a sprained ankle by taping it and insist on immediate weight-bearing, and another will put it in a cast. One doctor comes around three times a day to see you in the hospital; one guy comes around once; others have you back everyday for some type of treatment; some other doctors send you back and see you once a month; and obviously people mend differently and no two injuries are alike. Quite frankly, to meet the test of constitutionality, the bill has to be rational. And imagine, even if this were upheld constitutionally, imagine what would happen in the administration. You spend more administering the bill than you would in providing people with their benefits.

I just want to close with this because it deals with the Florida situation; I assume Mr. O'Malley will tell us something about it. You have to have a bill for the particular state and I'm not saying that threshold bills may not be good for some states; it may have proven well for Florida, I don't know, but I just want to tell you what Mr. Tom Moore, the vice-President of the State Farm Mutual Insurance Company had to say in

his testimony before the Commerce Committee on February 6 and 7. And what he said there is that the theory of first party benefits of course, is that if you pay people their economic loss, there will not be any, it will reduce claims and we agree with that fact. He said prior to the enactment of the Florida bill, State Farm did not experience any lawyer involvement in any of its claims for medical pay. And he says, now, since, and they've got a $1,000 threshold bill, the enactment of their bill in 1972, he said two extraordinary facts emerge: From the 924 Personal Injury Protection, that's "no fault", claims then pending in Miami, 416 were being handled through attorneys. "Of those cases, in which our insureds appeared to be free of fault in the accidents, a total of 508 cases, 82% were in the hands of attorneys. Without speculating as to why this should be so, it seems fair to note that the Florida law has a $1,000 medical threshold. In each case, where our policy holders present us with medical bills exceeding $1,000, he and his attorney will be free to press a bodily injury claim against the person who is to be responsible for the crash in which the injuries occur." Now, he concludes that " experience may show that the threshold is actually self-defeating because it may result in just the build-up in bills". And then he points out that the cost of automobile insurance generally is trending downward rather than upward.

So I say to you, gentlemen, you have a State here that does not have the problems of Massachusetts, Florida, Pennsylvania, and Illinois. You ought to pass a bill that is suitable to your State and now what has happened in other states. Thank you, Mr. Chairman.

Chairman Drakulich then introduced Mr. Tom O'Malley, Insurance Commissioner of State of Florida.

O'MALLEY: Senator Drakulich, Senators, members of the Nevada Legislature and this Committee, and ladies and gentlemen: I appreciated very much the invitation of your Commissioner of Insurance, Mr. Rottman, who invited me out here to offer in terms of some evidence before your Committee in consideration of some of the bills pending in the Nevada Legislature concerning automobile insurance reform.

I'd like to make a couple of points very quickly and basically that, what I have seen as Insurance Commissioner in the State of Florida for a little over two years now, and having studied and considered this concept of adequate and reasonable automobile accident reparations for plaintiffs, injured victims. As I travel about the country and debated with Leonard Ring, as I fought my battles in Florida with the trial lawyers, I have to, in all candor, say that I am a trial lawyer myself by profession. There are those who are in the bar, who are practicing attorneys, who feel very strongly that the current system is archaic, does not serve the numbers of people that it should serve, does not serve them fairly in

terms of making them whole as a result of injuries. There are a couple of points before I get into a very simple presentation of what our Florida law has accomplished which I think is significant in terms of experience because when our Legislature considered this "no fault" concept for automobile insurance, the same people basically, the faces may have changed, the names may have changed, but the same argument appeared only from one element, that's the trial lawyers. There were some segments of the insurance industry namely the National Association of Independent Insurers who had looked askance at the "no fault" concept, didn't think it would work. But basically the major opposition comes from trial lawyers. I think one has to say "why"? I can tell you as a trial lawyer I'd be happy to answer questions from any Senator or Assemblyman here as to just exactly what it means financially to a trial lawyer to be able to have an accident case come into his office. It means a lot of money, too. It did to me as a trial lawyer. The question is: are we serving the public. Several of the things that Leonard mentioned, I think, must be commented upon because they were passed over too quickly and softly. And I think raise some very serious questions. First, the Illinois bill, which was declared unconstitutional, was declared unconstitutional because, as Leonard Ring pointed out, the Court said the system of trying to pay pain and suffering benefits and tying it to medical expense was not fair. And the Illinois bill provision, called Section 680, which established this formula. The trial lawyers, in the process of the Legislative proceedings, wrote into the Illinois bill, a specific provision that said that if Section 608 fell, which is a provision they helped write, the whole statute fell. And that's exactly what happened in Illinois. We had the experience in Florida where the registered lobbyists for the Florida Trial Lawyers, the American Academy of Trial Lawyers, came around to our committee hearings and tried to pop in cute little amendments, one of which is to strike the subrobility provision of the Florida law, taking that last paragraph and I'm sure that you as Legislators are well-aware that most statutes, in order to preserve the constitutionality, if there is one question about a section of the bill, have a subrobility provision in your legislation. The attitude that was taken by the trial lawyers in Florida was, eliminate the subrobility provision in committee and then let the bill come out. And then if one section is successfully challenged, the whole bills fails if it doesn't have a subrobility clause. So procedurally they've been very sophisticated about how to kill this whole concept. Now one has to say "why"? Massachusetts, for instance, which Leonard was talking about, he passed over a little too quickly and I think it is most significant because what Massachusetts said, they said in a 32 page majority opinion; not just a little quickie that said, "well, people who opposed "no-fault" are on the other side in terms of the legal issues involved merely fail

to overcome the presumption of constitutionality". There isn't a Legislature in this country who, when they passed the statute the courts felt required the other side must overcome a presumption of constitutionality. Every bill that you pass as a Nevada legislator has a presumption of constitutionality through it until it's challenged and the court has considered arguments or ruled otherwise. What Massachusetts said was basically this: Massachusetts said that a legislative body should have the right, if they can abolish an English or Common Law cause of action, they certainly have a right to on reasonably fair standards, modify Common Law cause of action. And that's all they're talking about. Most people, when they take these public opinion polls, say well, we don't want our right to sue somebody taken away from us. But do they really know what they're talking about? Do they really recognize the fact that they may not be able to recover a dime if they lose a leg in an automobile accident, if they're guilty of any substantiable contributory negligence? They don't get a dime under the existing system. One of the arguments that one of the trial lawyers use is, well, what about the 30 year old housewife with five children who goes out, has an accident, a speeding car hits her broadside. What happens to her under "no-fault"; she's only going to get X number of dollars under first party benefits. They never raise the issue, had she been guilty of contributory negligence, under the existing system, the tort system, she couldn't recover a dime. She'd have tremendous medical expenses, tremendous out-of-pocket expenses, and couldn't recover one single dime if she was guilty of contributory negligence to an appreciable degree. So all the Massachusetts Supreme Court said in that opinion was, the plaintiff alleged that because he was not permitted to sue in tort, to use his Common Law cause of action right in tort, he was being denied a vested right. The Court disagreed with him and said that the Massachusetts Legislature, in a thirty-two page opinion,if they use reasonable standards, could modify that Common Law cause of action.

There is nothing unique about Legislatures doing this; changing a system that doesn't work and certainly the existing system does not work for the most people to the best benefit that it could in terms of reparation to the injured party either through loss of earnings or loss of wages or medical expense provisions. In Florida, for instance, our Legislature, many years ago,totally abolished two Common Law causes of action: alienation of affection, and criminal conversation for which one used to be able to sue under the Common Law theory under those two causes of action to recover money damages. Those two Common Law causes of action were abolished. In Florida you can no longer sue for alienation of affection; you can no longer sue for criminal conversation. So those two causes of action were abolished. What Florida did, Florida merely took the Common Law cause of action and modified it substantially, as AB 227 does here, setting some reasonable standards to be used as guidelines; not trying to appease the

trial lawyers by saying everybody should be entitled to pain and suffering money and using a formula as they did in Illinois. We didn't try to do that. We said in Florida, basically this: set reasonable standards and you will eliminate several things: 1) You eliminate tremendous crowding of your court dockets; and I'm sure Leonard will agree with me, that the major number of case loads in most courts, involve themselves with personal injury accident cases arising out of automobile accidents. So there are indirect savings you as Legislators can consider in terms of the cost of keeping that court system going to take care of a very archaic system of "an eye for an eye" or "a tooth for a tooth" concept. This truly isn't fair. I might say that in talking to other commissioners, for instance, Bob Short of Delaware, and Carl of Washington, and having met the former commissioner from Oregon who have in substance a kind of part "no fault" bill. The only problem with those bills, I feel personally, they do not, they have no threshold for which tort recovery cannot be had. In essence, to make the terms understandable, what they're saying in those two states is,we're going to have the company pay you the first party benefits, loss of earnings and medical expenses, but we're not going to remove your right to sue at all, under any standards. So all you're doing, and I can tell you this as an attorney, is encourage more litigation. Because what the attorneys will do who specialize in personal injury work or many of them will do, the ethical one doesn't, is they'll use that first party payment benefit to build up a third-party cause of action. Because I can tell you as an attorney when you go before a jury if you don't have substantial medical expense, the chances of getting a substantially large verdict are somewhat limited. And the old concept, the old trick, and I'm sure all the trial lawyers who are in this audience recognize it as such, the old trick was that if you carried medical payments coverage, as soon as that accident walked into your office, you whipped the guy off to a doctor and used up that $1,000 worth of medical treatment, whether he needed it or not, in many instances, in order to build up a third-party claim so that it would look good by the time you got it in front of a jury. And this happens. It's an unfortunate situation. In medicine we find doctors who take advantage of the situations. We've experienced a problem in Florida which unfortunately presents a very significant argument as to the fact that this goes on because when we passed our $1,000 medical threshold, we are now experiencing a series of claims where police action in the court shows that the person has not been injured or complained of injury at the scene of the accident, two or three days later after he's reached an attorney and a doctor, he's been hospitalized for six or seven days and when they come out, they've got a medical bill, one bill which I have on my desk, now reflects a total medical bill of $1,000.25 for a sprained wrist. So no matter how you write your bill, gentlemen, you're going to find people who are going to find a way to get around it.

And in many instances, very unethically, as it's being done in Florida. Well, when I heard Leonard talk about the comments made by the State Farm man, who said that medical payments claims they never had an attorney involved in collecting a medical payment claim. I can tell you why. When a person paid a premium for medical payments, he turned in medical bills and the company paid it. There wasn't any question. Sometimes, on very rare occasions, you find a company who questions the reasonableness of the cost. For instance, some osteopath or physician might have put down he had the patient in his office three times in a day because he got the dates mixed up or had the wrong secretary working on the patient's file. And we know it in the business, I know it as a lawyer and I know it as an Insurance Commissioner, that these abuses go on.

Another problem that one of the gentlemen asked here about the number of people in the ghetto areas having medical bills less than a person who is more affluent financially, a lot of the reasons why the medical bills in automobile accidents are so high is because lawyers are sending them to particular doctors. It goes without saying, that in Miami, Florida, that I can tell you that a certain plaintiff's doctor is going to give him a flat 5%disability, if that case goes to trial. If a person complains for six months with nothing but subjective complaints, no evidence of fracture or nothing that shows up on X-ray, that doctor will inevitably give that person 5% permanent disability in order to enlarge the possibility of a large verdict, if that case goes to trial. Now those are the abuses that the concept of "no fault" are designed hopefully to correct, not that it will correct all situations, but it will certainly eliminate a number of phoney claims that number in the thousands throughout the country and certainly exist here in your State just as they do in Florida. At the same time it does more than that; in Florida, in two years of "no fault", we have accomplished premium rate reductions of $68,000,000.00; $42,000,000 the first year with a mandated 15% reduction in bodily injury rates, and the balance of the $68,000,000 for an 11% reduction which we just ordered to be put into effect in January of 1973. I don't care how you cut the mustard, the public wants to save money and they have a perfect vehicle under which to save money now because by re-allocating the same premium dollar, but you're paying out to people medical expenses and loss of earning expenses rather than having almost 20% of the premium dollar go into lawyer's pockets. I'm not adverse to that; as a lawyer I hope it still keeps coming. But I think we have to realistically look at ourselves and say, "does the present system work; does it serve our citizenry as it should serve them in terms of reparation?" It does not, gentlemen. There isn't a study that shows that the existing system of being compensated for injuries arising out of an automobile accident cannot be improved upon, in some way. Now what plan any legislature decides to adopt must recognize that if you wish to accomplish savings, the threshold concept of medical expenses is realistic and should be applied.

Removal of court remedy: Now we've tried in Florida, our Legislature, in considering bills, tried to appease the cries of the trial lawyer associations that we were taking away the inherent right that the American citizen has. I swore I could hear a band playing in the background and flags waving when a trial lawyer got up to testify before our Senate Commerce Committee on a bill. It was really an emotional thing. It sounds good to say, well, don't take a person's right away, but when you stop to see the figures reflectively show that there's no question that most people are not adequately compensated. These are the important things that the citizens are concerned about. And under the old system, with no first-party payment, if you were laid out, most people, not the guy that's rich and able to buy up all kinds of policies to protect his family, but the guy who's out there working for $100.00 a week or less, or $125.00 a week who if he misses ten days of work may not be able to pay the rent or the mortgage payment or the food for his family. He certainly can't pay a doctor; maybe he doesn't have one of these major medical policies or can't afford to have a Blue Cross-Blue Shield policy. Who takes care of that person if he's injured? Under "no-fault" first party reparation he can be paid immediately loss of earnings based upon substantiation of his loss and his earnings; he can also have his medical expenses covered up to a reasonable sum. In Florida, the figure's $5,000.00. And we have then, in order to appease those who say, well, don't take away this right of recovery in serious injury cases, we have set those thresholds and a person who is seriously injured, for instance, that housewife can recover her first party benefits and if she then wants to go to court and sue in tort, she can do so. If the jury felt she was entitled to $25,000, $100,000, $125,000, they could award her that sum. Anything that her insurance company paid her under the automobile reparation act would be set off against this. So we preserve that right to sue in tort for the seriously injured person. And I think this bill, AB 227, as I glanced at it briefly yesterday, follows pretty much the line of the Massachusetts concept, the Florida concept, and there are those in the country who think that the Florida law is probably the most workable. Certainly we feel that from a legal standpoint we've been successful.

When Leonard mentioned whether or not the Florida law had been declared unconstitutional, there isn't a major law firm that specializes in trial work that hasn't gotten together with the Florida trial lawyers, in fact, they call each other. We've got minutes of their meetings where they have "how to kill 'no-fault' in Florida." They actually had a meeting last summer on how to kill "no fault", what can you do. So they began spending money, circulating throughout the State, trying to get people to come into their offices. This is another reason why State Farm has experienced representation of some 416 first-party claimant claims since the enactment of "no-

fault. The trial association's actively solicit clients to come into their office with a piece of advertisement to encourage the people to come into lawyer's to make sure they're getting what the law says they're entitled to get. This is because most attorneys that I've talked to in the State handle personal injury work and have had a drastic reduction in the number of cases that come into their offices. We know we have built in guidelines in our Florida law, the guarantee just as your law does, that the company who unreasonably refuses to pay the benefits that the law requires, that they have to pay interest and they have to pay a penalty. And believe me, that's the responsibility of the enforcement agency of the insurance commission of the state to make sure that no company tries to take advantage of the citizen. There is no reason in the world why a person has to go to an attorney if he has a headache for two or three days from a $25 accident and these are the cases that are costing $1,500 to $2,000. where attorneys on both sides are being paid. One of the things that used to infuriate me which helped to go into the build-up of the cost of automobile insurance was large defense firms used to have twenty lawyers, fresh out of law school, that whenever you filed a personal injury case, they'd run you ragged going down to hearings, motions on this, motions on that, so that they could bill that insurance company $75.00 for attending the motion calendar, knowing that many of these motions were literally dilatory in nature, but you had to go there, so by the time you got done with a $500.00 accident case which should have been paid, there's a defense firm getting maybe $1,200.00 in fees and there's the plaintiff's firm who's getting maybe 33-1/3% from a jury verdict up to 50% or whatever the jury awards. Of course, there's a doctor who in many instances prescribes far more treatment than is necessary. Both in my experience as a claims adjuster for six years when I was going through school, you could almost put your fingers on the doctors in the yellow pages and say that this doctor's going to have a guy in here that's been in an automobile accident with five days of treatment for diathermy on his neck where the damage to his bumper might have been $25.00. But that guy will be in there for that diathermy treatment everyday. Occasionally they put down diathermy bills and the guy was out playing golf. But these are the things that go into building up the costs of automobile insurance under the existing system. This helps no one, does nothing for the citizen, doesn't help the plaintiff, so I would urge you as legislators to seriously consider realistic thresholds in your bill, if you adopt a no-fault piece of automobile insurance legislation. Without a reasonable threshold you certainly won't accomplish anything because you won't eliminate the cost savings which you do when you eliminate the many things that go on in making up that difference whether it's built-up medical bills, whether it's unconscionable actions by a number of parties, including the plaintiff himself. Unless there is a serious injury, that person, in my opinion,

has no right to a pain and suffering payment for a headache for two or three days.We tried, along with the assistance of some of the people in Florida, to come up with the exception, such as the permanent disfigurement, permanent injury, fractures of bones which the Florida trial lawyers insisted be in the bill. Fracture of weight-bearing bones in most instances would be a permanent injury. We felt that in the two years that we've had our bill in operation we know we've been successful. You can tell so by the screams of anguish from the Florida trial lawyers.

I'd like to relate to you that one of the elements of damage, of course, that is consistent with the tort remedy is that the husband can sue for loss of consortion of the wife, but the wife can't sue for loss of consortion of the husband. I can never figure out, as a trial lawyer, the Common Law doctrine that said you can collect for your wife but she can never collect for you. I always considered myself rather expensive or at least worth more than a mere pittance without having the right to recover. So there are a lot of things about the whole concept with the Common Law system that we hear from the trial lawyers, "Don't take the person's right away." Well, this is what they tell the citizens in the poll: Do you think the Legislature should take away your right to sue a person who causes you injury or damage? So the person says to himself, "Heck, no, if I've got that now I want to keep it." The same person can go out there and have an automobile accident and not collect a dime unless the other person's at fault. As far as I'm concerned, I think it's a good thing; as an attorney I think it's a good thing in all fairness. I think attorneys owe a responsibility to see to it that legislation passes which benefits. Most legislatures are heavily dominated by attorneys. That's why there has been so much opposition to this concept which directly effects lawyer's pocketbooks if he's doing trial work. Gentlemen, I tell you that the present system doesn't work and if we don't do something about it, we're going to find that we will be going to Washington.

Chairman Drakulich then introduced Mr. Cornelius C. Bateson, former Insurance Commissioner of the State of Oregon who related Oregon's experiences.

BATESON: In late 1969, as Insurance Commissioner of the State of Oregon, I became concerned about the efficiency of the extant automobile operation system and the need to consider one or another of the various "no-fault" proposals that were being made. (See Addendum B for the complete text of Mr. Bateson's remarks.)

Chairman Drakulich then introduced Mr. Toy Gregory.

GREGORY: Thank you, Mr. Chairman. I represent the Nevada Trial Lawyers, as President of the Nevada Trial Lawyers Association. Due to the limit of the time, I would like to address my

brief remarks to just one aspect of the subject with which you're concerned and that is the questions of rates and who pays the higher rates and who the lower rates. I think this is a very important question, briefly touched upon by the Commissioner. For instance, under our present system, the insurance company pays damages where its insured is found to be legally responsible for damages in an automobile accident. Now, therefore, the insurance rates that are charged reflect the potential of the insured to cause damage to others under our present system. In other words, the driver who has a high accident rate, a lot of traffic citations, a greater potential to cause his company to pay damages to those that he injurs, will have to pay a higher rate. On the other hand, the careful driver who has no citations, is involved in no accidents, pays a lower rate and between the two poles we have the drivers with varying experiences whose rates are set accordingly. Now since our present system is based on and operates under a third party liability contract principal, this method of adjusting rates is fair and equitable. Now unlike our present system and the third party aspect, the threshold bills that you are considering, the pure "no-fault" in other words, all the bills except AB 264 and SB 255, the so-called Oregon plans, which incidentally the Nevada Trial Lawyers support, but unlike our present system, the "no-fault" threshold plan is a system of first-party contract. That is, the company pays to its own insured and is not concerned with the damages its insured causes to others. And in structuring its rates, it takes this into consideration. Now, as an example, the same principal applies to life insurance and health and accident insurance. If we have two individuals apply for the same life insurance policy and one has a history of heart disease, the other has no heart problems and good health, then the person with the heart condition is certainly going to have to pay the higher rate. Obviously, this is a potential for the company to have to pay him. The same is true of medical insurance. Now logically the threshold in the pure "no fault" system should have a similar rate structure. Therefore the person who is expected to collect the most from his company is the one who will logically pay the higher premium. An individual with a large family with a station wagon is going to have to pay a higher premium than, for instance, a college student who is unemployed owning a two-seater sports car. Suppose we had a collision between these two vehicles, the company that insures the station wagon will first have to pay a work loss to this insured, they're going to have to pay medical and hospital expenses to the driver of the station wagon; the same expenses to the wife, to the children, so it's going to have a substantial loss as a result of this accident which might not even have been the driver of the station wagon's fault. On the other hand, the insurer of the student who is driving the sports car who would be unemployed will have no work compensation to pay to him, if he is injured the company would have to pay medical and hospital insurance,

if he happened to have one passenger in the one seat, he would receive medical payments. But the situation, I think illustrates the point that the company who insured the sports driver is not concerned with his bad record, driving violations or how many accidents he has had, at least it has less impact than under the present tort liability system. Now with fault eliminated from our system which is the proposal under the threshold "no fault" plan, the sports car driver that I mentioned could run a red light, crash into a bus loaded with people, and his insurer wouldn't be concerned with the damages that he did to that bus unless, of course, it insured the bus also, because its only concern would be, what is my exposure to the insurance company, the driver of the sports car, who I insured.

