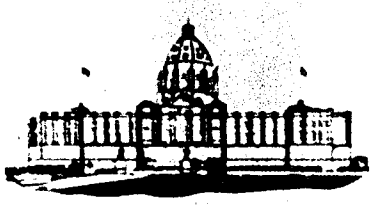
MINNESOTA SENATE

RESEARCH REPORT



Senate Counsel & Research

MINNESOTA NO-FAULT INSURANCE ACT

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Current Law and Legislative History

by

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PREFACE

This study was undertaken at the request of Senator Michael O. Freeman. It is a general overview of Minnesota's No-Fault Insurance Act. The first two sections of the report reviewing the original and current status of the act were written by Daniel P. McGowan, Senate Counsel. Mr. McGowan is also responsible for the Appendices. Sections III and IV, dealing with state-by-state comparisons and no-fault goals, were written by Mark R. Misukanis, Senate Research. Section V outlines problems with the current no-fault law. Overall editing of the report and preparation of the final draft were the tasks of Patrick J. McCormack, Senate Research, who may be reached at 296-0558.

INTRODUCTION

Over the course of many centuries, English common law has developed a system for compensating people injured in all types of accidents. This system requires the person who was at fault in causing the accident to pay monetary damages to the person who was injured. Lawyers refer to this system as the "tort" system, and it is a system based exclusively on fault. With a few exceptions and modifications, this is the system that operates throughout the United States today.

Under this fault-based system, insurance is purchased to pay for the damages that an insured person causes. This type of insurance is known as "liability insurance" because it pays only when the insured person is legally liable to pay another person.

In order to recover from liability insurance, a claim must be made by an injured person against an insured person, based on the insured person's fault. Sometimes a lawsuit must be commenced to make that recovery. As a result of the lawsuit a trial may ensue, but most lawsuits are concluded by some type of settlement in which the liability insurance company makes a payment to the claimant, in exchange for the claimant's agreement not to further pursue the claim.

Neither tort law nor liability insurance is designed to pay for harm that persons accidentally inflict upon themselves. Automobile accidents include a large number of incidents of self-inflicted injury, especially one-car accidents. Those injured in a one-car accident that is self-inflicted may have no recourse under the tort-liability system.

The no-fault insurance system has been developed over the last three decades as an alternative to the tort-liability system. The key characteristic of a no-fault automobile insurance system is that certain expenses resulting from the personal injuries of an automobile owner, the owner's family, and the driver and occupants of the owner's vehicle are paid by the owner's insurance company, regardless of who is at fault in causing the auto accident. People buy no-fault insurance to pay for their own injuries, which is why it is often referred to as "first person" coverage.

No-fault laws were enacted to remedy perceived problems under the fault-based system which included:

(1) lack of compensation for some auto accident victims, such as an injured driver who is at fault or a person injured by the fault of an uninsured driver;

(2) delay in payments needed for medical care and rehabilitation services;

(3) uncertainty of the amount of recovery;

(4) overburdening of the courts with minor auto accident claims; and

(5) excessive reliance on litigation.

The primary purpose of a no-fault auto insurance law is to assure compensation for the basic expenses of auto accident victims, regardless of fault. Other purposes include:

* prompt payment for medical and rehabilitation treatment;

* prompt payment for other known expenses;

* reducing litigation, particularly for claims involving small, known expenses; and

* removing disputes between insurance companies from the court system.

This report is written in five sections. Sections I and II describe the current act, focusing on its major provisions. The third section sets the Minnesota act in the context of the compensation systems adopted in the other 50 states. It also specifically compares the provisions of Minnesota's no-fault law with those of the other states that also have adopted no-fault. The fourth section reviews the data on no-fault results nationwide and in Minnesota since enactment. In addition, it assesses the success of no-fault in reaching its goals. The final section outlines problems with the current Minnesota no-fault law. As an aid to understanding the initial positions in the development of the no-fault act, appendices setting the historical context of the no-fault act and comparing prior House and Senate bills are included.

I. THE MINNESOTA NO-FAULT ACT OF 1974

The Minnesota No-Fault Act of 1974 made three major changes from the way auto insurance had been previously treated. First, it created a new form of first-party insurance: basic economic loss insurance. Second, the act made insurance compulsory, meaning that, as a condition to registration of an automobile, the owner was required to show that a plan of reparation security had been provided. Third, the act imposed certain limitations or thresholds in the right to sue for damages in a tort action. The compulsory first-party insurance, together with the tort thresholds, gave the Minnesota act the characteristics of what is referred to as a "modified" no-fault plan.