Now, it would stand to reason that under such a system, that the poor driver with the bad driving record, could demand lower rates in some instances than the married man with a large family who has a good job. It's illogical to assume that a person's own insurance company or that insurance company can charge its own insureds a higher premium rate because that insured party might cause some other insurance company to pay its insureds more money. It just doesn't work that way. Now, I think, to put it in a nutshell and I'll conclude my remarks with this comment, the threshold bill and the pure "no fault" bill is a complete reversal in our whole system of values. What we're doing is, we're making the careful driver instead of benefitting from his careful driving, we're penalizing him; we're making him subsidize the poor driver and making him pay the cost of the poor driver's insurance.

So, gentlemen, I request, our suggestion is, that we preserve our court system as we know it today and at the same time, cure many of the ills and we admit they are problems of the present system which are, we feel, cured by the Oregon plan.

Chairman Drakulich introduced Mr. Drake Delanoy.

DELANOY: Thank you, Mr. Chairman. I'm going to speak very briefly because of the hour. I was asked to participate as the chairman of a committee of lawyers from the north and south parts of Nevada, both plaintiff and defense attorneys, and this was called the No-Fault Committee of the Bar Association. We reviewed the legislation that had been in existence in other states and came up with the suggestion that possibly the Oregon bill would be a suitable bill for the State of Nevada. I am somewhat pained by the remarks of Mr. O'Malley, possibly inferring that there's unethical practice among the lawyers everywhere. Quite to the contrary, I don't feel that this ex-

ists in Nevada; I don't think we have any problems with unethical doctors, and so on. One of the things that concerned me when I looked into this problem is that we don't know at this time, how Nevada rates nationally with what we do pay for insurance. I don't know if we have any existing figures along those lines. We don't know at this time how Nevada rates nationally with what we do pay for insurance. I don't know if we have any existing figures along those lines. We don't know this: that if the no-fault bills are adopted how much the insurance companies are going to profit on the bottom line. In light of the attitude of certainly many of our clients, and we certainly do much of the defense work, they are opposed to the Oregon plan and suggest pure "no fault" or at least a threshold plan. So we feel, as a suggestion to this group, that possibly before we run, maybe we should walk, adopt something similar to the Oregon bill, return the tort value, and then if we're not successful, then go on to where you deprive the individual of their rights to sue. I think it's rather ironic that we're talking about the ERA on one side, listening to a group giving rights, and now you're listening to a group that wants to take rights away from Nevadans.

I feel this way, with the payment of $3,000 as we suggest, that will eliminate litigation. You're going to hear from one of our judges from Southern Nevada and you're going to hear that there's no clogged court system here. I have some statistics here from Oregon indicating that the cases filed have decreased in one or two of their counties. I have a further bit of information from the Insurance Commissioner of Oregon who, unfortunately is under subpoena to testify in Oregon, that they are following the same program that they adopted some two years ago, but at about a 15% decrease across the board. I think that's the kind of legislation we should try first in Nevada and again if it's not successful, go on to the threshold and take away the rights. Thank you.

Senator Drakulich announced that the hearing would recess until tomorrow, Thursday, afternoon at 3:00 p.m.

Senator Drakulich re-convened the hearing on the "no-fault" bills at 3:15, Thursday, March 1, 1973. He introduced Mr. Patton of the American Automobile Association.

PATTON: Thank you, Mr. Chairman and ladies and gentlemen of the Committee. My name is R. V. Patton. I'm vice-president and general manager of the California State Automobile Association, or the three As, if you prefer. We represent about 32,000 motorists in Nevada, about 12% of your licensed drivers. Nationwide we represent over 15,000,000 motorists and I think our interest in traffic safety in motor vehicle laws should be self-evident. We've been representing what we consider the best interests of motorists for over seventy years. We have a deep interest in the auto insurance system and wish to be sure that it meets the time-honored cost benefit test. I think at this point it's important to note that by any test the present system is not meeting a cost benefit level which is in the best interests of motorists. For this purpose I would refer you to two documents which I think will stand on their own merit. One is one of the twenty-three volumes of the Department of Transportation study. It's a summary; on page 100 they conclude: "In summary, the existing system ill-serves the accident victim, the insured, public and society. It is inefficient, overly costly, and slow." The Motor Vehicle Reform pamphlet, which was prepared by the Advisory Committee on Automobile Accident Claims by the Council of State Governments has a similar conclusion: "The Committee is unanimous in its belief that there is a clear and present need for reform in the auto accident reparation system. Experience has shown that the present court system based solely on fault has all too often been inefficient, inequitable, wasteful and a significant contributing factor to congestive court dockets." No amount of trial lawyer rhetoric can overcome the information which is available in not only these studies but in every objective study which has been made of the present system.

The need for auto insurance reform is now. Over 50% of the victims of auto accidents are uncompensated; those that are compensated are often compensated unfairly. For example, a statistic cited yesterday which again came from the DOT study showed that individuals with economic losses of $500.00 were being paid an average of 4-1/2 times their economic loss, where an individual who had been damaged in a case with a value of $10,000.00 ended up with $9,000 being his economic loss reimbursement. I submit that this is a very inefficient use of the premium dollars.

I think it's important to comment on further statements made by those who are opponents. They note that they represent the right to sue of injured victims. Who are these injured victims? In Nevada last year, I was just handed a document prepared by one of your own State bodies, the Department of Highways, which shows there were 21,000 automobile accidents last year in Nevada; that there were 8,000 injured and killed, and by a quick glance at the table that is supplied with it, you will see that about 25% of these were injured in single car accidents. I submit that those people had no right to sue. The right to sue is a potential right. It does not exist in at least 50% of the cases. Therefore, our concern should be for all injured victims to be reimbursed for their loss promptly, without regard to fault, preserving the right of the seriously injured to pursue that claim for additional damages if, in fact, he has a claim.

I think that we should consider what the bills before you will accomplish. Again in our judgment there are two bills, AB 227, and AB 226, which with a minor number of amendments, some of which have already been suggested to the authors, meet the criteria for cost benefit for all motorists in Nevada. We believe there must be a fine balance between the rights of those with minor injuries to recover immediately, reducing the costs by reducing their rights to this potential, in exchange for which they receive immediate reimbursement of all economic loss benefits to all victims.

I'll be happy to answer any questions in the interest of time, Mr. Chairman. That concludes my formal testimony. (See Addendum C for "Comparison of No Fault Automobile Insurance Bills prepared by the California State Automobile Association.)

Chairman Drakulich then introduced Mr. Al Wittenberg.

WITTENBERG: Thank you, Mr. Chairman. I'm a co-sponsor of two of the bills being considered, AB 226 and AB 227. In the studies that I have done on the subject of "no fault" and the hearings and conferences that I have attended, I've listened with much interest to the arguments against "no fault". I must admit I haven't heard any new arguments in the last six months and I didn't hear any new arguments yesterday and I doubt very much if I'm going to hear any valid arguments today. The real blunt truth about it, ladies and gentlemen, is there are not any real valid, intelligent arguments against "no fault". The opposition merely keeps running over the same old tired ground that I have been hearing for six months; that we shouldn't give up our basic all-American right to sue; that drivers are going to start driving more carelessly than they do today because they don't have to be responsible anymore; that some 18-year old blond, blue-eyed, beautiful piano player

that loses a finger or has her face scared is going to be ruined for the rest of her life because we have limited her tort liabilities; that rates are going to go up; and that our attorneys are going to go red lines. Well, I've got this much to say about all that and for lack of a better word - garbage. I say let's stop all this nonsense and get to the basics and get the facts before this Committee and let's thrash something out here.

The present system doesn't work, we all know it. "No-fault" can change this and it can benefit you, me, and all Nevadans. I believe that Nevada needs a good, strong, threshold style of bill. That's why I support AB 227, as the best offer, and 226 as the nearest alternate. I urge your support for it.

I would be remiss in speaking if I do not make some observations about the Oregon and Delaware style of bills offered before us. These bills referred to earlier should not even have been referred to us as "no fault". They are a fraud and an attempt to deceive the people of Nevada into believing that the Bar Association and the Trial Lawyers are in favor of "no fault". We know better. By playing on the public's emotions and telling them they can have "no fault" and not restrict or give up their right to sue, they are not telling the public the truth. The truth is that under the Oregon concept there will probably, more than likely, be an increase in rates and it would encourage every accident victim to collect what he can under his policy and then to turn around and sue for whatever he can get. I urge you to reject these plans and to see them for exactly what they are - fraud. Thank you.

Chairman Drakulich then introduced Mr. S. Lynn Sutcliffe.

SUTCLIFFE: Thank you, Mr. Chairman, members of the Committee. My name is Lynn Sutcliffe. I am counsel for the United States Committee on Commerce and have primary staff responsibility for consumer and automobile transportation legislation referred to that Committee, including the national "no fault" automobile insurance act, S 354. It is a pleasure for me to appear before this Committee and to discuss with you the national motor vehicle "no fault" insurance act and answer any questions you might have about that act and related matters. It is my understanding that copies of S 354 and the remarks of the sponsors made upon introduction of the legislation have been forwarded to the Committee by Senator Magnuson. I would like at this time to submit for the record a Congressional reprint of the introductory remarks which summarize the reasons for the national motor vehicle insurance act and provide a detailed commentary on the provisions and ramifications. (See Addendum D)

With the permission of this Committee, I would like to

orally summarize the provisions of the national motor vehicle insurance act and then answer any questions that you might have. To facilitate my summary, I would like to present to the Committee a chart comparing the national motor vehicle insurance act and a recently enacted Michigan "no fault" insurance law. This chart was presented to the Senate Commerce Committee in testimony on February 1, 1973. It was prepared by Dr. Dennis Reinmath, Professor of Insurance from the State of Michigan. I believe it will be helpful to the understanding of the basic provisions of S 354 and useful as a tool for comparing S 354 with other legislation that you have before this Committee.

With your permission, I would like to now proceed to an oral summary discussion of S 354, the National No-Fault Motor Vehicle Insurance Act, and ask if you could follow along with this chart so that you understand the way in which the Federal legislation works. I will not bother to reiterate the reasons why the Department of Transportation and the Senate Commerce Committee have found that the present system fails in every respect and as sponsors of the Federal legislation and the President himself has said that it's time we enact a "no-fault"program. Rather I'll address myself to the particulars of the legislation and explain that this is Federal standards legislation. By that I mean that certain guidelines are set down for states to abide by. Failure to abide by the guidelines results in the implementation within a state of a whole or pure "no fault" bill. The words of the statute, S 354, are that the "state meet or exceed the guidelines" in the national no-fault motor vehicle insurance act. So, if I may go over the sailing features of S 354 so you understand what those guidelines are.

The first feature is the mandatory basic reparation benefits. As you will see in S 354, it is the requirement that all reasonable medical and rehabilitation expenses be provided for on first party no-fault basis. This interestingly enough is the same provision in the Michigan law. Work loss must be provided at $1,000 a month level, adjusted by the relationship of the national average income to the state average income, but basically $1,000 a month to a minimum of $50,000 unless the State, for actuary reason can show the need to reduce the $50,000 level to $25,000 for work loss. So there's that flexibility for cost purposes; to reduce down the basic work loss from $50,000 to $25,000 if it needed in order to prevent insurance costs from rising.

Replacement, services lost, survivors' loss and survivors' replacement services loss. These are required to be provided subject to any reasonable limitations which the state establishes. If the state has particular problems, for example, many single car accidents in the state and does not believe it can absorb the total $50,000 and $25,000 wage loss protection,

it may elect, if it so chooses, to let survivors' loss, for example, to prevent premium cost for the comprehensive package from getting completely out of hand. In the optional deductions and exclusions, again, Federal legislation leaves this to the discretion of the state. The only requirement and control is that it be reasonable. Vehicles included in the system, all vehicles are included within the "no fault" system of S 354. The denial or restriction of benefits to certain persons: Persons who intentionally cause injury are denied the "no fault" benefits, the intentional converter, and that is bound to be someone over 15 years of age, and the uninsured motorist, to a limited extent, is limited to his first party insurance benefits. For every year that he has been uninsured, a $500.00 per year deduction is applied, as he makes application to the assigned risk plan.

As to the tort exemptions that retain tort liabilities, owners who have not purchased required insurance are still subject to tort liability; those persons who have intentionally caused harm to personal property and as far as the intangible damage area, damages for detriment in excess of $5,000.00; death, serious impairment, serious permanent injury, or more than six months of total disability or the inability to engage in one's occupation for a period of six months or more. These thresholds are identical to the Uniform Motor Vehicle Reparations Act drafted by the National Conference of Commissioners on Uniform State Laws and promulgated in August of 1972.

As you see, the Federal legislation does not go to a medical threshold. This would be equivalent to about a $5,000 medical threshold. That would be the closest guess as far as equivalency. Auto manufacturers, repair shops and railroads are not exempt from tort liability if they have done something to cause an automobile accident. These features I think you should check in both 226 and 227 where there is limitation because you may have unintentionally excluded or applied the exemption to these people. This is particularly true of damages caused by owners of parking lots and storage garages. You don't want the situation where an individual can park your car, scrape it up, return the keys to you and not allow you to have a damage claim. Check this in your provisions.

Damage to property other than a motor vehicle in use. What this means is that the motor vehicle is under the "no fault" system when it is in operation; it's parked on the side or someone bangs into it, you still have your tort remedy and again damages for economic loss not compensated by "no fault" benefits you may sue. In all the situations, the right to sue is limited and the right to recover, however, is substantial.

In relation to some of the comments made by a previous speaker, there is recognition in the Federal legislation that

there still will be litigation in this area, that there will be possible disputes between the insured and the insurers and in this situation, in order to facilitate the settlement environment, the insurer is required to pick up all costs of litigation, whether the claimant wins or loses, as long as the claim is not fraudulent or so excessive that it has no reasonable foundation. This means that the insurance company has to have pretty good reason for denying a claim on a first party basis. Otherwise he's going to have to absorb those costs. Under the present system, you realize, the costs of litigation are borne both by the insurance company and primarily, by the individual litigant who recovers a certain amount of money when the insurance company pays him his benefits or a jury decides a result and then he must turn around and finance that litigation out of his own pocket. What we're suggesting here is that the financing of the litigation in the new system should be borne by the entire insurance mechanism. We're spreading the risks in terms of benefits; we should also spread the risk in terms of cost of litigation and resolution of disputes. We think this provision addresses itself to some of the issues raised and will improve drastically the settlement involved between policy holders and insurers.

Under the Federal legislation, there is no ability to seek reimbursement from another insurance company on the basis of fault removed from the individual or individuals involved in the accident. This differs from the two bills that adopt a "no fault" approach, AB 226 and AB 227. As far as cancellation or non-renewal, the minimum standards of the Federal legislation would require a state to have some provision that "prevented cancellation during the policy term except on grounds, non-payment of premium or revocation of driver's license". As far as non-renewal, there will be notice required at the end of the policy period that the insurance company intended to non-renew and the insurance company would have to make arrangements to place you in the diverse plan and cost that assigned risk plan for you so that you can then go to the marketplace and decide whether you wanted to go into the assigned risk pool or whether you wanted to seek your insurance elsewhere. If you requested them to take care of the assigned risk, they would take care of that opportunity. Again this is a minimum standard, the state would meet or exceed it. I notice some of the other bills that were more comprehensive coverage for cancellation of an automobile, that would be in the mandate of the meaning or exceeding the requirements of the Federal legislation.

As to interstate aspects, the Federal legislation was able to accomplish a solution to a very difficult problem, that is, how to arrange for insurance coverage in all situations when a person is in-state, in another state under a "no fault" plan that differs from a "no fault" plan in his own state. Because of the breach of Federal jurisdiction

we simply require the insurance policy to change as it goes from state to state and provide that there can be no hold develop. I would suggest that in AB 226 and AB 227 that you look very closely at that. I think there are ways you can plug up more holes. I don't think you can plug up all holes because of the nature of the beast and the potential jurisdiction limitations of each state.

Like most legislation of "no fault", S 354 requires that the state establish an assigned claims plan that leaves fairly much to the discretion of the state provisions of that. One interesting aspect of S 354 is that it requires the insurance commission to make sure that no rate in the assigned claims plan are so excessive as to exclude any economically disadvantaged individual, as a class, the right to operate a motor vehicle. Standard compulsory insurance system, it is argued that you would deny economic groups the right to drive because they cannot afford the insurance. What this says is "if that situation pertains, there will be a study of the cost of that insurance to enable the economically disadvantaged to have access and to be able to operate a motor vehicle legally".

There are several other provisions that I would like to bring to your attention before closing. One is that the automobile insurance system under S 354 would require automobile coverage be primary except as a social security, other government provided benefits and workmens compensation; as to priority of payment, an individual would look to his own insurance company before he looked to the insurance company if he was riding in another motor vehicle. Payment must be made in thirty days. Failure to make payment within 30 days results in an 18% penalty.

A final point, I think it is important to realize because it has been misunderstood often, the Federal legislation leaves totally and completely to the individual states, either under the Federal standard approach or even if the Federal section comes into effect because of the failure of the legislature to act, leaves totally and completely to the states the regulation and taxation of insurance. This is specifically in the bill. It could not be said any clearer. I would like to emphasize that point.

Chairman Drakulich then introduced Mr. Lee Rose.

ROSE: Senator Drakulich: I'd like to speak for myself and I'd also like to say I'm representing State Farm and I would like to introduce a representative of State Farm and add my own personal comments.

Basically, with respect to this, I'm a practicing attorney in Las Vegas; about 65% of my practice is auto negli-

gence and of that, 60% I represent the defendant, 5% the plaintiff's side. So obviously this "no fault" insurance is going to effect me if it comes in, but I do support AB 227 and a Florida-type plan on that basis. I think that in my short comments here, the facts and percentages, I'm sure Mr. Pauly, who I will later on introduce, will fully supply, as well as Mr. Sutcliffe. Mr. Sutcliffe is certainly a hard act to follow, obviously well-versed in the field of "no fault". I don't intend to be. All I know is that the people of the State of Nevada obviously are looking for some kind of a change. I think, not only the people of Nevada, but people all over the country. What the changes will be, whether it's "no fault", the insurance companies, the attorneys, or what-not, I don't know. In my little domain in my practice, a prime example came up this morning, yesterday, and it's set for trial in the morning. It happens to be a case that's going onto the five year statute. Before the case was filed, there was a demand from the attorney for $25,000.00. After our phone calls and we filed an answer, it was a demand for $20,000.00. After the case went on for a year or two, the demand was down to $7,500.00. All the lawyers' time was being built up. Two minutes before I got in the car to get the plane, the attorney called me up and said "Do you think you can get me $300.00?" And I told him I could. Now this is a type of garbage law suit, for lack of a better word, as somebody said, that "no fault" could cure. Now, at this time, with your permission, Senator, I'd like to introduce Mr. Gary Pauley from State Farm. Mr. Pauley has been with State Farm for a number of years. He has attended and does attend for State Farm, the main office is in Bloomington, twelve of the western states, including Oregon. He is well-versed in the facts and the underwriting projections that are available at this time on "no fault". State Farm is the number one writer in the State of Nevada. I think we have something like 21% of all the insurance that is written in the State of Nevada. State Farm, with respect to the country, is first in forty three states in writing insurance. So it's the top writer in the country. It also is the top writer in respect to home owners' policies. With that introduction, Senator, I'd like to turn the podium over to Mr. Pauley.

PAULEY: The "no fault" issue is an important one, not only because it changes our way of doing business but it lays the groundwork for many changes in our social system. It is still too early in the game to know all of the advantages and disadvantages to the insuring public, but we have been through enough to date to get some feel of the pitfalls that await the unwary or the uninformed. The social problems that gave rise to the "no fault" concept do not appear to me to be present in Nevada. (See Addendum E for the complete text of Mr. Pauley's remarks.)

Senator Drakulich introduced Judge Leonard Gang.

GANG: Thank you, Mr. Chairman. My remarks will be quite brief. I'm not an opponent or proponent of "no fault". I have nothing to say regarding the various bills that have been introduced but I know, as you all have heard, and as I have heard today, the reasons frequently given for passing "no fault" is to eliminate court congestion and problems of bringing cases to trial.

In July of 1971 when I was appointed District Court Judge, we had a three year delay in bringing a civil jury trial to trial in Clark County. We had an 18 month delay in bringing a civil non-jury trial to trial. Now there is a third category and that is criminal cases. There is a 60 day rule in Nevada, as you know, requiring that the case must be tried in 60 days of the arraignment. In 1971 there were three new district judges appointed in Clark County and a fourth went into effect in July of 1972. At the present time, in Clark County, there is no court congestion. It takes four months for a case to go to trial in civil non-jury cases when the attorneys indicate they are ready to go to trial. Criminal cases are tried in sixty days from the date of the arraignment, if the criminal so requests. In civil jury cases, it takes eleven months at the present time for a case to go to trial from the time that the attorneys indicate they are ready to go to trial. Since July of 1971, the three additional judges and the fourth since July of 1972 have not had courtrooms that facilitate jury trials. On March 19, I am informed by the persons in charge of construction to the Clark County Courthouse, we will receive our four new courtrooms which will accommodate jury trials. It is my prediction that within nine months from the time that the additional courtrooms are available, civil jury trials will be tried within four months from the time the attorneys indicate they are ready for trial. Gentlemen, that is not court congestion.

We've also heard a lot of talk, I've heard some today, about the volume of personal injury cases in court. Clark County, as you all know, has the heaviest calendar in the State of Nevada. In the year of 1972, I hate to give you these statistics because you've heard a lot of them, there were 15,984 matters filed. I'm going to break that down to three categories. I'm eliminating divorce, probate, juveniles, mentals, and URAs. They are matters that generally do not take a great deal of time. There were 3,971 civil matters filed. There were 3,283 criminal matters filed; a total of 7,254 cases. Of the 7,254 cases, our court administrator and I have attempted to break down the amount of these cases that would be personal injury cases. We have estimated that of the 7,254 cases, 754 cases would be personal injury cases, only about 10%. Now that includes all personal injury cases.

That includes what's known as "slip and fall", medical malpractice, attractive nuisance cases, in other words, others matters beside automobile injuries.

What I've been trying to get across, and I hope it is evident, is that in Clark County, at least, and we are the busiest calendar at least in the State, personal injury matters, in terms of getting them to trial,does not present a problem. And we do not have court congestion that has caused advocates of "no fault" to advocate it as in other areas of the United States as in larger cities such as New York and Chicago. It is not a problem in Clark County and I know it isn't a problem in Winnemucca or Lovelock, where I have sat, and in Washoe County it isn't a problem.

Senator Drakulich then introduced Mr. Neil Galatz.

GALATZ: Mr. Chairman, I just want to check some facts and I will try to restrict it to those facts as briefly as I can. The majority of cases being auto cases, in Nevada at least, Mr. Ring's quotation or statement as to what the Massachusetts decision decided was apparently questioned and I would like to set the record straight. I have been able to get ahold of a copy of the Massachusetts decision. It is alleged, in addition, quoting from the Court's majority opinion: "that the $500.00 limit operates as a ..... discrimination against the poor in that they are charged less than others for the medical care, passing over the plaintiff's ..... to make this argument, it may briefly be dismissed on the grounds that the plaintiff has failed to come forward with evidence that this is the fact in the case." That issue has not been decided in Massachusetts. There was no evidence in that case put on. I would suggest to you that Mr. Ring's statement of the case is correct.

We have heard about the Oregon plan encouraging law suits, not reducing them. I do have some figures verbally regarding Oregon and again obviously, figures lag. Five cases are down in one year in ..... County, Oregon by 200 cases on auto cases. I don't have those in writing yet; I will attempt to secure them and get them to you. I do have here and would like to give it to you, a news release from the Delaware Insurance Commissioner in which he points out that under their plan, much like the Oregon plan, they have had a significant reduction in the number of cases, but the Delaware, Oregon, Maryland type of plan, I suggest to you, does work in taking care of small cases. We were quoted a $42,000,000 figure in Florida. That's very impressive. That works out to about $10, or a little less than $10.00, per car in Florida. In Nevada, we're told, a more limited form of Mr. Capurro's bill we will save all of $6.00 or 2%. For that we are talking about giving up pain and suffering. What are we talking about? Under any of these bills we are talking about this kind of situation. A fractured skull;

two simple fractures of your leg, both legs fractured, laid up in bed for months. Or two arms broken. Nothing but your medical expense or if it's a retired person, not even that because they get medi-care. I don't think that that's something that is very, very insignificant. I think that those are significant cases; those are not nuisance cases.

A $40,000 life insurance policy certainly should cost more than a $20,000 life insurance policy, but I do not think that a $40,000 policy is a bad buy for $40.00; a $20,000 policy would cost $25.00. We are not making a savings when we consider the benefits.

With regard to rate reduction, you've heard the testimony directed to Nevada. I do have here a letter from Commissioner Rauls office in Oregon, February 1, 1973. He points out that in Oregon the bodily injury rates will be decreased by approximately 10% on all classes due to the impact of their plan. Gentlemen, I suggest to you that the Oregon plan not only gives you first party benefits, not only reduces needless litigation, but does it at a savings.

With respect to efficiency: We have heard many, many figures tossed around. With respect to those figures, I would like to leave you with another exhibit, and I hate to load you with this many papers, but we have been given that circle and we've heard repeated talk about how inefficient the tort system is in the automobile field. I have two ..... that I would like to leave with you. I think that one of them you may have received as part of the complete letter from the Oregon Insurance Commissioner. I was told a complete letter was given to you yesterday, but it does give you the comparative performances in terms of the losses and premium return in the Oregon Commissioner's report. You will find when you look at these that under the " no fault" benefits, not their bodily injury liability, that the "no fault" benefits which existed in Oregon long before anyone talked about any kind of "no fault" plan, that the health and accident, fire insurance, workmens' compensation insurance, collision coverage which is "no fault" and the comprehensive, "no fault", and their auto bodily liability all turned in similar efficiency performance levels. There is no difference in efficiency rating. The figure of 44¢ and so on, I don't know where that comes from except that I gather it's a figure that Professor Keaton quoted somewhere and no one seems to know where that came from. But we do have here a chart from the Loss and Expense Ratios, New York Insurance Department, that shows considerably better performances than the figures that have been quoted heretofore and again I would like to leave them with you for your perusal. (See Addendum F)

In terms of the"big case", we have heard a great deal from gentlemen regarding how the "big case" is not adequately compensated. I agree. But does the threshold plan do the job?

I would suggest to you it does NOT do the job. It does not do the job because in 226 it puts a $5,000 limit on it. That's not the case we're having the problems with. 227 limits the wages two years, but I am told and what I hear here, it's really supposed to be limited even more. It's supposed to be limited to $10,000 maximum benefits, so apparently that's not going to cover the really big case. SB 158, we've heard an enormous cost problem there and I don't think anyone wants to ford that cost but even that one, at its great cost puts a $750 per month limit on wages. And I have recently had to work with economists on wage projections in this state. That will not project an adequate coverage for people who are seriously injured if their injury case is still uncompensated or under-compensated. I think that the threshold may be .... conductive because at least now people are aware that when they take that FR it's only the minimum coverage; that if they do something wrong they are responsible for that wrong. Under the "no fault" they will be under the impression that the threshold plan will cover them; that they don't need anything above the minimum Financial Responsibility law and that's all that these "no fault" plans would evince and we'll find fewer of the large liability policies and fewer people will collect when they are in the right. Do you want to raise and do something? Why don't they also approve a 25 and 50 FR raise? Compulsory insurance? Do you feel you can make AB 264 enforceable as a compulsory plan? That's easy. You simply have to put in a line which says every owner or registrant licensed in this State shall carry the coverage. It can be done if you feel it can be enforced effectively. I suggest to you that AB 264 does take care of 96% of the cases. If you make it $5,000, you go to 98%. You can. It's not difficult. But it does it, without, without, arbitrarily limiting the right of an injured workman, an injured mother, child or any other person to have the courts determine their merits and their rights. It does it without the innocent subsidizing the reckless, and it does it, if we seem to see from the Oregon figures given to you, without cost to our people.

I would suggest a sensible and intelligent approach. You don't have to revolutionize our system here, jump into something before anyone has any intelligible figures. I think that there is a slow, sensible realistic approach that will take care of the needs of the people of this State. Thank you.

Chairman Drakulich introduced Mr. David Sargent.

SARGENT: Thank you, Mr. Chairman, ladies and gentlemen of the Committee. My name is David Sargent. I'm a Professor of Law at Suffolk Law School. I've been asked to appear this afternoon by the Clark County Bar Association and I would like to start my remarks by simply explaining to you that some ten years ago I was appointed by Dr. Robert Keaton of Harvard Law School as a member of the advisory panel for what would be known as the "Keaton-O'Connell Basic Protection Plan". Since that time I've served as a member of the New York State Assembly's Special Commission on Auto-Reparations

I was appointed by Governor Reuben Askew as a member of the Governor's special commission on auto reparations for the State of Florida. I've been consulted by some twenty-five state legislatures; I've debated the subject of auto reparations throughout the country. I say this to you only so if you agree or disagree with what I have to say, at least you know my interest in the subject is not of short duration.

I think you would have a great interest in knowing what the experience with the threshold type of insurance has been in the Commonwealth of Massachusetts. As you probably know, the Massachusetts plan is very similar to the threshold plans that are presently before this Committee. The Massachusetts plan provides for up to $2,000 in economic loss benefits. They compute them somewhat differently than you. In Massachusetts you have your medical bills paid without regard to fault. You also are entitled to recover 75% of last year's average weekly wage minus whatever wage continuation plan that you may have. The big difference is that in Massachusetts the wage protection benefits are secondary as opposed to under your plan where by in large they are primary insurance.

In Massachusetts we were ripe for some kind of a change. We're a big urban area; there had been abuses of the present system by some lawyers, by some insurance companies. We had the highest insurance rates in the nation. We had a lot of unethical practices by some insurance companies, problems with regard to cancellations. We had terrible problems with court congestion in Suffolk County where Boston is located had a five year delay for jury trials. And certainly that's unconscionable. But I'd like to tell you that after two full years of "no fault" automobile insurance in Massachusetts, we still have the highest insurances rates in the nation, we still have the highest court congestion in the nation, and that's without the so-called automobile accidents that clog our system.

In Massachusetts, the experience showed for 1971 that initially there was a 15% reduction on the cost of just bodily injury coverage, the cost of your "no fault" insurance together with a minimum amount of liability insurance, only about $5,000 worth of liability insurance. Now with that very small reduction which amounted to some $4.20 in the rural areas of Massachusetts, there were tremendous increases imposed simultaneously on all the other kinds of insurance. For example, the Governor of the State of Massachusetts, whose name also happens to be Sargent, although we are not related, as I'm sure he would point out to you if he were here, ran for re-election on the campaign that "I saved you by enacting "no fault" insurance a tremendous amount of money". Full-page ads went out in every newspaper of the State; if you lived in Boston I saved you $180.00; if you lived in Lawrence $120.00, and so on down the line. It became very interesting that the Governor

was re-elected very largely on this issue which was one of the hottest of the campaign. He won re-election as a Republican in a heavy Democratic state. When the election was over, some week thereafter, the Supreme Judicial Court of our Commonwealth declared that the attempted rate reductions on all insurance except the bodily injury coverage were unconstitutional. Within two weeks thereafter, the insurance commissioner granted an increase on property damage coverage of a liability nature of 38.4%. So within three weeks after the election, the public was paying 53.4% more for property damage coverage than they were told they were going to pay. Now you might be interested in knowing what the cost is in Massachusetts to insure a car. In Boston which is the highest rated district, if you are a so-called Class 10 driver which means that you have no young drivers in the family, you don't commute more than ten miles to work and all the other favorable things, in 1970, which was the last year that we had the "fault" system, the cost of insuring a 1970 Chevrolet Impala was $525.41. That's the cheapest for a full package of insurance, that's property damage, comprehensive, collision, liability. There was no "no fault" at the time. In 1971, the first year in which we had "no fault" insurance the cost of insuring a new Chevrolet Impala was $592.75, an increase of $60-odd dollars. In 1972, when we had "no fault" insurance for the second year and we had also extended "no fault" insurance to property damage area, the cost of insuring a new Chevrolet Impala, was $648.87. That's more than an $85.00 increase over that three year period of time. So contrary to what you may have been told, the motorist in Massachusetts today is paying more for insurance than he ever paid before. Now I think you ought to consider that not only in paying more than he ever paid before, but it's very significant to determine what he got in exchange for his insurance premium dollars. If you look at this, it's a surprising result.

"No fault" insurance, I heard people say yesterday, is supposed to pay more people than the present system. There's a terrible social problem created by the fact that the driver in a single car accident is not entitled to compensation. But in Massachusetts, in the first year, we didn't pay more people than we paid people under the old tort liability system. In 1971, the first year of "no fault" insurance, we paid 55% less people anything than were paid under the original tort liability system. And the people who were paid were paid on an average of 60% less dollars than the average claimant was receiving in 1970. Now you put these two figures together and you come up with an amazing result. You've got a tremendous drop in the number of people who are paid and the people who are paid are actually paid a smaller amount on the average than the average person received before.

The insurance companies, for 1971, paid somewhere in the vicinity of 65% to 70% less dollars than they paid out the previous year. Now that's just for liability insurance. Put

those two figures together: the public paid 15% less in premium dollars for just that "no fault" bodily injury coverage, but they got back 65%less. Now I think that if a housewife walked into a supermarket and she saw that the can of coffee that normally sells for $1.00 was selling this week for 15¢ off, she wouldn't think she was getting much of a bargain if she opened the can of coffee and discovered that 70% of the coffee was gone. And that's exactly what has happened in Massachusetts. The public is paying more money than they paid before, but they're getting less benefits.

I think you might also be interested in knowing what the public reaction has been to "no fault" insurance in Massachusetts. The Associated Press did, what was admitted a random survey after the plan had been effect for seven or eight months. They came back with the conclusion that was carried throughout the country that the public in Massachusetts was overwhelmingly reacting adversely to "no fault" insurance. They were greatly distressed with "no fault" insurance. Now admittedly that was a random survey. So Opinion Research Corporation of Princeton, New Jersey, which is the largest public opinion-taker in this country and certainly their credentials don't have to be substantiated by me, they came to Massachusetts and they conducted a survey of people who had been injured in automobile accidents during 1971 to get what their reaction was. They discovered that 62% of the people who had been injured in motor vehicle accidents felt that they had been treated unfairly by "no fault" insurance. They discovered that the overwhelming majority of the people in Massachusetts paid more for auto insurance than they did in 1970. They discovered that with regard to claims that were made between January and July, and the survey was conducted in December, six months later, in some cases 10 or eleven months later, a very, very substantial number of them, something like 30%, had not received payment. With the "no fault" system, they still hadn't been paid.

Now I think if you add all this up, you have to come to the conclusion that the threshold plan in Massachusetts, whether it's constitutional or unconstitutional, whether it's desirable to have a threshold, whether it does or does not eliminate small cases or medium-size cases or large ones, that it really is costing the public more money and they are not getting much back in exchange for their premium dollars.

The problem with "no fault" insurance, and "no fault" insurance on this continent, as someone pointed out, was really the Saskatchewan plan. That is not a threshold plan. It was "no fault" insurance whereby all people received what were admittedly token benefits but you still preserved the right to sue in court. Now under some "no fault" plans, either the pure "no fault" plan which was at one time proposed by Mr. Sutcliff's Committee or Senator Hart, at least,

they talked about the elimination of the right to recovery for pain and suffering in all cases. The question is: do the public really know what pain and suffering and general damages is all about? If someone should cause me to lose my leg, that leg isn't going to hurt very long. But there's been an interruption of the enjoyment of my life. I'll never again be able to walk on the beach or dance, the things that make life worth living for most people. Is that kind of element of the injury compensable? Does the public want it to be compensated? Many of the "no fault" plans try to either eliminate or drastically restrict the right to recover general damages. Some use the threshold plan, Illinois tried to use the ..... plan, but the basis is still to eliminate the right to recover for pain and suffering, for at least some people.

Now under the Delaware and the Oregon plan, and I won't accept the position that those are fraudulent plans, you may differ with them, but I think it's really unjust to call them fraudulent, or if you want to call them first-party plans, I'll accept that if you like that better than "no fault", but under those plans what they really do is say, we'll pay you on a "no fault" basis certain economic losses and if you're unhappy with what you've been paid, you can sue in court to recover the difference between 100% recovery minus what you've already been paid. Now in Delaware, the Commissioner of Insurance, Commissioner Short, has indicated to me the best available estimates indicate that with that kind of a plan, without a threshold, there will be, or there is, a 70% reduction in suits. This is accomplished with no formal threshold. What they're saying is the nuisance case, and I agree, the small case is the nuisance case, if you pay a man his wage loss and you pay his medical expenses, many of them, most of them are satisfied with that. But you have done that without denying the right to the person who happens to be seriously injured, but he doesn't happen to fit into one of these thresholds you've established, the right to recover for pain and suffering. The problem takes care of itself.

Now Mr. Capurro, I listened to you yesterday with considerable interst. You talked about the fact that if these plans were passed there would be undoubtedly need later on for some additional legislation to take care of problems that perhaps might not have been foreseen. I agree with that. I think that's generally indicative of the philosophy of juris prudence in this country. The change should be evolutionary and not revolutionary. All I'm suggesting to you that in Oregon and Delaware, which, by the way, they've had rate reductions also with no threshold plans, that in those two states there is considerable evidence that you can pay first-party benefits, not take away the right to recover for pain and suffering, and still have a reduction in liability claims and the resulting reduction in cost. If it doesn't work in Nevada, it's very simple to take that kind of a plan, or in any other state, and pull a threshold into it if you think that's necessary. I think there is con-

siderable evidence that it does work without arbitrarily saying to people with legitimate claims that you can't recover just because you don't need our threshold. In Massachusetts where we have a $500 medical threshold, that meant that there was a great amount of discrimination and I don't believe there's any question that poor people haven't been treated in the same way as people with greater assets.

I ask you to seriously consider that the objective that you seek to achieve can be accomplished by letting the small claim fall of its own weight and by passage of the Hayes bill, which I believe is AB 264. Thank you. (See Addendum (

Chairman Drakulich introduced Mr. Charles A. Brown.

BROWN: Mr. Chairman, members of the Joint Committee: My name is Charles A. Brown. I'm the Pacific Coast vice-president of the American Mutual Insurance Alliance. I'm located in San Francisco. We are a national organization which I'm sure most of you know representing major mutual fire and casualty companies and our position, I think, at this point, is reasonably well-known to this Committee.

We support a modest approach to this problem that has been called "no fault" and most everything else here in the last few days as it has been in every other legislature where I have been in the last four or five weeks in the Western states. One point that has not been made, and one word of caution, that's all I have to say. Number one, nothing has been said here, really, pointed, at what have commonly been called in the insurance industry and the legal profession ever since my time, some forty years in this business, called nuisance value cases. Our entire interest in a medical threshold of $1,000, for example, and that's what we would recommend, is to simply eliminate the cases which everybody almost every witness has admitted or said, or both, that the small cases are overpaid, but I don't think it's been clear, why. I'll tell you why they're overpaid. Because we settle them for less that it costs to try them and win them. That's certainly a waste of money.

We would support modest first-party benefits such as appear in AB 226 and with some reasonable limits on Mr. Capurro's bill, we would strongly support that. We urge you one thing: actuaries in this great industry of ours have had years of experience on forecasting costs in ratemaking, based upon experience. I simply want to emphasize to this Committee that there isn't an actuary in the fire and casualty business who has any cold figures to forecast the cost of these first-party benefits. Now certainly they can make judgments. The figures you've heard from people in the East and from plaintiffs' attorneys and from everybody else in the last couple of days and I've been here all the time, the factors used by actuaries and these various

organizations vary from a factor of 30 to a factor of 80. Gentlemen, they're guessing. We urge you to take a modest approach and use a modest medical threshold. You'll contain costs and you'll ultimately improve the system in the State of Nevada.

Chairman Drakulich then called upon Mr. Bert Goldwater.

GOLDWATER: Mr. Chairman and members of the Committee. I'd like to get down to basics in order to talk to you. I want to talk to you about why I'm here and why you're here first. You are the legislative body authorized to make laws. Now these laws have got to have some social reason and good sense in our check and balance system of government. Now we know that a lot of laws that you pass have not stood up and held water and that isn't because it's the Nevada legislature; it's a lot of legislatures and it's also the Congress. Laws which create unequal treatment are laws which are thrown out and declared unconstitutional. And laws which allow one to seize the property of another are thrown out also. Under our attachment statutes which you have to amend, people are entitled to notice. And laws which favor one group as against another group in society, special acts favoring a class of segregation laws, are thrown out, and laws which favor society against an individual, such as capital punishment cases, are thrown out. The conclusion can generally be made that legislatures must act responsibly for everyone without discrimination. And to achieve a social result which has equal and beneficial general application. Now remarks that nuisance cases are garbage and there's fraud in the courts is loose talk. The lady who just talked here, I've never met her, but she's got a case of damages, not permanent, probably partial, probably temporary. But that law which you're considering would probably discriminate against her.

Now, who am I, and why am I here. I'm here for the same reason that you are. I don't come here every year and I don't come here often. This week I've been here twice concerning two laws which I think are important. I was here Tuesday because I think the State of Nevada is entitled to get additional taxes under the Estate Tax Law without costing people anymore money; I've said that for twelve years, and I think the Committee is going to agree with me. It may be that I'll have to come back for the next twelve years on this law. And I'm here regarding the passage of this law because I think it's got to show four things: It's got to be socially necessary; it's got to be constitutional; it's got to be feasible; and it's got to be fair and reasonable. Now I don't know anything about the rates. We've heard both sides of that. Insurance companies are not sure, we need more experience. They've had some experience; there have been rates decreased; they think it will be decreased 2% or 6%. But I'll speak today on AB 227 having in mind your duties and mine. My duty is to act responsible. True, I have duties as a lawyer. I have represented insurance companies; I have sued them; I have sued their clients and I have represented their clients. I have no animosity toward the authors of the bill, the companies, and I'm not pandering or

crying out for the lawyers, the trial lawyers, the plaintiff's lawyers or the defense lawyers. I've been all kinds of lawyers. I don't want anything on my tombstone especially, and I'm not anxious to have a tombstone. I just want put on the tombstone that I acted in what I think is the best interest for all of us. We're all drivers and we're all potential victims of automobile accidents and we're all possible litigants in law suits. God knows we're taxpayers and we're also insurance buyers. Now, let's begin, what is "no fault"?

It's a gimmick like social security. You're not secure with social security. It you try living on social security, you'll find out it isn't secure. Now we've had "no fault" for years and years. I don't see why we give it the gimmick name. Fire insurance on your house is "no fault"; medical pay under your car insurance is "no fault"; comp is "no fault"; we've always had "no fault". So why are we calling this "no fault"? We're calling it "no fault" for the socially important reason that if you have first party insurance on yourself, you can collect from your own insurance company regardless of whether you're at fault or not. Like life insurance, medical pay on your car; fire insurance; everybody gets it. Now I am not opposed to first party reparations insurance, self-insuring yourself and the occupants of your car from the items of medical coverage and disability coverage and loss of income coverage. That is a socially important thing and socially feasible and if some of your bills, notably SB 264* was cleaned up, it would require everyone to carry mandatory insurance for himself and his occupants and pedestrians, what we know as now as medical pay, plus loss of income pay; whether you make it mandatory or compulsory will depend on insurance rates and whether insurance companies will agree to it. But what does AB 227 do, to which I want to address myself. It goes far beyond that social reason and it seeks to tinker with the whole system of law. Now since Oliver Wendell Holmes wrote his book, "The Common Law", and gave his lectures to Harvard University, way back in the early part of the century, we have had a system of law whereby there would be compensation. What Holmes found was trespass on the case taken from the Bible that used to be called "an eye for an eye"; you had to pay for putting someone's eye out; they put your eye out. Then we developed a sophisticated system of law whereby we had rules and whereby there was a conduct compensable in dollars. How do you pay for something that you do to harm someone else? You pay in dollars. Now in your present bill, the first thing that catches your eye is Section 10 but it doesn't apply to motorcycles. Section 16 doesn't apply to vehicles of the United States and Section 33 doesn't apply to non-residents. This is discrimination and this is the kind of law you're getting ready to pass.