A. Basic Provisions

Subject to certain exceptions, the act is designed to ensure that all individuals who sustain injury arising out of the maintenance or use of a motor vehicle in Minnesota, or in some cases outside Minnesota, will be entitled to receive basic economic loss benefits. The act requires all owners of motor vehicles registered, licensed, or principally garaged in Minnesota to maintain a plan of insurance complying with the act during the period in which the operation or use of the motor vehicle is contemplated.

Non-resident owners of motor vehicles not required to be registered, licensed, or which are not principally garaged in Minnesota are also subject to the security requirements of the act, although in a much more limited form.(1)

All plans of reparation security (insurance) must provide coverage for basic economic loss benefits totaling $40,000, consisting of $20,000 in medical expense coverage and an additional $20,000 in coverage for other specific types of economic loss.(2) In addition to basic economic loss insurance, the act requires insurance coverage to include liability insurance in the amount of $30,000 per person for bodily injury with a $60,000 per-accident limit, and $10,000 in coverage for property damage.(3) The act also requires owners of motor vehicles registered or principally garaged in Minnesota to have uninsured and underinsured motorist coverage in an amount of $25,000 per person for bodily injury with a $50,000 per-accident limit.(4)

In addition to compulsory basic economic loss, residual liability, and uninsured-underinsured motorist insurance, the act as initially adopted required insurers to <u>offer</u> insured persons additional medical expense coverages and additional residual liability insurance.(5) Insurers also were initially required to offer basic economic loss benefits to all persons who purchased

liability insurance for motorcycles, but these mandatory offer provisions were repealed in 1980.(6)

B. Payments to Injured Persons

The no-fault act pertains to persons injured in accidents arising out of the maintenance or use of a motor vehicle in Minnesota, as well as persons injured in another state who are covered by a policy complying with the act. If an uninsured or underinsured individual is involved in the accident, the injured person may, in addition to basic economic loss benefits, be entitled to receive either uninsured motorist or underinsured motorist benefits.(7)

Basic economic loss benefits are made available to the injured person according to a priority scheme,(8) which rank-orders the policies responsible for payments in a given accident. For example, some accidents involve several vehicles and pedestrians. A number of insurance companies are involved. The priority scheme determines which insurance coverage meets which costs of each person involved.

In general, drivers or occupants of business vehicles are covered by the plan of insurance covering those vehicles.(9) Pedestrians who are injured by a business vehicle, but who are not drivers or occupants of other involved motor vehicles, will be entitled to recover under the policy covering the business vehicle.(10)

In cases involving private motor vehicles, the usual priority for an injured person will be the plan of insurance under which he or she is insured.(11) If the injured person is not insured, but is a driver or occupant of an insured motor vehicle, the applicable plan of security is that covering the vehicle. Uninsured individuals who are neither drivers nor occupants of an insured motor vehicle recover under the plan of insurance covering any involved motor vehicle.(12)

The priority scheme for individuals seeking to recover uninsured or underinsured motorists benefits is not controlled by the no-fault act. The order in which those insurance coverages apply in a given accident is governed by a series of Minnesota Supreme Court decisions which will be discussed in a later section dealing with uninsured-underinsured motorist coverage.

C. Tort Claims

Tort claims are still possible under the Minnesota no-fault laws, but only in a very limited set of circumstances. If a tort action is anticipated, an injured individual must confront the potential limitations of the tort offset and tort threshold provisions of the no-fault act.(13) The offset and threshold

provisions are designed to ensure that an injured individual recovers in tort only for loss uncompensated for by the no-fault system.

The no-fault system includes "monetary" and "verbal" damage thresholds. Accidents requiring payments above financial thresholds are said to "exhaust" these limits, and tort claims may be used to recover damages in excess of these financial limits. In addition, the tort thresholds require a serious injury before recovery for these damages will be allowed.(14) The intent is to reduce the cost of the no-fault system by eliminating litigation expenses that would otherwise be incurred in the resolution of minor tort claims.

The threshold requires:

(a) that the injured victim incur at least $4,000 in medical expenses; or

(b) that the injury result in (1) permanent disfigurement, (2) permanent injury, (3) death, or (4) disability for 60 days or more.