*A.B. 264

A, driver of a beer truck, meets a private car in an intersection. OK? Under your law, A, the driver of the beer truck, can be sued. He's a commercial vehicle and so his principle can be sued. The driver of the private vehicle is exempt. They have first party insurance. The driver of the beer truck hasn't got a law suit; he might be hurt, but he doesn't have a law suit. A student on a motorcycle, he can be sued, but a student at the University of Nevada with a car who has first party insurance, he can't be sued. He's another student, but he's got a car; the other kid has a motorcycle. This is what I'm talking about in discrimination; this is why I feel that your law is not going to make any sense and is going to be unfair and unreasonable.

Section 15, sub-paragraph 4 says that if you don't have this insurance to pay yourself any others, including a pedestrian, may personally sue you. Well, who cares about that? I have a car, I carry insurance, I haven't got anything anyhow. What do I care if anybody sues me? There's only one more reason why you need not carry insurance. Section 19 is another little goodie that favors the insurance company and is highly unfair to your constituents, to me, to you, to the rest of the public. There is no duplication of recovery; you cannot recover from two companies even though you paid premiums to both. But you can duplicate premiums. Your employer pays premiums on you or everybody that's in business pays premiums to the NIC, but in the event you receive recovery under the NIC, your private insurance company, to that extent, doesn't have to pay you. So you pay premiums for first party insurance on your car, but if it happens to be an accident where you're covered by NIC your company gets the benefit of that deduction.

When do you receive payment, Section 22? Thirty days if the insurer has verified the claim, but when does the insurer verify the claim? There is no provision for when he should verify the claim. He might take a year to be satisfied.

Section 26, medical fees regulated. This isn't socially feasible; it isn't good. They must be reasonable, but what is reasonable? Section 44 you appropriate $44,000.00 a year to the insurance department to check the fees. But Section 29 is the most harshest, the most discriminating of all; it says in effect that you can sue, you can sue, you can go to courts and sue and you won't have many suits if you give a man his medical, you give a man his loss of wages, you give a man a reasonable amount of recovery for those things which are immediately harrassing him; his loss of wages, his doctor bills, his car, but then you say you have what you call a "threshold". Now this doesn't make any sense. It ranges in some states from $500.00 and you've put it at $2,500.00;

and I see the Government bill is $5,000.00. But it is discriminatory because it says for (mumble) you have $2,500 you can file a suit against the man. Do you know what that means? Do you realize what you're doing here? You're saying that by fortuitous circumstance, that if I go to expensive doctors and have a private room and I get bills run up to $2,500, I have a law suit. If I don't have that much in bills, I don't have a law suit for the same injuries. And you're saying that if your general benefits were at least $5,000 for economic disability, then you're saying, now, you have a lawsuit. OK. I'm a lawyer; I make $2,000 a month. In 2-1/2 months I can sue because my economic losses in 2-1/2 months would be $5,000.00. But a maid over here in the Ormsby House getting $75.00 a week would have to have a wage loss, an economic loss for many weeks before she would have a right to file a law suit that I had. That's discriminating against her.

But more discrimination is in this act. You say that if there's a death there could be a suit; permanent disfigurement; loss of a body member; permanent injury; permanent loss of body functions. Gentlemen, this is an invitation to unconstitutionality on its face and it's an anti-social piece of legislation of the rankest kind. It's all well and good to seek to provide that each owner or operator provide for his own medical payments and those of his family. But how in the name of reasonable fairness do you decide here, you sit in a seat in the legislative halls and decide that A who suffers a back injury that takes two years to recover and is only $2,220.00 cannot sue; but B, who is a lawyer who makes $2,000.00 a month can sue after three months because his total payable for such a loss is $6,000. D, a student with no wage loss, cannot recover against B until he has $5,000; and E, a housewife, who has an injury, but it's partial, not permanent; she's only hospitalized for three months; she can get around; her medicals are only $2,000; she can't sue. I think that Federal law is going to be in the same situation as this law. There is no social reason why you can say to a person, Look, your bills aren't high enough; you haven't got a case. That isn't going to make any sense. The State of California has just decided a case, Brown vs. Merlow, in which they have said that the distinctions made by legislatures in the "guest" statutes are unconstitutional. We have a "guest" statute here; all states have them. Why were they made? Because it was considered socially desirable. I suppose by the legislatures that people who rode in cars shouldn't bring suits against those who were their hosts. But the court said there's no sense to that. A man riding in a car who is in the position of a passenger having paid some part of the gas bill and gets hurt is no different than the man riding in the car who doesn't pay part of the gas bill. One is a guest and one is a passenger, but they both hurt. There's no sense to them, and there's no sense to your law with what you call a so-called "threshold". What are you trying to do socially? You are trying to cut out the nuisance cases, right? OK. You have a law on the books now called "Motor Vehicle Damage Actions" that says anything under $3,000 has to be arbitrated.

Section 38.215, NRS. "All civil actions for damages for first injury, death and property damage arising out of the maintenance or ownership or use of a motor vehicle for the cause of action in the State of Nevada and the amount at issue does not exceed $3,000 shall be submitted to arbitration." That's one thing you've got already. No.2, if you have a reparations act and people get their doctor bills up to $5,000 or $10,000 and their loss of wages, you're not going to have a lot of nuisance cases but you got a lot of cases which are not nuisance cases which are legitimate cases where people have temporary disability. Now where people have doctor bills of less than $2,500, people have loss of wages of less than $5,000 and you are tinkering with a screwdriver into the works of a very fine watch and that is the tort system which seeks to arrive at a fair compensation for those who are injured. Now if you put into your act that they cannot sue for duplication of special damages, something like that, you would have some sense to it and I'm going to get to that in just a second. I don't want to too much of your time here.

Your property damage provision of Section 31 makes no sense at all. Now, except for hitting a parked car, you're not liable for striking another's auto except for one local misconduct as a proximate cause. You're not required to maintain property damages, but if you don't carry property damages you cannot sue anyone unless your car was parked and your damages are more than $550.00. Now what arbitrary thing is that? Why don't you make it $650.00? Why don't you make it $450.00? Why did you pick that out of the sky? That's kind of a mickey-mouse part of the bill which doesn't make any sense.

Section 33 is another anomalous. Two cars meet in the middle of the street; one man's from Tennessee; he hasn't got any first party insurance; he's not exempt; the other fellow's from Sparks; he's got it; can't sue him. Why? It just doesn't make any sense. It's going to be discrimination. The local man in Nevada who carries the insurance, he's exempt from torts except under certain conditions. The man from out of town - no.

Now what is the purpose of this law? I have no grief for insurance companies. On the other hand, I would feel they would be aghast at what the law says. There is a limit of 104 weeks on disability; $1,000 for burial; but no limit on medical pay. It says "everything". I heard a little while ago you can amend that. The court calendars are clogged. If that is a social reason, I don't think it makes any sense. No matter how clogged the calendars are, if there's one measure that needs justice, he's entitled to it. It doesn't take this legislature to sit and say, "the courts are clogged; we're awfully sorry, you can't get a fair shake in this State". That's no reason to do anything.

Because Judge Gang said there wasn't any clogged court. 120

My general conclusion regarding this is that your bill is poorly drafted. What if, under Section 14, a man loses his wife. That's under your survivor's benefit. Only economic losses. What's a wife worth? What economic value does a dead person have? And then you get less expenses; you don't have to feed her anymore. This bill is fraught with discrimination but the idea is not all bad. It's generally an important adjunct to social progress in this State that everyone gets some protection. Single car accidents and double car accidents and that they have to buy it themselves for themselves and their passengers unless they have some other protection. That's a good social reason. I can see that; I can't argue with it. It's a step in the right way. But you cannot eliminate the well settled and ancient laws of right and duty. You can't make driving recklessly easy and encourage that sort of thing.

Phoney claims - the gentlemen from the insurance company talked about phoney claims. Who won't phoney-up the claims to come up over the threshold? This is what you're asking for. Now you must remember there are three kinds of damages in the law: There's the special damages, doctors, hospitals, loss of wages; there's the compensatory damages you are eliminating and there's the punitive damages. We should provide for special damages, compensatory damages and other things. I respectfully suggest to you that the first party coverage that you have should cover everything including motorcycles and commercial cars. But that when you go on and you discriminate based upon how much somebody pays for a hospital bill or how much they pay their doctor or how much they have in loss of wages as to whether they're hurt, then I say your bill is asking to be thrown out as discrimination, as anti-social, and as unfair. I respectfully urge you to adopt that sort of bill which gives protection as social reasons and eliminate that which has no social reason and is discrimination. Thank you.

Mr. Capurro, sponsor of AB 227, presented the following testimony:

An important decision is going to be made here tonight. It's a decision about automobile insurance and the outcome will effect every citizen of Nevada.

The decision is whether we should continue to have a system of liability insurance that gives us nothing but the right to sue after an automobile accident with no guarantee that we will collect anything or whether we should have a system that guarantees us compensation for our economic losses every time.

That, in a nutshell, is what no-fault automobile insurance is all about. In the system we have today, the liability insurance policy we buy protects us from claims brought by someone else, but that policy cannot and will not pay us a single red cent. Today if we are injured we can sue the other driver. That much is guaranteed by the present system. And if the other driver is found to be at fault and we are completely blameless, we are entitled to collect from the other guy's insurance company. How much we collect and when we collect it is highly speculative. Much depends upon how good a case we can make, how well we might impress a jury, and, in some instances, how much insurance the other fellow has. The amount of loss we suffered is pretty much a secondary consideration.

The United States Department of Transportation has come up with facts and figures on how well anyone, as an injured person, would fare under the present liability system. First we can't be in a hurry for our money. Half of all liability claims are settled in six months, but in cases involving serious injury or death, the average time of settlement nationally is 16 months and some cases drag on for five years and longer. So it's best to have a nest egg handy to tide us over in the more serious cases. Second, don't look for any guarantee that we will receive any money at all. Remember, only the innocent victim can collect from the liability system. The so-called "guilty" driver gets nothing no matter how minor his degree of guilt. Only 45% of the seriously injured and survivors of those killed benefit in any way from liability insurance. That's less than half.

Finally, don't expect any bargains from liability insurance. About 20 to 25 cents out of every premium dollar we pay goes to cover the costs of lawyers, claims investigators, and other involved in the job of determining who was at fault. Only 45¢ of the premium dollar gets back to you in benefits. These are the facts of the present system as documented by a two-year study by the Federal Government. It's not a pleasant picture.

A no-fault system will change all this and change it for the better. With no-fault, you buy insurance that will pay you for the economic losses you suffer as the result of an automobile accident. My insurance pays me, and your insurance pays you. No finding of fault, no fixing of blame, no delays. It's fast

and it's fair. It is my belief that the tort system need not be abolished in order to solve the problems of the automobile accident reparations system. Thus, Assembly Bill 227 is a partial no-fault and provides first-party benefits in the less serious cases. In the 10% to 15% of the remaining cases, the tort system remains intact. Assembly Bill 227 is best described as a limited system of compensation for injuries caused by automobile accidents without regard to fault. It's purpose is to provide accident victims with a means of prompt and equitable compensation. It will allocate the insurance dollar more efficiently and reduce the cost of automobile insurance. The title of this new insurance is NARRA. AB 227 requires an owner to have security for the payment of basic loss insurance benefits. A person violating this requirement is subject to criminal penalties. 40% of Nevada drivers are uninsured. No-fault is a better system for Nevada because it does what an insurance system is supposed to do. It compensates people for their losses. The present liability insurance system doesn't care about the accident victim or his losses. All it cares about is protecting the at-fault driver by making sure that he does not have to pay for the damages he causes. His liability insurance pays it for him.

Now we have a chance to get a better system in Nevada, one that will probably cost motorists less money. AB 227 will reduce premiums if it becomes law. I feel that it's important for me to note that this bill is not a panacea for the problems for our present automobile insurance system. It is, however, a clear and decisive step in the right direction. As is often the case when a system is being drastically changed, specific problems usually arise and are solved by additional legislation. It is time to take this important first step to make a significant and sorely needed reform of our automobile insurance system.

ASSEMBLY

AGENDA FOR COMMITTEE ON COMMERCE

Date _____ Time _____ Room _____

Bills or Resolutions to be considered	Subject	Counsel requested*
AB 226	AN ACT providing a plan of reparations for motor vehicle accidents; requiring each policy of motor vehicle liability insurance to provide for payment, without regard to fault, of personal injury protection benefits; providing certain limits for the payment of those benefits; providing discovery procedures; providing limitations on actions; providing for the payment of attorney's fees; providing for the regulation of rates; providing an assigned claims plan; regulating certain legal actions; providing a penalty; and providing other matters properly relating thereto.	
AB 227	AN ACT relating to a plan of reparations for motor vehicle accidents; requiring the maintenance of security for motor vehicles; providing for payment of certain benefits; providing for certain reimbursements among insurers according to fault of insureds; exempting certain persons from tort liability under certain circumstances; providing for subrogation of insurers under certain circumstances; providing discovery procedures; providing for optional added coverages; regulating fees for attorneys; regulating rates; providing a penalty; making an appropriation; and providing other matters properly relating thereto.	
AB 264	AN ACT relating to a plan of motor vehicle liability insurance; requiring certain motor vehicle liability insurance policies to provide certain benefits; providing exclusions; providing for determinaton of liability; providing for certain legal actions; providing for procedures for cancellation of coverage; providing for regulation of rates; and providing other matters properly relating thereto.	

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date Wed., Feb 28 Time 3:00 p.m. Room Senate auditorium - Room 131
Subject see above

Date Thurs, Mar 1 Time 2:00 p.m. Room Senate auditorium - Room 131
Subject see above

STATEMENT OF SENATOR CARL F. DODGE BEFORE
A JOINT HEARING OF THE COMMITTEES ON COMMERCE
ON S.B. 158, A NO-FAULT AUTO INSURANCE BILL

February 28, 1973

The concept of insurance is based on the good social principle of the community pooling of risks so that a loss that could not be borne by any single member alone can be borne easily by the community as a whole. Fire, health, and auto collision insurance are examples of such so-called first party protection.

Automobile public liability and property damage, so-called third party insurance, is a different breed of cat. Here the community joins together, not to ease the victim's loss, but to protect the negligent wrongdoer. Any money paid to the victim is incidental. The forces at work in this situation, with all the defense mechanisms of the present system, are in fundamental conflict with the social good. Less than half of those killed or seriously injured receive any benefits from auto insurance, and 10% of this class of victims receive nothing from any system of reparations.

The fault system fails because it is the product of a time which bears no relationship to the motorized age we inhabit. It is based on the seemingly fair premise that a person ought to be financially responsible for the consequences of his negligence. This principle was useful and defensible under the common law in England at a time when there were no motorized vehicles. But this

system was not intended to serve a nation in which there are 10,000 automobile injuries daily, 55,000 fatalities, and $16 billion of economic losses annually, and three out of four drivers will be involved in an auto accident in the next five years.

To be humane and fair in its results a system of handling auto accident costs should: (1) Compensate all victims, (2) pay generous benefits, (3) have low administrative costs, (4) have reasonable premimus, (5) pay benefits fast, (6) pay benefits periodically rather than lump sum, and (7) minimize the burden on an overcrowded court system.

I submit that the present system meets none of these criteria. It is inequitable and untimely in its limited relief and its costs, which have increased 75% nationwide in the last 10 years, are becoming too burdensome for all of us.

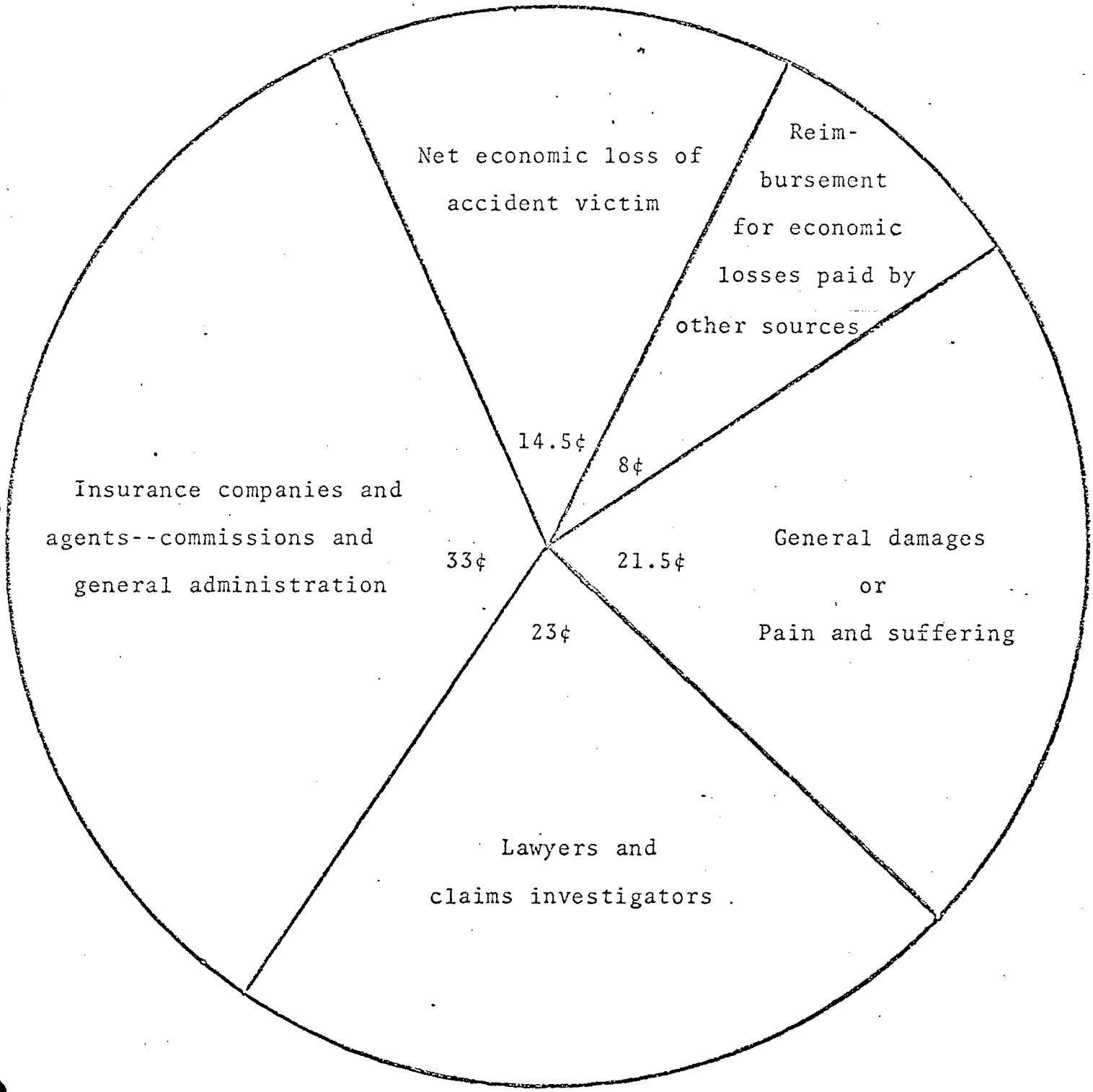
Most of us are premium payers, we are all probable accident victims, and all drivers are potential wrongdoers. In this context we are presented with a social value judgment -- is it worth giving up our right in the main to sue for economic loss plus pain and suffering in return for the assurance of protection against all economic loss and probably of less cost? I believe it is.

In 1971 I introduced a pure no-fault bill with no right to sue for negligence. This bill, S.B. 158, is a similar bill except that the right to sue for negligence is retained in cases of death, significant permanent injury, serious permanent injury, serious permanent disfigurement, or more than 6 months of complete inability to work in an occupation. These provisions were patterned

after those in the Hart-Magnuson bill narrowly defeated by the United States Senate last year.

S.B. 158 provides a mandatory first party primary coverage system, offering protection against economic loss without regard to fault. I am confident a substantial majority of Nevadans support this consumer legislation and we should respond accordingly by enacting this bill.

DISTRIBUTION OF PERSONAL INJURY LIABILITY
INSURANCE PREMIUM DOLLAR



SOURCE:
New York Insurance Department Study
1970

FEBRUARY 28, 1973

STATEMENT OF CORNELIUS C. BATESON
REGARDING OREGON'S NO-FAULT INSURANCE LAW

Honorable Chairman and members of the Committee:

In late 1969, as Insurance Commissioner of the State of Oregon, I became concerned about the efficiency of the extant automobile operation system and the need to consider one or another of the various "no-fault" proposals that were being made. Because Oregon, as one of the small states, did not face the problems of court delay and unfairness which were inherent in the operation of the tort reparations scheme in many of the large eastern states, I appointed a special committee to work with and advise me in an attempt to devise an improved reparations system which would meet Oregon's need and the desires of its citizens.

The committee, formed in January of 1970, had as its fundamental charge: "Search for the basic requirements of a fair automobile reparation system and translate them into a Bill, or Bills, for presentation to the 1971 Oregon Legislature."

The committee considered the Rockefeller proposal, the Massachusetts legislation, the Illinois and Florida proposals and proposals from various interested insurance trade organizations. In each case, the attempt was to find a proposal which would meet Oregon's needs. The committee quickly came to the conclusion that the problems in New York, Massachusetts, and Illinois were not fundamentally with the law, but rather with its administration; it was clear that in none of those states could a citizen achieve a speedy determination of his rights viz a viz those of another citizen in regard to any civil matter, whether related to an automobile accident, a contract case, or any other civil cause. The committee perceived that much of the thrust of the plans and legislation proposed in those states was to limit access

to the courts, not to make the automobile reparation system fairer. The committee rejected this approach to the problem and continued its search for the basic elements of a good automobile reparation system.

After much study, the committee determined that the three basic elements of such a system are:

1. Certainty: An injured party must be certain that he will receive some compensation for his loss if injured in an automobile accident without, necessarily, having to prove that someone else was at fault or, alternatively, at greater fault than he.
2. Speed: A recovery, no matter how certain, is of dubious value if it is delayed to the point when the injured party's creditors have forced him toward bankruptcy or toward an unfavorable compromise of his just claim with an insurer. Information which came to the committee's attention made it clear that this latter course of action was more the rule than the exception in many jurisdictions in which rapid determination was impossible.
3. Fairness: The committee recognized that automobile reparation system had no comparability to the Workmen's Compensation System. Workmen's Compensation, designed to force an employer to pay for repairs to his human production machinery in the same manner in which he is forced to pay for repairs to his mechanical production machinery has no philosophy in common with the right of a person to be compensated for the damages done to him by a negligent third party.

The committee also determined that, while a large number of Oregon citizens carried voluntary first party medical payment coverage (more than 70% of the insureds of Farmer's and State Farm, for example), many of those who did not

carry this coverage were those least able to afford medical injury (e.g., high-risk drivers who were forced to insure with companies which did not offer medical payment coverage or drivers on very limited budgets who were forced to void that coverage because of its cost).

The committee also quickly determined that a mandatory first-party coverage without right of subrogation would completely reverse the customary rating concepts of insurance which are: Those expected to cause more injury must pay a higher proportion of the gross premium dollar than those expected to cause less injury. That statement would have been reversed to: Those expected to suffer more injury must pay a higher proportion of the gross premium dollar than those expected to suffer less injury. The clear case is as follows: At the present time an unemployed single male, age 20, with a bad driving record pays a substantially higher premium than a 35-year old professional man with a wife and five children who is employed at a good salary and has a good driving record. This is because statistics show that that unemployed single male is more likely to cause injury than is the 35-year old professional man. A mandatory first-party system without subrogation completely reverses that rating scheme and the most attractive risk, at the lowest premium, would be the unemployed single male; the most expensive risk, at the highest premium, would be the 35-year old professional man. This seemed to the committee to be patently unjust.

The committee, therefore, proposed House Bill 1300, 1971 Session. This Bill met the three stated criteria (certainty, speed, and fairness) by requiring first-party coverage for medical payments and wage loss, whether within or without the state, by allowing subrogation against the person who was at fault in the accident and by not limiting the right to seek recovery for the tortious actions of another.

This last criterion is one of the most important. The committee did not feel that it was sufficiently wise to foresee every case or situation in which first-party benefits would be adequate and fair; it did not seek to substitute its judgment for the judgment of a jury. Nonetheless, the Bill is so designed so as to discourage frivolous or nuisance suits and, in fact, has the highest practical "threshold" of any of the "no-fault" statutes in any United States jurisdiction. This effective threshold is not imposed by legislative fiat; it is a natural and fair result of the operation of the subrogation section of the law. It does not say to any citizen "you may not", it does say "it may not be to your advantage to do so."

The committee also considered a number of ancillary improvements in the insurance system, but rejected their inclusion in the "no-fault" Bill. Separate Bills were introduced on comparative negligence (Wisconsin-type) and the permission to make advanced payments without admission of guilt. In addition, a Bill regarding separate special verdicts was introduced. All were enacted.

In considering the minimum limits which were required to be offered by the Bill, the committee was constrained by practical requirements. It was known that a $3,000 medical payment level would cover approximately 90% of the accidents. In addition, it was necessary that the added premium costs of this coverage not be perceived to be excessive by the Legislature or the voters. We estimated at the time of the legislative meeting that the average "clean" driver (age 30, ten miles to work, good driving record) would have an increased premium of approximately $15 in a mid-state territory. As a matter of fact, the premium as submitted by the rating bureau was $8 after the Statute became effective.

The $500 limitation on wages was based upon then-extant state wage records for industrial employees.

The $12 per day in the "housewife" section was based on the cost of obtaining basic domestic help in the Portland Metropolitan area.

The experience under these proposals has shown that the losses have been even fewer than anticipated. It will, in my view, be possible to increase the medical payments to $5,000 or, perhaps, to an unlimited amount, without increase of premium. It may also be possible to increase the wage coverage to a $750 per month payment rather than the present $500 per month payment. Whether or not a minor additional premium will be necessary for this has not yet been determined, but it is possible that it will not be necessary.

Oregon has a competent and adequate judiciary. The median age of law cases decided in Oregon is seven months. A very small number of these cases are involved in the automobile reparations system. In one county, Marion, with a population of more than 170,000 persons and four Circuit Judges (the Circuit Court is the lowest court of record and unlimited financial jurisdiction) there occurred a period of five weeks in which not a single law suit was filed involving an automobile accident. A cursory, non-statistical perusal of the printed court records makes it clear that only a very small minority of the law suits in Oregon deal with automobile accidents. In addition, a number of legal firms which specialize in plaintiff work have informed me that the first question which they ask a potential plaintiff in an automobile accident case is, "Do you have automobile insurance?". If the answer is "yes" they explain the Oregon "no-fault" law. They indicate that their caseload has dropped very substantially because of the first-party coverages mandated by Oregon law.

It is important to be very skeptical of purported "savings" resulting from legislatively mandated rate decreases. The net result of the mandated

decreases in insurance rates in Massachusetts have been to lower their bodily injury premium to slightly more than twice the national average, while increasing the rates for other coverages. This is the result of a complex and convoluted set of circumstances in Massachusetts which cannot, I believe, be translated or transferred to any other jurisdiction.

In Oregon, the statute of limitations for tort actions is two years. In Oregon, no-fault coverage commenced in January, 1972, and there was no requirement that all automobiles have it until January 1, 1973. It will therefore be January 1, 1974 before a full year of 100% experience has occurred. It will not be possible to tell with mathematical precision until December 31, 1975 what precise change in court load level may have occurred as a result of Oregon no-fault law.

This is probably as soon as any other jurisdiction will be able to make reliable and competent reports.

Oregon's experience to date has been more favorable than we had dared to hope. The public reaction expected against the premium increase has been ameliorated by reductions in the bodily injury premium rate. Payments to claimants have been accelerated. Certainty and speed of payments has, I believe, done much to remove some of the anguish which surrounds automobile accident injury. In short, the Oregon Legislature in 1971 was able to enact a system which--at a minimal additional premium cost in some cases-- has been able to meet the three fundemental criteria of certainty, speed, and fairness. It was able to make this transition without a social upheaval or disruptions.

Thank you for the opportunity to appear before you this afternoon.

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COMPARISON

OF

NO FAULT AUTOMOBILE INSURANCE BILLS

NEVADA LEGISLATURE

Fifty-Seventh Session

California State Automobile Association

NEVADA DIVISION

February 26, 1973

	AB 226	AB 227	AB 264	SB 158	SB 255
INSURANCE COVERAGE	REQUIRES EVERY LIABILITY POLICY TO PROVIDE FIRST PARTY BENEFITS	REQUIRES EVERY POLICY ISSUED TO PROVIDE SECURITY TO PROVIDE FIRST PARTY BENEFITS (Excludes government owned vehicles)	REQUIRES EVERY LIABILITY POLICY TO PROVIDE FIRST PARTY BENEFITS	REQUIRES OWNER OF MOTOR VEHICLE TO CARRY FIRST PARTY COVERAGE PROPERTY PROTECTION INS. & RESIDUAL LIABILITY	SAME AS AB 264
EHICLES OVERED	ALL MOTOR VEHICLES OTHER THAN MOTORCYCLES AND MOTOR-DRIVEN CYCLES	PASSENGER TYPE VEHICLES & PICK-UP & PANEL TRUCKS NOT USED IN BUSINESS OR OCCUPATION OF INSURED	ALL PASSENGER MOTOR VEHICLES-EXCLUDES MOTORCYCLES, TRUCKS SUBJECT TO MOTOR CARRIER ACT, FARM TRACTORS, RAILROAD	ALL VEHICLES EXCEPT THOSE PROPELLED BY MUSCULAR POWER	SAME AS AB 264
VERALL LIMIT N BENEFITS	$5,000.00 PER INJURED PERSON PER ACCIDENT	MEDICAL - NONE DISABILITY - 85% OF GROSS INCOME FOR 2 YEARS SURVIVORS - 1 YRS. INCOME FUNERAL - $1,000.	$3,000. PER INJURED PERSON.	NONE (LUMP SUM SETTLEMENT, WITH COURT APPROVAL PERMITTED UNDER SPECIAL FINDING)	SAME AS AB 264
EDICAL REATMENT XPENSE	NO LIMIT ON DURATION OR AMOUNT (SUBJECT TO $5,000 OVERALL LIMIT ON ALL BENEFITS	NO LIMIT ON DURATION OR AMOUNT	NO LIMIT FOR 1 YEAR (BUT SUBJECT TO $3,000. OVERALL LIMIT ON BENEFITS)	NO LIMIT (EXCEPT FOR SEMI-PRIVATE HOSPITAL ROOM)	SAME AS AB 264
OSS OF OMPENSATION	NOT TO EXCEED $750/MONTH FOR 1 YEAR. BENEFITS ARE REDUCED BY 15% OR LESSER ACTUAL INCOME TAX ASSESSMENT	2 YEAR ACTUAL WAGE LOSS - TO BE REDUCED BY 15% IF BENEFITS ARE NOT TAXABLE AS INCOME	70 PERCENT OF WAGE LOSS 14 DAYS AFTER ACCIDENT & NOT TO EXCEED 1 YEAR	NOT TO EXCEED $750. PER MONTH (15% REDUCTION FOR INCOME TAX BENEFIT. ALSO NOT TO BE PAID BEYOND NORMAL LIFE EXPECTANCY	SAME AS AB 264

	AB 226	AB 227	AB 264	SB 158	SB 255
SS OF RVICES	NOT TO EXCEED $15/DAY FOR 1 YEAR	EXPENSES FOR REPLACEMENT SERVICES PERFORMED BY INJURED PERSON	EXPENSES FOR REPLACEMENT SERVICES PERFORMED BY INJURED PERSON (14 DAY WAITING PERIOD) OR $12.00 PER DAY	EXPENSES FOR REPLACEMENT SERVICES PERFORMED BY INJURED PERSON FOR HIMSELF AND DEPENDENTS	SAME AS AB 264
RVIVOR'S NEFITS	SAME LIMITS AS IMPOSED ON LOSS OF COMPENSATION AND LOSS OF SERVICES	$5,000. MINIMUM AND UP TO THE AMOUNT OF DISABILITY BENEFITS THAT DECEDENT WOULD HAVE RECEIVED FOR 1 YEAR	NONE PROVIDED	SAME LIMITS AS IMPOSED ON LOSS OF COMPENSATION (MAXIMUM $750 PER MONTH UP TO LIFE EXPECTANCY)	SAME AS AB 264
NERAL PENSE	NOT TO EXCEED $1,000.00	NOT TO EXCEED $1,000.00	NONE PROVIDED	NOT TO EXCEED $1,000.00	SAME AS AB 264
RSONS TO OM BENEFITS E PAYABLE	NAMED INSURED OR RELATIVE RESIDING IN HOUSEHOLD; OPERATOR OR OCCUPANT OF VEHICLE; PEDESTRIANS	NAMED INSURED, RELATIVES RESIDING IN HOUSEHOLD, PERSONS OPERATING THE INSURED MOTOR VEHICLE AND PEDESTRIANS PASSENGERS	NAMED INSURED, RELATIVES RESIDING IN HOUSEHOLD, GUEST PASSENGERS AND PEDESTRIANS (PEDESTRIANS MAY BE EXCLUDED OUT-OF-STATE	NAMED INSURED, SPOUSE, RELATIVES RESIDING IN HOUSEHOLD, PASSENGERS, PASSENGERS IN COMMERCIAL VEHICLES EMPLOYEES AND PEDESTRIANS	SAME AS AB 264
ERE BENEFITS E PAYABLE	IN STATE OR OUT-OF-STATE AND IN CANADA AND MEXICO (EXCLUDES PERSONS OUTSIDE INSURED VEHICLE)	IN STATE OR OUT-OF-STATE, TERRITORIES AND POSSESSIONS OF U.S. AND IN CANADA	WITHIN AND WITHOUT STATE	WITHIN AND WITHOUT STATE, TERRITORIES AND POSSESSIONS AND IN CANADA	SAME AS AB 264

	AB 226	AB 227 MOTORCYCLES	AB 264	SB 158	SB 255
ERSONS EXCLUDED ROM RECEIVING ENEFITS	OWNER & SPOUSE OF UNINSURED VEHICLE, NONRESIDENT IN UNINSURED VEHICLE NOT REGISTERED IN STATE, OPERATOR INTENTIONALLY CAUSING INJURY	OWNER & RELATIVES OCCUPYING ANOTHER OWNED, BUT UNINSURED VEHICLE; PERSONS OPERATING VEHICLE WITHOUT CONSENT; INTENTIONALLY CAUSING INJURY, DRIVING UPON A WAGER, FELONY OR STOLEN VEHICLE	INTENTIONALLY CAUSED INJURY; RACING OR SPEED CONTEST; AND, IN OUT-OF-STATE ACCIDENTS, OCCUPANTS OF OTHER VEHICLES AND PEDESTRIANS	UNLAWFUL USER OF VEHICLE; OWNER OF UNINSURED MOTOR VEHICLE; AND NONRESIDENT DRIVING OUT-OF-STATE VEHICLE AND NOT INSURED BY NEVADA LICENSED INSURER	SAME AS AB 264
RIORITY OF NSURERS - PERATORS AND CCUPANTS	1. INSURER OF OWNER 2. INSURER OF OPERATOR 3. HIS OWN	1. HIS OWN 2. INSURANCE COVERING VEHICLE	1. INSURER OF VEHICLE 2. INSURER OF PERSON	1. INSURER OF OWNER 2. INSURER OF OPERATOR	SAME AS AB 264
RIORITY OF NSURERS - ERSONS WHO ARE OT OPERATORS R OCCUPANTS F VEHICLE	1. HIS OWN 2. INSURER OF OWNER 3. INSURER OF OPERATOR	1. INSURER OF ANY INVOLVED VEHICLE	1. INSURER OF VEHICLE 2. INSURER OF PERSON	1. INSURERS OF OWNERS OF INVOLVED VEHICLES 2. INSURERS OF OPERATORS OF INVOLVED VEHICLES	SAME AS AB 264
SSIGNED LAIMS PLAN	ORGANIZED BY INSURERS AND FUNDED BY UNINSURED MOTORISTS	NO PROVISION	NO PROVISION	ORGANIZED AND FUNDED BY INSURERS	SAME AS AB 264
RIMARY OVERAGE	INSURANCE IS PRIMARY EXCEPT FOR SOCIAL SECURITY & WORKMEN'S COMPENSATION & SIMILAR STATUTORY PLAN	INSURANCE IS PRIMARY. WORKMEN'S COMPENSATION BENEFITS ARE TO BE CREDITED AGAINST BENEFITS	INSURANCE IS PRIMARY-BENEFITS TO INSURED AND MEMBERS OF HIS FAMILY REDUCED BY BENEFITS PAYABLE BY U.S., STATE, WORKMEN'S COM. OR SIMILAR PLAN	INSURANCE IS PRIMARY, EXCEPT FOR SOCIAL SECURITY BENEFITS	SAME AS AB 264

	AB 226	AB 227	AB 264	SB 158	SB 255
UPLICATE ENEFITS	PROHIBITS DUPLICATE PAYMENT OF BENEFITS	PROHIBITS DUPLICATE PAYMENT OF BENEFITS	~~NO PROVISION~~ PROHIBITS DUPLICATE PAYMENT OF BENEFITS	PROHIBITS DUPLICATE PAYMENT OF BENEFITS	SAME AS AB 264
EQUIREMENT HAT ADDITIONAL OVERAGE BE FFERED	YES- UP TO A MINIMUM OF $50,000.00	NO PROVISION	YES	PERMISSIVE, IF INSURED ELECTS FOR EXCLUDED MEDICAL & WAGE LOSS AND FOR 50% OR MORE LOSS OF A BODY FUNCTION	SAME AS AB 264
EQUIREMENT HAT BENEFITS E PAID WITHIN O DAYS	YES	YES	NO PROVISION	YES	SAME AS AB 264
ENALTIES FOR ATE PAYMENT F BENEFITS	1½% OF AMOUNT OF CLAIM FOR EACH MONTH PAYMENT IS LATE. TREBLE AMOUNT IF INSURER WILFULLY REFUSES TO PAY	10% SIMPLE INTEREST	NO PROVISION	6% INTEREST PER ANNUM. ATTORNEY'S FEES ARE ALLOWABLE FOR ADVISING AND REPRESENTING A CLAIMANT	SAME AS AB 264
EQUIREMENT HAT BENEFITS E PAID BY CHECK	YES	NO PROVISION	NO PROVISION	NO PROVISION	SAME AS AB 264

	AB 226	AB 227	AB 264	SB 158	SB 255
ROVISIONS WHICH PECIFY WHEN A LAIMANT AND INSURER AY RECOVER AN TTORNEY'S FEE	YES	YES (CLAIMANT ONLY)	YES (CLAIMANT ALLOWED ATTORNEY'S FEES FOR RECOVERY OF SUBROGATED CLAIM)	YES	SAME AS AB 264
ECOVERY OF AMAGES FOR AIN, SUFFERING ENTAL ANGUISH ND INCONVENIENCE	PROHIBITED UNLESS: 1. MEDICAL EXPENSES EXCEED $1,000. 2. LOSS OF BODY MEMBER 3. SERIOUS IMPAIRMENT OF BODY FUNCTION 4. PERMANENT DISFIGUREMENT 5. PERMANENT DISABILITY 6. DEATH	PROHIBITED UNLESS: 1. MEDICAL EXPENSES EXCEED $2,500. 2. LAST INCOME EXCEEDS $5,000. 3. LOSS OF BODY MEMBER 4. PERMANENT DISFIGUREMENT 5. PERMANENT INJURY 6. TOTAL OR PERMANENT PARTIAL DISABILITY 7. PERMANENT LOSS OF BODY FUNCTION	NO PROVISION	PROHBITED UNLESS: 1. 6 MONTHS OF COMPLETE INABILITY TO WORK 2. SIGNIFICANT PERMANENT INJURY 3. SERIOUS PERMANENT DISFIGUREMENT 4. DEATH	SAME AS AB 264
TANDARD FOR MEDICAL REATMENT EXPENSE IMITATION ON RIGHT O RECOVER DAMAGES FOR AIN, SUFFERING MENTAL NGUISH	USES RELATIVE VALUE STUDY	~~NO PROVISION~~ EQUIVALENT VALUE	NO PROVISION	NO PROVISION	SAME AS AB 264
UBROGATION	FULL (INTERCOMPANY ARBITRATION BETWEEN INSURERS)	FULL (INTERCOMPANY ARBITRATION BETWEEN INSURERS)	FULL (ARBITRATION PROVIDED)	FULL	SAME AS AB 264

	AB 226	AB 227	AB 264	SB 158	SB 255
OMPARATIVE EGLIGENCE	YES	YES	NO PROVISION	NO PROVISION	SAME AS AB 264
ANDATORY NINSURED OTORISTS OVERAGE	YES (UP TO 100/300)	NO PROVISION	NO PROVISION	NO PROVISION	SAME AS AB 264
ETHOD OF ETTLEMENT F DISPUTES ETWEEN INSURER ND CLAIMANT	COURT ACTION (ATTORNEY'S FEES ALLOWED)	COURT ACTION (ATTORNEY'S FEES ALLOWED)	ARBITRATION	COURT ACTION (ATTORNEY'S FEES ALLOWED)	SAME AS AB 264
ROHIBITION ON EFUSAL TO ISSUE R RENEW POLICY	PROHIBITS REFUSAL TO RENEW POLICY BASED SOLELY ON AGE, SEX, MARITAL STATUS, RACE OR OCCUPATION	NO PROVISION	PROHIBITS CANCELING OR REFUSING TO RENEW A POLICY, EXCEPT FOR NON-PAYMENT OF PREMIUM	NO PROVISION	SAME AS AB 264
ROPERTY DAMAGE OVERAGE	NO PROVISION	YES (TORT LIABILITY EXEMPTION BELOW $550. DAMAGE)	NO PROVISION	YES (PROPERTY PROTECTION BENEFITS ARE PROVIDED ON A "NO FAULT" BASIS)	SAME AS AB 264

	AB 226	AB 227	AB 264	SB 158	SB 255
PREMIUM RATES	SAVINGS REALIZED BY NO FAULT SHALL BE RETURNED TO INSUREDS.(BIENNIAL REPORT REQUIRED BY INS. COMM.)	15 PERCENT REDUCTION IN RATES MANDATED FOR SAME CLASS OF COVERAGE AND RATES IN EFFECT ON 7/1/72	RATES SHALL NOT BE EXCESSIVE, INADEQUATE OR UNFAIRLY DISCRIMINATORY	RATES SUBJECT TO CONTROL UNDER EXISTING LAW	SAME AS AB 264
PROPERTY DAMAGE TORT EXEMPTION	NO PROVISION	YES DAMAGES UNDER $550.00	NO PROVISION	YES EXCEPT INTENTIONALLY CAUSED ACTS	SAME AS AB 264
NO FAULT BENEFIT "DEDUCTIBLES" ALLOWED	NO PROVISION	YES-$250;$500; or $1,000. (AT REDUCED RATES)	YES-UP TO $250. FOR MEDICAL EXPENSES	NO PROVISION	SAME AS AB 264
EFFECTIVE DATE	JULY 1, 1973 (ASSIGNED CLAIMS PLAN, JANUARY 1, 1974)	JANUARY 1, 1974 (RATING PROCEDURES, JULY 1, 1973)	JULY 1, 1973 (NO ORDER OF PREMIUM REIMBURSEMENT PRIOR TO JULY 1, 1974)	JULY 1, 1973	SAME AS AB 264

STATEMENT OF S. LYNN SUTCLIFFE, COUNSEL TO THE SENATE COMMERCE COMMITTEE
BEFORE THE NEVADA ASSEMBLY, COMMITTEE ON COMMERCE, MARCH 1, 1973

Mr. Chairman and Members of the Committee,

My name is Lynn Sutcliffe. I am Counsel to the United States Committee on Commerce and have primary staff responsibility for consumer and automobile transportation legislation referred to that Committee, including the National No-Fault Motor Vehicle Insurance Act (S.354).

It is a pleasure for me to appear before this Committee to discuss with you the National No-Fault Motor Vehicle Insurance Act and answer any questions you might have about that act and related matters. It is my understanding that copies of S.354 and the remarks of the sponsors made upon introduction of that legislation have been forwarded to the Committee. I would like at this time to submit for the record a Congressional Record reprint of the introductory remarks which summarize the reasons for the National No-Fault Motor Vehicle Insurance Act and provide detailed commentary on its provisions and ramifications.

With permission of this Committee, I would like to orally summarize the main provisions of National No-Fault Motor Vehicle Insurance Act and then answer any questions you might have. To facilitate my summary, I would like to present to the Committee a chart comparing the National No-Fault Motor Vehicle Insurance Act and the recently enacted Michigan No-Fault Insurance Law. This chart was presented to the Senate Commerce Committee in testimony on February 1, 1973. It was prepared by Dr. Dennis Reinmath, Professor of Insurance from the State of Michigan. I believe it will be helpful to the understanding of the basic provisions of S.354 and useful as a tool for comparing S.354 with other legislation that you have before this Committee.

With your permission, I would like to now proceed to an oral summary discussion of S.354, the National No-Fault Motor Vehicle Insurance Act.

COMPARATIVE ANALYSIS OF S354 AND MICHIGAN NO-FAULT STATUTE

	S354	MICHIGAN
Mandatory Basic Reparation Benefits		
Allowable expense (medical and Rehabilitation)	All reasonable expenses	Same
Work Loss	$1,000/month to a minimum of $50,000 ($25,000)	$1,000/month to a minimum of 3 years ($36,000)
Replacement services loss Survivor's loss Survivor's Replacement services loss	Subject to any reasonable limitations which a state establishes	$20 per day for 3 years $1,000/month to a minimum of 3 years $20 per day for 3 years
Optional Deductions and Exclusions	As established by the state	Up to $300 per accident and any other deductible provisions approved by commissioner of insurance
Vehicles Included in System	All vehicles required to be registered in the state and Federal Government vehicles	All vehicles required to be registered and which have more than two wheels. No provision for Federal Govt. vehicles.
Denial or Restrictions of Benefits to Certain Persons		
- Person who intentionally causes injury		Same
- Intentional converter		Same
- Uninsured motorist $500 per year deduction		Uninsured motorist
Tort Exemptions and Retained Tort Liabilities	Abolished except as to:	
- Owners who have not purchased required insurance		Same

	S354	MICHIGAN
Tort Exemptions and Retained Tort Liabilities (Cont'd.)	- Intentionally caused harm to person or property	Same
	- Damages for detriment in excess of $5,000 if there is death, serious impairment disfigurement, significant permanent injury or more than 6 mths. of total disability	Damages for detriment if there is "death, serious impairment of body function or permanent serious disfigurement."
	- Auto manufacturers, repair shops, railroads	Same*
	- Damages caused by owners of parking lots and storage garages	No provision
	- Damage to property other than motor vehicles in use	Same, except absolute liability for non-vehicular property damage substituted
	- Damages for economic loss not compensated by no-fault benefits	Same
Attorney's Fees		
	- Payable by insurer win or lose if claim not fraudulent or so excessive as to have no reasonable foundation	Payable by insurer if claimant is successful and not fraudulent or so excessive as to have no reasonable foundation
Reallocation of Costs		
	- Not permitted between private passenger vehicles	Same
	- Not permitted between heavier vehicles and lighter vehicles	Same

* Law excludes these categories by common law definitions contained in statute.

Cancellation and Non-Renewal	Not permitted during policy term except during initial policy period unless - non-payment of premium - revocation of driver's license Notice required at end of policy period and insurance in assigned risk costed and arranged for if requested	Michigan existing cancellation law substantially similar. See Mich. Ins. Laws, Ch. 32.
Interstate Aspects		
Out-of State Coverage for Mich. Residents	No-fault benefits for insured Michigan motorists effective if accident occurs in any other state and Canada. Liability insurance required for Michigan motorists traveling in other states.	
Non-Michigan residents traveling in Michigan	No tort rights for non-resident against Michigan resident (Michigan residents have tort exemptions to the extent of no-fault benefits) Non-resident has Michigan no-fault benefits if insured with a Michigan licensed insurer Michigan no-fault benefits not available to non-resident if insured with an alien insurer which has not voluntarily filed a compliance statement	
Provisions for Innocent Uninsureds, e.g. Victims of Hit and Run Accidents	Assigned Claims Plan	Same

STATEMENT OF GARY PAULEY, ASSISTANT COUNSEL

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

BLOOMINGTON, ILLINOIS

BEFORE THE JOINT COMMERCE COMMITTEES OF THE

NEVADA SENATE AND ASSEMBLY STUDYING NO-FAULT

INSURANCE, FEBRUARY 28, MARCH 1, 1973.

My name is Gary Pauley, Assistant Counsel of the State Farm Insurance Companies of Bollmington, Illinois. Although I'm confident that you are all somewhat familiar with the State Farm Companies and our involvement in the insurance market of the State of Nevada, I would like you to know of our specific interests as related to the No-Fault issues that will be explored during these joint hearings. State Farm has in effect, as of December 31, 1972, 62,227 automobile insurance policies in the State of Nevada. This business generated earned premium for our Companies of $9,543,685.00 during the year 1973. By way of comparison, when I appeared before this committee during your last session to discuss the enactment of the new Nevada Insurance Code our Company had in force approximately 55,000 automovile insurance policies. This would indicate our continued growth and involvement in Nevada automobile insurance matters of approximately 10% per year.

As another method of comparison, State Farm's share of the private passenger vehicle market in Nevada for 1971 was approximately 19.8% in terms of premium volume. While I was unable to get the most up to date figures on registered private passenger vehicles, I'm confident that our continued growth as noted earlier has sustained our market position and perhaps improved it slightly. We are of course, the number one writer in the field

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in the United States with some 13.5 million policies in force and maintaining approximately 12 to 13 % of the total market in terms of premium volume. Since State Farm is rather well known as a "low premium" Company, our percentage of the market in terms of insured vehicles is slightly higher.

Thank you for sticking with me through all the background. While I did not want to bore you with lots of facts and figures, I do feel that it is important to show you why the issues that you are exploring today are of such importance to our Companies.

The No-Fault issue is an important one, not only because it changes our way of doing business but it lays the ground work for many changes in our social system. It is still too early in the game to know all of the advantages and disadvantages to the insuring public, but we have been through enough to date to get some feel of the pitfalls that await the unwary or the uninformed. It has been State Farm's objective to be certain that the people who will ultimately be responsible for change, be fully informed as to the potentials whether the resultant solution be good or bad for the insurance industry. It is for this reason that State Farm has tried to maintain a completely flexible objectivity on this problem. And, while we have not opposed any given solution to the problem we have not hesitated to express our views on any given proposal.

The social problems that gave rise to the No-Fault concept do not appear to me to be present in Nevada. To the best of my knowledge, we are not facing the payment of benefits delay, the court congestion, the imbalance of payments between the small and large claim that occur in some of the eastern and metropolitan areas. If there is a problem in the west, and perhaps in Nevada, the

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problem centers around the cost of insurance coverage. Even in this area I have found that while cost is a factor to the insuring public, that in relationship to other states that suffer from the congestion problem the overall cost is somewhat less in the west. In terms of profitability of insurance, the market in Nevada has not been too good for our Company. Our financial history has generally been, on a state wide basis, one of loss. Fortunately, although severity of accidents continues to climb, the frequency in the last year or so has declined and we have been fortunate to be able to return some premium dollars, by way of dividends to our policy holders.

If we are in agreement that perhaps the prime issue on No-Fault insurance in Nevada is "cost" then let us explore this issue. For purposes of this cost analysis, I have used SB158, and Assembly Bill 227. As you are aware, SB 158 provides unlimited medical benefits and loss of income coverage with a monthly limit of $750.00 for life. And, while the right to proceed in tort is somewhat restricted, this provision is similar to the UMVARA approach hence I have used this concept in developing a cost comparison. Our activities have calculated that this benefit package will cost an additional 69% of the Bodily Injury and Uninsured Motorist coverage. Of course to be accurate we must recognize that we will be eliminating all of the current medical payments coverage for those policies that now provide this coverage, hence our anticipated change in cost for this coverage would be approximately 40 to 45%.

We should point out and emphasize the point that this cost increase has anticipated a substantial saving in the tort area by the restriction placed on tort by this appraoch. Earlier in February Mr. Thomas Morrill, Vice President of our Company testified before the U.S. Senate Committee on Commerce regarding

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the No Fault issues and noted:

> "State Farm's actual studies show that a 5,000 economic loss package per person will compensate 98% of all injury cases in full and pay 85% of all economic loss. A 25,000 package per person will compensate 99.94% of all cases in full and pay 97% of all economic loss....."

Although Mr. Morrill was discussing the effect of deductibles in this particular testimony it seems apparent to me that these figures reveal another fact, i.e. that a $5,000.00 threshhold would eliminate approximately 98% of the personal injury liability claims. It also points up the fact that when benefits or threshhold of limitation on tort recovery are elevated that you effect correspondingly fewer people, perhaps to their detriment. As a matter of fact, our activities have indicated that when the tort restriction thresh hold gets over the $1000.00 to $1500.00 mark, that further savings are negligible, perhaps in the 1 to 2% category.

It therefore seems to me that cost savings, if any, must be realized not from extremely high tort restrictions but from a limitation on exposure or the benefits to be paid. In this light you might recall that Mr. Morrill noted that a $5,000.00 benefit package would pay 98% of all injured parties and would pay 85% of all economic loss.

In determining what is an appropriate No-Fault program for a given state, particularly Nevada and other western states where this prime issue is cost, it is important to construct a program that will balance the benefit package with the tort restriction I have already shown you where this is not occurring in SB 158. On the other hand, Assembly Bill 227 may well be the vehicle by which this balance of costs may be possible. It is my understanding that

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while this bill currently has an unlimited medical benefit that this was an error in the bill drafting and the medical benefit is in fact to be limited to $10,000.00. We could further improve the cost aspect of this particular coverage by limiting the period in which such benefits are payable to one year or in the alternative to a 2 year benefit period to correspond with the benefit period provided for disability benefits. Frankly, I would hope that both coverages or benefits would be reduced to a one year period for recovery.

In costing Assembly Bill 227 as it now reads, our actuaries have recognized the $2,500.00 medical benefits or $5,000 income loss threshhold and have concluded that this form of benefit package would entail a 16% increase in BI-UM premium. This, translated to dollars, means an annual average cost of $7. However, just like SB 158, we will be removing the MPC cost of $13. which means an overall savings to your constituents of approximately $6.00 per year or about 2% of their total premium costs. Furthermore, if this bill is further restricted to the recommended benefit package, and I strongly urge you to consider this, then the savings may be increased by a few percentage points. Frankly, I can't ascertain an approximate figure here since our actuaries do not consider that increases in benefit packages above a given level substantially increases cost. In turning back to Mr. Morrill's testimony you will recall that the expanded benefit package only paid 1.94% more cases but paid 12% more of the total economic loss. This indicates to me that while the number affected in the more severe injury level is small, the cost is substantial but will be spread over the entire insuring class, making the overall increased cost per individual relatively small.

Please remember that all of the cost analysis discussed today is purely an educated guess as we have no experience sufficient at this time to be able

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to tell what will happen. For example, in December 1972, we made a survey of all our pending first party injury claims in Miami, Florida, under that state's No-Fault law. (Assembly Bill 227 is patterned after the Florida law, hence this should give us some idea of the potential for Nevada). In any event, two extraordinary facts emerge:

1). Of the 924 first party claims pending in Miami, 416 were being handled by attorneys.

2). In those cases when our insured appeared to be free from fault in the accident, a total of 508 cases, 82% of these were in the hands of attorneys.

Without speculating as to the why of the above facts, it is fair to note that Florida has a $1000.00 medical threshhold and as soon as medical goes above this threshhold the policy holder and his counsel will be free to press his claim against the party believed to be responsible for the crash in which the injury occurred.

BI litigation at the moment is down in Florida, but the question remains, will it stay down? In any event the industry must remain free to price it's service. Mandated rate reductions or even increases make absolutely no sense when the waters and experience are as unsettled as they are on the issue.

Nevada under the current rate law is in one of the most felxible positions of all on this issue. Let competition set the rate, it may take a while until experience develops but it will occur. The only effect of a mandated rate reduction would be a restriction of the voluntary market. Would you be eager to write new business, regardless of your field, if you didn't know what that business was going to cost?

In like manner, we urge you to restrict the current proposal, in whatever

7).

form you select to the Bodily Injury area. In other words, let's not at this time include Property Damage. In discussing this with several of your members, it became quite apparent that you knew the reasons why the major portion of the industry is urging the various states not to include this coverage in the reform package at this time. Therefore, rather than make the philosophical arguements to you, let's put this issue on a pure cost basis. Our actuaries have estimated that Assembly Bill 227 with a $550 threshhold on PD will reduce costs of PD liability by 40%. Translated to dollars this means $9.00 savings in this coverage. However, everyone must noe buy collision coverage if he wants to protect that first $550. level and in our opinion the costs for this additional collision coverage will go up from $55.00 per year to $64.00 per year. Unless my math is real bad this looks like a $9.00 increase and perhaps a $64.00 increase for those individuals who would prefer not to purchase collision coverage. Perhaps the owner of an older model car is willing to absorb his loss of vehicle under the current system if he is at fault in an accident, but he sure won't be willing to take the same risk under the new system if his car is totalled out while it's parked and unoccupied.

Gentlemen, my time and voice have about played out and I would like to leave a few moments for questions. While we don't profess to have all the answers we do have some experience in these areas which we are delighted to share with you. Thank you for allowing me to meet with you today.

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AUTO INSURANCE LOSS AND EXPENSE RATIOS
(AS A % OF PREMIUMS)
AUTO BODILY INJURY LIABILITY

5

	Claims Paid & Outstanding	Loss Adjustment Expenses	Company Operating Expense	All Other Expenses*	Total Expenses
Stock Company National Totals	62.9	13.0	5.7	22.4	41.1
Mutual Company National Totals	62.5	16.5	4.2	18.6	39.3
Insurance Rating Board Totals	66.9	11.5	6.0	24.9	41.4
Mutual Insurance Rating Bureau Totals	67.2	15.8	5.1	19.6	40.5
IRB Members					
Aetna Casualty	75.3	10.3	5.2	21.4	36.9
Fireman's Fund	61.2	9.3	7.2	25.8	42.3
Hartford Acc.	67.3	11.8	6.0	23.3	41.1
Security Group	51.1	14.1	7.4	24.9	46.4
U.S.F. & G.	63.5	10.3	3.6	25.4	39.3
MIRB Members					
Liberty Mutual	74.6	16.6	3.4	14.9	34.9
Kemper	52.7	12.7	4.8	23.6	41.1

* Commissions, other selling expenses and state taxes and fees.

SOURCES: 1968 Loss and Expense Ratios, New York Insurance Dept.; Insurance Rating Board; Mutual Insurance Rating Bureau.

The greatest variance among the many no-fault plans occurs in the definition of what class of persons can still bring an action in tort against the wrongdoer to recover full compensation. The A.I.A. plan, the Nationwide plan, and the 1971 U.S. Senate bill, substantially or completely abolish the tort remedy for the driver and the passengers of the automobile. Maryland's recently enacted insurance reform plan calls for $2,500 in primary first party benefits, but neither impairs the traditional tort remedy nor deducts the benefits from the tort recovery. The Massachusetts, New Jersey, Connecticut, Florida and Michigan Acts all restrict, and partially abolish, the tort remedy by "threshold" limitations. The Illinois Act, which impaired the tort remedy by a formula limiting recovery of general damages, was invalidated by Illinois court proceedings.

The thresholds are too varied to be readily cataloged. A plan may define the minimum threshold in terms of the dollar amount of medical bills incurred before a tort suit can be brought, with $200, $500, $1,000, $2,500 or some other amount being the magic number, with or without hospital bills and with or without X-ray bills being included. Medical bill dollar thresholds may be combined with non-monetary conditions for suit, such as permanent disability, or permanent and "significantly disabling" loss of function, or fracture, or fracture of a "weight-bearing bone" only. Quaere, is the skull a weight-bearing bone? Are the bones of the hand "weight-bearing", or only "weight-carrying" on some occasions?

To justify the tort restriction, some proponents resort to the use of questionable figures. One recurring theme is that only 44¢ out of each insurance dollar goes to the injured party. The Federal Department of Transportation refers to this, but as a supposition from a work by Professor Keeton of the University of Illinois, rather than as a conclusion based on actual D.O.T. findings. A display of first party and third party loss ratios may be appropriate here for the year 1967, the period for the figure referred to by D.O.T. Alfred M. Best & Company, a recognized compiler of statistical data on insurance, reports ratios for 1967 of incurred losses to earned premiums as follows:

ALL STOCK COMPANIES

Type of Insurance	Losses Incurred as a Percentage of Earned Premiums
Health & Accident Insurance, Non Group (no fault)	50.2%
Fire Insurance (no fault)	56.2%
Workmen's Compensation Insurance (no fault)	63.9%
Automobile Bodily Injury Insurance	62.2%
Auto Collision Insurance (no fault)	56.8%
Auto Comprehensive Insurance (no fault)	52.1%

Type of Insurance	Losses Incurred as a Percentage of Earned Premiums
Health & Accident Insurance, Non-Group (no fault)	53.4%
Fire Insurance (no fault)	51.3%
Workmen's Compensation Insurance (no fault)	65.0%
Auto Bodily Injury Liability Insurance	63.7%
Auto Collision Insurance no fault	60.1%
Auto Comprehensive Insurance (no fault)	53.6%

Rather than belabor a point which will receive much attention in the current legislative session, I believe it sufficient at this point to say that the committee and the Insurance Commissioner feel that Oregon's present system works to the benefit of the public. A survey of the major insurance companies writing auto liability insurance in Oregon indicates that they feel the new Oregon auto insurance law is highly successful to date.

Some critics of our plan refer to certain published commentaries on the D.O.T. report. It is well to remember that the D.O.T. figures are based not on Oregon experience, but mostly on the experience in such eastern states as New York, Massachusetts and Pennsylvania, whose legal systems are afflicted with political problems that are foreign to the Oregon legal climate.

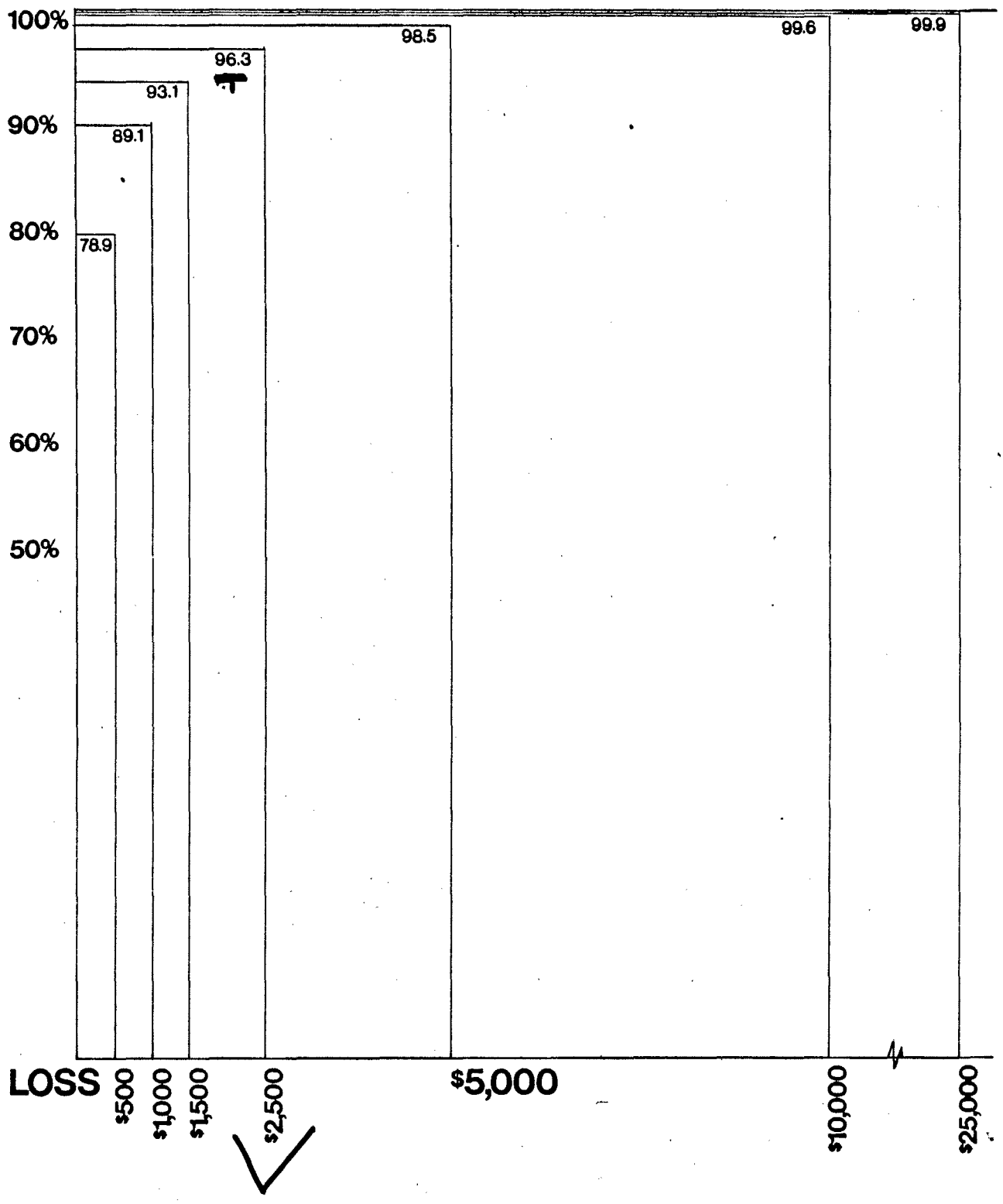
SUMMARY

The committee feels, in view of the widespread acceptance of Oregon's present system as developed in the 1971 legislative session, that its underlying philosophy should be maintained. The committee further recommends that the medical payment maximum benefit should be raised to $5,000 and the income replacement benefit maximum to $750 per month for a period of 52 weeks, without a premium increase. Oregon will not have reliable figures on losses under our present system until mid-1973.

The committee feels that some clear evidence that the tort restriction is in the best interest of the public is necessary before persons are deprived of the valuable right to proceed at law against other persons who cause injury or loss.

AUTO INJURY ACCIDENTS

Percent of Claimants by Amount of Economic Loss



JOURNAL OF COMMERCE

ERCE, Tuesday, February 6, 1973

Delaware Act On Auto P-I Held a Boon

Journal of Commerce Staff

DOVER, Del., Feb. 5 — Delaware Insurance Commissioner Robert A. Short said today that "less than a dozen wreck-related lawsuits have been initiated in the 13 months since the Delaware Motorists Act took effect." The act, which took effect Jan. 1, 1972, made auto insurance compulsory in Delaware and placed personal-injury protection under a no-fault concept.

Personal-injury protection covers loss of wages, loss of services and medical expenses caused by involvement in an auto accident.

Arnold Olsen, state director of insurance coverage, said that although comparative figures are not available on lawsuits during 1971, they would number "considerably more."

Mr. Short said there is not a single known case of those insured having to wait an inordinate length of time to recover personal-injury losses.

The total absence of this type of complaint makes it difficult to recall that it was the primary reason for passage of the law in the first place, he said.

Mr. Short said major stock-insurance companies had to reduce their bodily injury rates by 25 per cent when the law first began. Mr. Short does not have, or desire, the authority to control rates for mutual companies.

However, he said the average rate-level reduction for bodily injury by all companies doing business in Delaware was 8.5 per cent. This was done with no prohibition on lawsuits except that funds already recovered by one's own insurance company may not be considered in the suit.

"For the first time in memory," Mr. Short said, "no auto insurance rate level increases have occured in 20 months and none are applied for or anticipated."

In Delaware, this means that since the inception of the act no one should have "paid more in total insurance premiums unless he has had a change of classification, an accident or driving offense record, or an increase in coverage. Many have paid less.

Mr. Short said Delaware has had lower rates than most of the rest of the United States therefore, dramatic reductions were not anticipated. "Our purpose was to assure that injuries be paid for, and in that, the law is successfull."

STATE OF OREGON INTEROFFICE MEMO

ADD. F
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TO: COMMISSIONER RAWLS DATE: February 1, 1973

FROM: Richard A. Hunke
Deputy Insurance Commissioner

SUBJECT: A.P.I.P.

WRITTEN	INCURRED	L.E.R.
3,310,652	2,098,433	64.3%

The above figures are from six companies. It should be noted that there is no creditability to the figures, however, the trend indicates that the loss and expense ratio will balance out at approximately 67%. The companies indicate that the B.I. rates will be decreased by approximately 10% on all classes due to the impact of the A.P.I.P. It appears that approximately 65% of the A.P.I.P. incurred losses are from medical expense with 35% loss of income. The average claim appears to be in the vicinity of $535.

Richard A. Hunke
Deputy Insurance Commissioner

RAH:mph

81-123-5015

Mississippi Law Journal

THE MASSACHUSETTS EXPERIENCE UNDER NO-FAULT

*Eugene G. Coombs, Jr.**

No army can withstand the strength of an idea whose time has come. —Victor Hugo

The Massachusetts experience proves no-fault is an idea whose time has come.[1]

For the most part legislative support depended on a single factor — the hope, since established as fact, that the plan could cut automobile insurance costs. Other motivations commonly advanced to support the no-fault idea were relatively unimportant. It cannot be claimed, therefore, that the Massachusetts experience shows that no-fault itself is an idea whose time has come.[2]

The Massachusetts no-fault automobile insurance law was added to the pre-existing compulsory bodily injury liability insurance coverage in 1970 and became effective on January 1, 1971.[3] By subsequent legislation, no-fault automobile property damage insurance was added, effective January 1, 1972.[4]

The no-fault bodily injury coverage is known as "personal injury protection" coverage, and by the acronym PIP. The statute requires that policies issued in compliance with the compulsory law[5] provide for the payment of medical expenses, a portion of wages "actually lost" and not otherwise compensated, and actual payments for non-income producing services which the insured would have performed for himself or his family but for his injury. The total amount of benefits payable

*Member of Kansas and Massachusetts Bars and United States Supreme Court Bar. A.B. 1957, University of Kansas; LL.B. 1960, Harvard Law School. The author acknowledges with thanks the cooperation of Robert E. Keeton, David J. Lane, and John G. Ryan in the preparation of this article.

[1]Address by John G. Ryan, American Insurance Association Proceedings, New York City, May 18, 1972.

[2]Ryan, *Massachusetts Tries No-Fault*, 57 A.B.A.J. 431 (1971).

[3]MASS. GEN. LAWS ANN. ch. 90, §§ 34A, D, M, N (Supp. 1972); *id.* ch. 175, §§ 22 E-H, 113 B-C (1972); *id.* ch. 231 § 6D (Supp. 1972); Act of August 13, 1970, ch. 670, *as amended*, Act of August 23, 1970, ch. 744 [hereinafter cited as PIP Act]. Since 1927, proof of a bodily injury liability policy, or a substitute form of security, has been a condition to registration of a motor vehicle. MASS. GEN. LAWS ANN. ch. 90, § 1A (Supp. 1972).

[4]MASS. GEN. LAWS ANN. ch. 90, § 34 O (Supp. 1972); Act of November 3, 1971, ch. 978, *as amended*, Act of November 15, 1971, ch. 1079.

[5]MASS. GEN. LAWS ANN. ch. 90, § 1A (Supp. 1972).

for injury to or death of any one person is "at least two thousand dollars."[6] The coverage extends to the named insured and members of his household, any authorized operator or passenger of the insured's vehicle and any pedestrian struck by it, subject to certain exceptions and exclusions. There is no limitation upon the number of people entitled to benefits on account of any one accident, *i.e.*, there is no aggregate limit of liability. The coverage is required to extend to the named insured and members of his household if they are injured by a vehicle to which no PIP coverage applies.[7]

Section 4 of the PIP Act creates a limited exemption from tort liability which extends to the owner, registrant, operator or occupant of a motor vehicle having PIP coverage to the extent that the injured party is entitled to PIP benefits himself.[8] In other words, the responsible party, if he is entitled to PIP coverage himself, enjoys an exemption from tort liability for those items recovered by the injured person as PIP benefits which would otherwise have been items of special damages.

The practical effect of this exemption is undermined substantially by a provision for "subrogation" by the insurer paying PIP benefits to an injured person against the liability insurer of the tort-exempt wrongdoer. These inter-insurer claims are to be settled by agreement or, failing that, by arbitration on traditional fault bases.[9] Obviously, this is not subrogation as the word is generally understood,[10] but a wholly independent statutory right of recovery.

In addition to the limited exemption from tort liability created by section 4 with respect to items of special damages, section 5 of the Act limits the automobile accident victim's right to recover so-called general damages.[11] It provides that a plaintiff in a motor vehicle accident within Massachusetts may recover damages "for pain and suffering, including mental suffering associated with such injury," only if the "reasonable and necessary" medical expenses exceed $500 or the injury causes death, consists in whole or part of loss of a body member, or permanent or serious disfigurement, or loss of sight or hearing, or a fracture. This limitation on the recovery of general damages is not restricted expressly to those plaintiffs who are entitled to PIP benefits. However, dicta in *Pinnick v. Cleary*[12] seem to indicate that the Supreme Judicial Court finds this restriction implicit in section 5.

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[6]PIP Act § 2, MASS. GEN. LAWS ANN. ch. 90, § 34A (Supp. 1972).

[7]*Id.*

[8]PIP Act § 4, MASS. GEN. LAWS ANN. ch. 90, § 34M (Supp. 1972).

[9]*Id.*

[10]BOUVIER'S LAW DICTIONARY 1143 (1946).

[11]PIP Act § 5, MASS. GEN. LAWS ANN. ch. 231, § 6D (Supp. 1972).

[12]271 N.E.2d 592, 597 (Mass. 1971).

The no-fault property damage insurance is called "property protection insurance" (PPI). It became effective on January 1, 1972, one year after the bodily injury law, and is also compulsory. It exempts Massachusetts owners and operators from liability to each other on account of damage to their respective vehicles, and provides a variety of options by which each vehicle owner may protect himself by first-party coverage.[13]

The constitutionality of the no-fault bodily injury law was upheld in *Pinnick v. Cleary*.[14] Detailed analysis of the Massachusetts PIP statute may be found elsewhere[15] and is beyond the scope of this article. The foregoing statements are intended to provide only the most general acquaintance with the statutes and to supplement the suggestion that the Massachusetts PIP law is most aptly called "limited" or "modified" no-fault.[16] The limited tort exemption is offset by the PIP insurer's "subrogation" rights against the tortfeasor's compulsory insurer.[17] The only practical limitations upon the law of damages are the pain and suffering "threshholds" established by section 5.[18] If this section contained the law's most significant change, it also provoked the most controversy. Focused upon it were the hopes of its advocates and the most bitter attacks by its opponents.

BEFORE NO-FAULT

In 1927, the Massachusetts Legislature enacted the first compulsory automobile liability insurance statute in the United States.[19] Since that time, Massachusetts motorists have been required to provide evidence of bodily injury liability insurance in the amount of $5,000 per person, $10,000 per accident, as a condition to the registration of their motor

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[13]MASS. GEN. LAWS ANN. ch. 90, § 34 O (Supp. 1972).

[14]271 N.E.2d 592 (Mass. 1971).

[15]Kenney & McCarthy, *No-Fault in Massachusetts Chapter 670, Acts of 1970 — A Synopsis and Analysis*, 55 MASS. L.Q. 23 (1970); Ryan, *No-Fault Automobile Insurance*, 17 BOSTON COLLEGE ANN. SURV. MASS. LAW 530 (1970); Note, *The Massachusetts "No-Fault" Automobile Insurance Law: An Analysis and Proposed Revision*, 8 HARV. J. LEGIS. 455 (1971).

[16]Pinnick v. Cleary, 271 N.E.2d 592, 595 (Mass. 1971): "[The act] establishes a modified system of compensation through their own insurers for victims of automobile accidents regardless of fault." *See also* Ghiardi & Kircher, *Automobile Insurance: An Analysis of the Massachusetts Plan*, 21 SYRACUSE L. REV. 1135 (1970); address by David J. Lane, Annual Seminars of the Society of Chartered Property and Casualty Underwriters, Los Angeles, Calif., Oct. 23, 1970.

[17]PIP Act § 4, MASS. GEN. LAWS ANN. ch. 90, § 34M (Supp. 1972).

[18]PIP Act § 5, MASS. GEN. LAWS ANN. ch. 231, § 6D (Supp. 1972).

[19]MASS. GEN. LAWS ANN. ch. 90, § 1A (1972).

vehicles. Until 1972, there was no such requirement with respect to property damage liability coverage.[20] Over the years, the state developed accident and claims frequencies which surpassed or rivaled the nation's highest.[21]

Needless to say, compulsory insurance rates did not remain constant under the circumstances. Sociologists, economists, and politicians have noted the existence of one large metropolitan area in a state that is otherwise largely rural. The classifications for compulsory automobile insurance rates take geographical considerations into account.[22] As a result, motorists in the Greater Boston area paid the highest premiums for their insurance. In the high rate territories in and around Greater Boston, the compulsory rates were more than five times those of the lowest rated territories.[23] If Boston had the greatest concentration of automobiles and motorists in the state, it also had the most voters and the largest newspapers.

The battle between the insurance commissioner and the industry over compulsory insurance rates was a long and bitter one even before 1967. Since 1961, an underwriting profit of 1 percent was allowed by the commissioner in setting rates for the compulsory coverage.[24] By statute, compulsory rates for the succeeding year were to be announced on or before September 15,[25] but the deadline was not always met.[26]

The compulsory rates were not determined by the industry subject to state approval, but were fixed by the commissioner. The compulsory insurance market[27] should be considered in at least two aspects. The one most generally considered is that of the policyholder — *i.e.*, every motor vehicle owner must have the insurance as a condition to the registration of his vehicle. The second aspect is that the insurance is compulsory upon the underwriter. Insurers in a compulsory state are required to accept every vehicle owner, where as insurers in non-compulsory states are not. This means that the worst class of drivers

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[20]MASS. GEN. LAWS ANN. ch. 90, § 34 O (Supp. 1972).

[21]Information furnished by the Division of Insurance.

[22]*Id.*

[23]Boston Herald Traveler, July 9, 1968, at 1, 20. This situation persists. The present average rate for compulsory coverage in Boston is $73 and in Hyannis, $14. Information furnished by the Division of Insurance.

[24]Information furnished by the Division of Insurance.

[25]MASS. GEN. LAWS ANN. ch. 175, § 113B (1972).

[26]Court interpretation of these deadlines have held them to be discretionary. Doherty v. Commissioner of Ins., 328 Mass. 161, 102 N.E.2d 496 (1951); Liberty Mut. Ins. Co. v. Acting Comm'r of Ins., 265 Mass. 23, 28, 163 N.E. 648, 650 (1928). Such a delay in an election year could eliminate a political issue.

[27]CRANE, AUTOMOBILE INSURANCE RATE REGULATION 12-22 (1962).

is insured under a compulsory system, whereas that class in theory at least will be eliminated by underwriting judgment from a noncompulsory insurance system. Thus, the preexisting compulsory law was blamed for the state's high accident and claims frequencies as well as for every increase in rates. Regardless of the soundness of these assertions, they were widely voiced and the demands for change increased.

Two events in 1967 marked the beginning of the process of reform. First, the Keeton-O'Connell plan was passed by the Massachusetts House of Representatives.[28] Its passage in August 1967 seemed sudden and unexpected, without the advance warning of a long and heated public debate. It showed clearly the vulnerability to change of the 40 year-old compulsory law. Secondly, Commissioner of Insurance C. Eugene Farnam, by administrative regulation, prohibited any increase in compulsory insurance rates for the ensuing year.[29] This ruling was not challenged by the companies. Although the compulsory rates were frozen by the commissioner, rates for bodily injury liability coverage in excess of the statutory limits, and for medical payments, property damage liability, and physical damage coverages were subject to a "file and use" law.[30] Obviously this statute gave greater initiative and flexibility to the companies than was afforded them with respect to compulsory rates. The industry's decision to accept the commissioner's compulsory rate freeze in 1967 may have rested upon the desire to reduce the pressure for reform and to preserve their rating initiative for the noncompulsory coverages. It is also possible that the companies' experience would not have justified a substantial increase in the 1968 rates.[31]

The initial legislative steps in the reform process occurred in 1968. The first of these extended the commissioner's compulsory rate freeze through the years 1969 and 1970.[32] The second required insurers to offer excess bodily injury liability coverage up to the limits of $20,000/$50,000, $5,000 medical payments coverage, and $5,000 property damage liability coverage to their compulsory policyholders at rates promulgated by the commissioner.[33] This law was called the "Mary

[28]Boston Globe, August 16, 1967, at 1, cols. 4-5, at 5, cols. 1-4. It was defeated in the senate, 28 to 10. Boston Herald Traveler, September 19, 1967, at 1, 15.

[29]Appendix A.

[30]MASS. GEN. LAWS ANN. ch. 175, § 113C (1972).

[31]Boston Herald Traveler, December 13, 1967, at 1, 26; Boston Globe, December 22, 1967, at 1, 7.

[32]Ch. 643, § 2A [1968] MASS. ACTS, *as amended*, MASS. GEN. LAWS ANN. ch. 175, § 113B (1972).

[33]Ch. 643, § 3 [1968] MASS. ACTS, *as amended*, MASS. GEN. LAWS ANN. ch. 175, § 113C (1972).

Newman amendment,"[34] and its impact cannot be overestimated. Not only did it deprive the companies of the rate-making initiatives which they had previously held under the file-and-use provisions of section 113C and transfer this power to the commissioner, it virtually eliminated underwriting considerations from most of the important lines of automobile insurance. In previous years, the companies accepted substandard risks, either as assignments or in lieu of an assignment under the assigned risk plan, more or less as a necessary evil and a cost of doing business. Massachusetts motorists who were "assigned risks" were entitled to only compulsory $5,000/$10,000 bodily injury liability coverage from the insurer to which they had been assigned. If these motorists wished to obtain increased bodily injury limits, or property damage liability coverage, those coverages and others were offered by companies specializing in them, at higher rates. In a given year, a motorist considered to be a substandard risk might have found his automobile insurance to be written by three different companies under three separate policies. If the Mary Newman amendment reduced the possibilities of inequity and inefficiency which existed in these circumstances, it also gave the companies cause to ask what they had gained by accepting graciously Commissioner Fornam's rate freeze the year before. Then, as if to add insult to injury, the commissioner extended the "freeze" to all automobile liability rates, asserting that the Mary Newman law gave him this power.[35] This ruling was modified on appeal,[36] but the court decision came too late to materially affect rates for 1969.

In November 1969, Commissioner Farnam held hearings on proposed increases of 26 percent and 25 percent in property damage liability and medical payments coverages, the rates for which he was empowered to set by the Mary Newman amendment.[37] On Christmas eve, before the commissioner's findings had been announced, the companies filed an overall increase of 26.9 percent in physical damage rates, for use in January 1, 1970. Commissioner Farnam promptly rejected this filing and a refiling on December 30. It was perhaps more than coincidence that within the next two weeks, on January 12, 1970, he announced his

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[34]Mary Newman served in the Massachusetts House of Representatives in 1953-54 and from 1957 to 1970. She has been Secretary of Manpower since 1971.

[35]Boston Globe, November 27, 1968.

[36]Insurance Rating Bd. v. Commissioner of Ins., 356 Mass. 184, 248 N.E.2d 500 (1969).

[37]Boston Globe, November 8, 1969, at 1, 5.

disapproval of the proposed rate increases for property damage liability and medical payments coverage.[38]

The commissioner's decision as to the physical damage rates was overturned by the Supreme Judicial Court in July of 1970,[39] and his decision on the property damage rates was overturned in early 1971.[40] But the effect of administrative determinations is not to be measured solely by their success in the courts. In the time between these two decisions, Massachusetts enacted its no-fault law.

In August 1970, three years had passed without a rate increase in any line of automobile insurance. The Keeton-O'Connell plan was the first "no-fault" reform program to be seriously considered by the Massachusetts Legislature. That plan continued to attract national as well as local attention. In 1967, it gained support from consumer groups and the news media, and was being reintroduced in the Great and General Court of Massachusetts annually. As originally filed, the Keeton-O'Connell plan did not alter the state's statutory rate-making process.[41] Keeton and O'Connell are law professors and might have been of a mind that state-made rates were not necessarily a bad thing.

If the Massachusetts automobile insurance industry opened its mind to reform early in 1970, nothing contributed more to its anxiety than the state-made rates — the 1967 rates still in effect in the summer of 1970. Whatever arguments might be made, pro or con, no logical necessity existed between no-fault insurance and any particular rating system. There were an ample number of alternatives to the Keeton-O'Connell plan.[42] Some of these alternatives may have persuaded at least segments of the Massachusetts insurance industry that a no-fault program was not the worst of the proposals then being advanced. The press began to report favorable industry consideration of "a modified no-fault plan."[43] The bill introduced as senate bill 1430, was reported to have

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[38]Boston Globe, January 13, 1970, at 1, 4. Physical damage rates were not controlled by the Mary Newman law, ch. 643, § 2A, and were still subject to the file-and-use law, MASS. GEN. LAWS ANN. ch. 175A (1972). *See also* Boston Globe, July 23, 1970, at 25.

[39]Insurance Rating Bd. v. Commissioner of Ins., 260 N.E.2d 922 (Mass. 1970).

[40]Insurance Rating Bd. v. Commissioner of Ins., 268 N.E.2d 144 (Mass. 1971).

[41]H.R. 1844, Mass. Legis., 1964 Sess.; H.R. 4820, Mass. Legis., 1968 Sess.

[42]*E.g.*, the American Insurance Association Complete Personal Protection Plan. Boston Globe, February 18, 1970, at 22. Another proposal was for a $250 deductible on compulsory bodily injury liability coverage. Boston Globe, January 30, 1970, at 1, 4. Compulsory arbitration of bodily injury claims under $3,000 was also proposed. Boston Globe, January 16, 1970, at 34.

[43]Boston Sunday Advertiser, January 18, 1970; Boston Globe, February 25, 1970, at 10; Boston Globe, March 8, 1970, at 18.

been drawn by the Governor's staff, the Joint Legislative Committee on Insurance, and the Insurance Department. It was said to have the Governor's support and an industry guarantee that compulsory rates would be reduced 15 percent from the present level if the bill was passed as filed.[44] Neither senate bill 1430, nor the original Keeton-O'Connell bill, made provision for competitive rating. In most other respects, senate bill 1430 was substantially the same as senate bill 500, a bill with competitive rating provisions which had been filed annually since 1967 by the Massachusetts Association of Independent Insurance Agents and Brokers. If its competitive rating feature had initially won industry support for senate bill 500 over Keeton-O'Connell or other plans, the companies' hopes were frustrated again when senate bill 1430 was introduced. In the form of a substitute for a merit-rating bill, senate bill 1430 passed the house of representatives on July 29, 1970.[45] The senate made two amendments, passed the bill, and sent it to the Governor for his signature.[46]

The insurance companies originally supported the "modified no-fault" proposal, but they were less than gratified by the bill as passed by the senate. Two of the major companies immediately announced that they would stop writing automobile insurance in the state.[47] Their principal objections were to the senate's amendments to the bill. The amendments required 15 percent reduction not only in compulsory coverages, but to all automobile lines, and provided for "guaranteed renewability" of statutory policies. The senate's passage of the no-fault bill was surprising at first glance. Not only had the senate defeated the Keeton-O'Connell bill in 1967, it had twice rejected senate bill 1430 the week before.[48] The senate's sudden change of heart gave rise to speculation that political considerations were at work and that by passing an "unwise and unworkable" bill which was causing such consternation to the companies, the Governor could be embarrassed and forced to veto it in an election year.[49] Governor Sargent expressed an awareness of this possibility when he signed the bill into law in a prime time

[44]Boston Globe, May 8, 1970, at 3; Boston Herald Traveler, May 8, 1970, at 1, 8. Milton G. McDonald, the state's chief actuary, predicted a 30 percent increase in 1971 rates unless the system was changed. Boston Globe, June 24, 1970, at 1, 22.

[45]Boston Globe, July 30, 1970, at 16.

[46]Boston Globe, August 7, 1970, at 1, 15. The vote was 26 to 8. Nineteen Democrats voted for the bill and two voted against it.

[47]Boston Herald Traveler, August 8, 1970, at 1, 4. The ranks of discontented companies grew within the week. Boston Globe, August 11, 1970, at 1, 33.

[48]Boston Evening Globe, August 6, 1970, at 8.

[49]Boston Herald Traveler, August 8, 1970, at 8; Boston Globe, August 12, 1970, at 1, 8.

television speech on August 13, 1970.[50] Not only did he make the most of the rhetorical possibilities offered,[51] but he also introduced emergency legislation addressed to the companies' major objection to the guaranteed renewability provision added by the senate.[52] He threatened to keep the legislature in session until these amendments were adopted.[53] They were adopted the day after the threat, at 2 o'clock in the morning.[54]

The companies then challenged the validity of the statute's mandatory 15 percent reduction in the noncompulsory lines of automobile insurance.[55] Their attack was successful,[56] but the decision did not come until after Governor Sargent's reelection. As amended, by the legislature at the Governor's instance and the court at the companies' instance, the law became fully effective on January 1, 1971.

After No-Fault

Only one full year's statistical data is presently available for use in judging the performance of the Massachusetts statute. When the no-fault law went into effect on January 1, 1971, it was at compulsory coverage rates which were 15 percent lower than the 1970 rates—*i.e.*, 15 percent lower than the frozen 1967 rates—rather than the 30 percent increase in compulsory rates which Chief Actuary McDonald in May of 1970 had predicted would be necessary without reform.[57] In 1970, compulsory earned premiums had been roughly $150 million. Ignoring any increase in the number of vehicles, the 15 percent reduction would amount to a savings of $22.5 million. If Mr. McDonald's prediction was accurate, the 30 percent increase in compulsory rates would have produced total premiums approximately $45 million over the 1970 levels. Perhaps in spite of the history of the bill, its enactment nevertheless may be regarded as a legislative determination that this reduction in premium volume was a worthwhile objective.

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[50]Boston Herald Traveler, August 14, 1970, at 1, 8.

[51]"I will not be blackmailed by an industry that has lived well and profitably in Massachusetts for many, many years. . . ." He also directed the Insurance Commissioner "to develop plans for a State Insurance Fund." Boston Herald Traveler, August 14, 1970, at 1, 8.

[52]Boston Globe, August 18, 1970, at 3.

[53]Boston Herald Traveler, August 22, 1970, at 1, 3.

[54]Boston Globe, August 23, 1970, at 1, 22.

[55]Boston Globe, August 26, 1970, at 35.

[56]Employer's Commercial Union Ins. Co. v. Commissioner of Ins., 265 N.E.2d 90 (Mass. 1970); Aetna Cas. & Sur. Co. v. Commissioner of Ins., 263 N.E.2d 698 (Mass. 1970); Boston Evening Globe, November 9, 1970, at 1.

[57]*Supra* note 45.

In the minds of the Act's proponents the justification for the original 15 percent reduction was its restriction upon the right to recover for pain and suffering.[58] The draftsmen also expected that since the recovery provided by the Act was certain, the number of claims would increase under no-fault. But the additional claims would be pure "no-fault" claims for out-of-pocket expenses, and this increase in costs would be more than offset by the cost savings resulting from the limitations on recovery for pain and suffering—more than offset, it was hoped, by about 15 percent.

The number of personal injury accidents, as reported to the Registry of Motor Vehicles, did not increase in 1971. Instead, it dropped by nearly one-third, from 91,142 to 61,014.[59] The number of reported non-fatal injuries dropped from 151,094 to 92,507.[60] As the statistics were developing in 1971, they did not escape the attention of the insurance commissioner and the legislature. In the late months of 1971, the commissioner ordered an average 27.6 percent reduction in the 1972 compulsory rates.[61] In turn, the legislature further amended the rating law[62] by authorizing the commissioner to hold public hearings to determine the extent of any unfair profit accruing to compulsory insurers on 1971 policies. After these hearings, on October 11, 1972, the commissioner ordered each insurer providing the compulsory coverage in 1971 to return to each policyholder a net amount equal to 25.9 percent of the compulsory premium.[63] No appeals were taken from this decision, which included the now customary 1 percent allowance for profit.[64] As a result, compulsory automobile insurance rates in 1971 and 1972 were some 37 and 38 percent, respectively, of the rates in effect between 1967 and 1970. When these reductions are coupled with the Supreme Judicial Court's determination of December 14, 1970, in *Travelers Indemnity Company v. Commissioner of Insurance*,[65] that the frozen 1967 compulsory rates were confiscatory and inadequate when extended into 1970, the results are even more dramatic. The draftsmen of the no-fault law had incorporated the 1970 compulsory insurance rating

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[58] PIP Act § 5, MASS. GEN. LAWS ANN. ch. 231, § 6D (Supp. 1972).

[59] Appendix B.

[60] *Id.*

[61] Massachusetts Department of Banking and Insurance, Division of Insurance, Opinion, Finding and Order of December 31, 1971.

[62] MASS. GEN. LAWS ANN. ch. 175, § 113B (1972), *as amended* Acts of 1972, ch. 977 (Supp. 1972).

[63] Massachusetts Department of Banking and Insurance, Division of Insurance, Opinion, Findings and Orders of October 11, 1972.

[64] MASS. GEN. LAWS ANN. ch. 175, § 113B (Supp. 1972).

[65] 265 N.E.2d 90 (Mass. 1970).

table into the statute,[66] and mandated a 15 percent reduction from those rates. The companies did not seek a retroactive adjustment of 1970 compulsory rates after the *Travelers* decision. Thus the 1971 and 1972 rates are fractions of rates adjudged inadequate and confiscatory for 1970.[67]

The reduction in the rate levels for compulsory coverage after no-fault has been due to the anticipated reduction in average paid claim costs[68] and the unexpected reduction in the number of claims.[69] The reduction in average paid claim costs, at least in the first full year of no-fault, would seem to be primarily the result of the restrictions imposed upon recovery for pain and suffering by section 5. There are present indications that the companies' loss adjustment expenses are declining under no-fault. Obviously, a no-fault claim does not require as extensive an investigation as that required under the fault system. Medical bills and reports and lost earnings records are obtained with the claimant's cooperation[70] rather than by negotiation with his attorney and discovery procedures if suit is brought. Claims for no-fault benefits generally are being adjusted without the necessity of either the claimant or the company resorting to the services of attorneys. These savings to the companies in loss adjustment expenses are expected to result in further rate reductions beginning in 1973.[71]

The reasons for the reduction in the number of bodily injury claims are more difficult to explain. The figures provided by the Registry of Motor Vehicles show no reduction in the number of fatalities in 1971. Indeed, the number of fatalities in 1971 was slightly higher than in any year since 1965.[72] Even claims adjusters will concede that death is one injury which will not be faked. The absence of a reduction in the number of fatalities leads one to doubt that the number of highway accidents in 1971 did in fact decline. Furthermore, state officials privately assert knowledge that the number of accidents actually increased in 1971. Despite the arguments sometimes made to the contrary, there is no reason to believe that no-fault legislation

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[66]PIP Act § 6, Acts of 1970, ch. 670, § 6, *as amended*, Acts of 1970, ch. 744, § 2.

[67]In contrast to this reduction in the compulsory rates, property damage liability rates were increased by the commissioner an average 38.1 percent following the Supreme Judicial Court's decision in Aetna Cas. & Sur. Co. v. Commissioner of Ins., 263 N.E.2d 698 (Mass. 1970).

[68]Appendix C.

[69]Appendix B.

[70]PIP Act § 4.

[71]Conversation with John G. Ryan, Commissioner of Insurance.

[72]Appendix B.

suddenly changed the driving habits of some two million motorists, for better or worse.

If it is true that the number of actual highway accidents did not diminish substantially in 1971, then the Registry of Motor Vehicles statistics on reported personal injury accidents must mean that prior to no-fault some people who were not seriously injured were utilizing the automobile reparations system. It is certainly true that some motorists who were entitled to a recovery of general damages prior to the Act now are not. Despite the complaints and charges by opponents of no-fault, there is no evidence in the news media nor the insurance division records of widespread public dissatisfaction with this result. This may mean only that there are more motorists who pay insurance premiums in the state than there are accident victims. On the other hand, it may indicate that instances of real hardship caused to accident victims by the limitations on the recovery of general damages have been extremely rare.

CONCLUSION

The first published statistical study of the results of the first full year of Massachusetts' no-fault experience of which the author is aware is that by Dr. Calvin Brainard which appears in this symposium.[73] The Council on Law-Related Studies in Cambridge is conducting a large-scale survey of the effects of the Massachusetts plan, not only on accident victims and insurance companies, but on attorneys, insurance agents, adjusters, and management personnel as well. The first results of this survey are expected early in 1973.[74]

Casualty underwriters generally hold that 3 years' experience is necessary to give confidence in the equity and reliability of a particular rate.[75] Nevertheless, the short-run results of the plan as reflected in the data now available must be gratifying to its proponents and to those in industry and government who worked so hard to implement the law in the short period between its passage and its effective date.

In light of the history of its enactment, a couple of caveats are worth suggesting. One cannot conclude that the enactment of this law in another state would produce results as dramatic as the results in the first year of the Massachusetts experience. Nor does the Massachusetts experience demonstrate that none of the alternate no-fault plans then

[73] *See* Brainard, *The Impact of No-Fault on the Underwriting Results of Massachusetts Insurers*, 44 MISS. L.J. 174 (1973).

[74] A similar study is underway in Florida. Information provided by the Council on Law-Related Studies, 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

[75] Information provided by the Division of Insurance.

or now being considered could not have effected results at least as promising. As Commissioner Ryan noted,[76] legislative support for the Massachusetts plan was based primarily upon its projected cost reductions rather than other arguments advanced in favor of no-fault legislation.[77] If the substantial rate reduction in Massachusetts is due primarily to the Act's restrictions upon the recovery of general damages, perhaps other proposals with more extensive restrictions might result in even greater savings. The Massachusetts statute presents a great many problems of construction and interpretation which have yet to be resolved by the legislature or the courts,[78] an additional indication of the crisis and confusion surrounding its enactment.

The phrase "no-fault insurance" is now applied to such a wide variety of proposals that it has lost virtually all substantive connotations. The political popularity of the term, like the term ecology, does not serve to advance consideration of specific proposals.[79] The Massachusetts statute certainly was more than a legislative accident, notwithstanding a quip by Governor Sargent after his reelection in 1970, "I am here through no fault of my own." Certainly the better time for reasoned evaluation of the present automobile reparations systems and the proposals for reform is before a crisis in the system makes dramatic change inevitable. That is one lesson of the Massachusetts experience.

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[76]Ryan, *supra* note 2.

[77]Among the other arguments were elimination of court congestion, delays, and inequities in the traditional reparations system. Note, *The Massachusetts "No-Fault" Automobile Insurance Law: An Analysis and Proposed Revision, supra* note 15, at 455-58.

[78]Kenney & McCarthy, *supra* note 15; *Note, The Massachusetts "No-Fault" Automobile Insurance Law: An Analysis and Proposed Revision, supra* note 15.

[79]Address by Bernard L. Webb, "No-Fault Insurance and the Lemming Syndrome," at the Seminar on No-Fault Insurance, of the Society of Chartered Property and Casualty Underwriters, New Orleans, La., Nov. 18, 1971, quoting Herbert S. Denenberg, "The Politics of No-Fault Automobile Insurance: The People vs. the Trial Lawyers," an address before the National Governor's Conference, San Juan, Puerto Rico, Sept. 14, 1971.

APPENDIX A

The following memorandum, dated February 7, 1968, was issued by the Massachusetts Commissioner of Insurance C. Eugene Farnam. The memorandum was prepared in regard to classifications of risks and schedule of premium charges for motor vehicle liability policies or bonds in 1968:

> Massachusetts General Laws Chapter 175, Section 113B, requires the Commissioner of Insurance, after due hearing and investigation, to fix and establish fair and reasonable classifications of risks, and adequate, just, reasonable and non-discriminatory premium charges to be used by insurance companies in connection with the issue of execution of motor vehicle liability policies or bonds, both as defined in Section 34A of Chapter 90.
>
> On January 26, 1968, a public hearing was held after advertising in the newspapers in the various cities and towns listed in said Section 113B.
>
> At the public hearing, a stenographer who was duly sworn made a complete record of the proceedings. Statistics, data, and argument concerning the computation and preparation of the proposed classifications of risks and schedule of premium charges to be used by insurance companies for the year 1968 were introduced in evidence before me.
>
> I have given careful consideration to all of the evidence presented at the hearing, and on the basis of that evidence, I find that —
>
> 1. the proposed classifications of risks are fair and reasonable and the premium charges relating thereto are adequate, just, reasonable and non-discriminatory, and
>
> 2. the proposed rules and regulations are reasonable and necessary to facilitate the operation of said Section 113B and to enforce the application of the classifications and premium charges fixed and established.
>
> NOW, THEREFORE, I do hereby establish and promulgate for the year 1968 the classifications of risks, schedule of premium charges relating thereto and rules and regulations, all as set forth in the Finding and Order dated December 29, 1966, said Finding and Order containing the classifications of risks, schedule of premium charges relating thereto and rules and regulations applicable to motor vehicle liability policies or bonds issued or executed for or during the year 1967, except that Table A on page 58 of the said Finding and Order is hereby amended as follows:

TABLE A

Expected Loss Factors Applicable to Policy Year 1968 for Statutory (Compulsory) Liability Coverage

	1964	1965	1966
All Classifications	.654	.654	.654

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS
REGISTRY OF MOTOR VEHICLES
STATISTICIAN'S OFFICE
BOSTON, MASSACHUSETTS

PERSONAL INJURY ACCIDENTS BY MONTHS: 1966 THROUGH 1971

MONTHS	1966	1967	1968	1969	1970	TOTALS	AVERAGE	1971
January	8,282	5,962	10,033	6,580	9,544	40,401	8,080.2	6,136
February	7,044	8,426	7,613	6,877	7,347	37,307	7,461.4	5,077
March	6,085	7,843	7,496	6,554	7,740	35,718	7,143.6	4,460
April	6,527	6,573	6,073	5,979	6,348	31,500	6,300.0	4,695
May	7,214	7,018	7,109	6,881	7,387	35,609	7,121.8	5,391
June	6,963	6,760	7,505	6,425	7,457	35,110	7,022.0	4,985
July	6,532	6,113	6,187	6,590	6,702	32,124	6,424.8	5,035
August	6,799	6,597	6,567	6,886	7,278	34,127	6,825.4	5,109
September	6,831	6,665	6,752	7,208	7,096	34,552	6.910.4	4,475
October	7,546	6,665	6,976	7,943	7,621	36,751	7,350.2	5,059
November	7,303	7,772	7,866	8,442	7,238	38,621	7,724.2	5,019
December	8,887	7,109	8,461	9,184	9,384	43,025	8,605.0	5,573
Total Accidents	86,013	83,503	88,638	85,549	91,142	434,845	86,969.0	61,014
Persons Injured Non-Fatally	148,357	140,399	144,509	136,540	151,094	720,899	144,180	92,507
Persons Injured Fatally	900	867	897	898	904	4,466	893	908
Total Injured	149,257	141,266	145,406	137,438	151,998	725,365	145,073	93,415
Persons Injured per accident	1.735	1.692	1.640	1.607	1.668	1.668		1.531
Percentage Persons Injured Fatally	0.603%	0.614%	0.616%	0.653%	0.595%	0.615%		0.972%

APPENDIX C

The following statistics, revised August 1972, were provided by the Massachusetts Automobile Rating and Accident Prevention Bureau, Boston, Massachusetts.

PRIVATE PASSENGER – COMPULSORY*

Losses Incurred Inclusive of Allocated Claim Expense
Valued as of March 31, 1972 for Policy Year 1971
and as of December 31, 1971 for Policy Years 1966-1970

Policy Year	Earned Car Years	Compulsory Premium	Losses Incurred	*No. of Claims	Claim Freq.	Ave. Claim Cost	Pure Premium	Loss Ratio
1971	1,957,232.4	111,218,794	44,669,699	55,044	*	*	22.82	40.2
1970	1,959,529.2	130,633,902	98,522,664	119,353	6.1	825	50.28	75.4
1969	1,888,593.8	126,036,229	97,578,851	123,393	6.5	791	51.67	77.4
1968	1,816,003.9	121,839,805	94,091,726	121,177	6.7	776	51.81	77.2
1967	1,758,012.6	118,501,317	85,386,422	114,977	6.5	743	48.57	72.1
1966	1,711,430.1	110,240,158	86,476,367	120,956	7.1	715	50.53	78.4

			**Developed					
			Losses Incurred	*No. of Claims				
1971	1,957,232.4	111,218,794	48,877,585				24.97	43.9
1970	1,959,529.2	130,633,902	99,192,618	117,813	6.0	842	50.62	75.9
1969	1,888,593.8	126,036,229	97,051,925	122,184	6.5	794	51.39	77.0
1968	1,816,003.9	121,839,805	93,856,497	120,426	6.6	779	51.68	77.0
1967	1,758,012.6	118,501,317	85,207,111	114,517	6.5	744	48.47	71.9
1966	1,711,430.7	110,240,158	86,398,538	120,690	7.1	716	50.48	78.4

*1971 No. of Claims are Division 2 only prior to Inter-Company Settlement.
Note: Policy Year 1971 Private Passenger experience excludes P.I.P. deductibles.

**Development Factors

Losses Incurred		Number of Claims	
1971	1.0942	(1971	1.0240)
1970	1.0068	1970	.9871
1969	.9946	1969	.9902
1968	.9975	1968	.9938
1967	.9979	1967	.9960
1966	.9991	1966	.9978

Author's Note: "No. of Claims" for 1971 includes only no-fault claims and not third party claims, *i.e.*, bodily injury claims where one of the threshholds required by section 5 is needed or claims for special damages not compensated by no-fault benefits. Therefore, it is the expectation of the Insurance Division that additional 1971 claims will be reported in the future. If these 1971 claims are reported, "Claim Frequencies" are increased and "Average Claim Costs" are decreased.

THE IMPACT OF NO-FAULT ON THE UNDERWRITING RESULTS OF MASSACHUSETTS INSURERS

*Dr. Calvin H. Brainard**

For many years prior to 1971, insurers as well as motorists were dissatisfied with the performance of the Massachusetts automobile liability insurance market — insurers because prices were too low and motorists because prices were too high.

With the advent of no-fault automobile insurance, effective January 1, 1971, Massachusetts motorists received a reduction of 15 percent in their compulsory bodily injury liability rates (Coverage A) and shortly will receive a further rate reduction of 27.6 percent in the form of a retroactive premium refund. The overall reduction will be 38 percent.[1] As to Coverage A, therefore, no-fault can be credited with a considerable mitigation of motorist dissatisfaction with price.

The purpose of this article is to examine the other side of the market — the effect of no-fault on the costs and profit margins of Massachusetts insurers of automobiles.

Underwriting Results Under No-Fault, 1971

The Results of Ten Leading Insurers

As indicated in Table 1, no-fault produced very gratifying underwriting results for Massachusetts insurers in 1971 with respect to the statutory Coverage A.

Despite a rate reduction of 15 percent, the 10 leading insurers— who wrote about 70 percent of the total volume of Massachusetts automobile insurance — earned premiums of $76.7 million while incurring losses of only $28.9 million. The gross margin from insuring operations (not including selling and administrative costs and taxes) was $47.8 million or 62 percent of earned premium income. Compared with the experience of prior years, this margin tells a rags-to-riches story. While the margin varied from 69 percent (Lumbermens) to 49 percent (Hartford), all insurers benefited handsomely from the turnabout.

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[1]In 1970, the schedule of Coverage A rates, basic limits, ranged from $24 to $375. Therefore, the savings produced by a 38 percent rate reduction would range from $9 to $143.

ASSEMBLY

AGENDA FOR COMMITTEE ON COMMERCE

Date Fri., March 2 Time 4:00 p.m. Room 222

Bills or Resolutions to be considered	Subject	Counsel requested*
AB 300	Prohibits unfair methods of competition and unfair or deceptive acts or practices in conduct of any trade or commerce;	
AB 301	Creates consumer affairs division of department of commerce and regulates deceptive trade practices;	
AB 313	Specifically prohibits conversion of rented or leased vehicle.	

(no meeting held)

*Please do not ask for counsel unless necessary.