The tort threshold applies only to a lawsuit to recover for personal injuries. A lawsuit to recover for damage to property, such as damages to an automobile, may be brought without meeting the tort threshold.

An assigned claims plan is created to assure payment of the basic no-fault insurance benefits to auto accident victims who are not otherwise covered by no-fault insurance. A hit-and-run victim who does not own an automobile, and thus does not have his or her own no-fault coverage, would receive benefits from the assigned claims plan.

II. UPDATE ON THE CURRENT MINNESOTA NO-FAULT LAW

Since the enactment of the Minnesota No-Fault Act in 1974, a number of amendments to the act and various court decisions interpreting the act have brought the law to its present state. These amendments and court decisions are numerous, and a complete listing of them would be a monumental task. In order to bring the act into current focus, three important areas of the act are discussed in the remainder of this section. Those three areas are: the right to collect basic economic loss benefits; uninsured-underinsured motorist coverage; and stacking of coverages.

A. The Right to Benefits.

Minnesota Statutes, Section 65B.46, expresses the policy behind the no-fault act: that everyone injured in the state of Minnesota through maintenance or use of a motor vehicle has the right to no-fault benefits. However, not all injuries will be covered. For example, injuries received while on, mounting, or alighting from a motorcycle are exempt.

1. Motorcycle Injuries

The severity of motorcycle injuries and the resulting expense made drafters think it inequitable to burden the motoring public with the cost of motorcycle accidents. Therefore, even if an automobile is involved in a collision with a motorcycle, causing injury to those riding on the motorcycle, the injury does not qualify for no-fault benefits. Since no-fault benefits are not payable for the person injured while riding motorcycles, there is no tort threshold requirement, and the victims of accidents involving motorcycles are therefore left to the tort system to seek recovery.

In Feick v. State Farm Mutual Auto Ins. Co.,(15) a minor was injured when his bicycle was struck by a motorcycle. A claim was made for no-fault benefits under the policy purchased by the child's parents. The Minnesota Supreme Court held that the accident did not qualify for no-fault benefits because a "motor vehicle" was not involved.

Although the statute does not extend no-fault benefits to motorcycle accidents, some insurance policies may do so. As mentioned above, the initial no-fault act required the offer of optional no-fault benefits to motorcycles; due to the high cost, relatively few were actually purchased and intentionally issued. Perhaps one reason some insurers have included coverage for an insured person being "struck by a motorcycle" is that these injuries do qualify for uninsured motorist coverages. In

Rosenburger v. American Family Mutual Ins. Co.,(16) where the claimant had fallen off one motorcycle and had been run down by a companion motorcycle the court held that these injuries were subject to coverage under uninsured motorist coverages.

2. Geographic Limitations

The scope and coverage of the no-fault act is limited to the United States, all United States possessions, and Canada. A Minnesota policy must at a minimum extend its personal injury protection to injuries occurring within this area. The scope of the act for out-of-state accidents is further limited. Out-of-state accidents occurring from the maintenance and use of a motor vehicle which is one of five or more vehicles under common ownership, and regularly used in the course of the business transporting persons or property, is not covered beyond the Minnesota state line.

An insured person is entitled to collect under a Minnesota policy providing coverage for any motor vehicle accident regardless of where the accident occurred as long as it is within the above-mentioned geographic area. In this sense, the no-fault coverage is a personal coverage that follows the individual.

3. Definitions of Motor Vehicle Use

Another issue concerning the right to benefits has been the definition of "maintenance or use" of a motor vehicle. In general the rule in Minnesota is stated simply as a question of whether there is a connection between the injury and the use of the vehicle for transportation purposes. This question revolves around whether a "vehicle" was involved in the accident, keeping in mind that what may be a vehicle for purposes of the statute may differ in various sections of the no-fault law and under various types of policies. Furthermore, the Minnesota Supreme Court has looked at the "maintenance and use of a motor vehicle" question with a view toward determining whether there has been a causal connection between the injury and the use of the vehicle, and whether the use of the vehicle was for transportation purposes.

In other words, legal issues have revolved around whether specific machines were motor vehicles under the terms of the act, and also around whether the injuries actually came from the operation of the motor vehicle, or were unconnected to the use of the motor vehicle.

In the Nadeau v. Austin Mutual Ins. Co. case,(17) the Minnesota Supreme Court decided the question of the availability of no-fault coverage when there was an injury in connection with the use of a motor vehicle, in a situation where the injured party did not come in contact with the motor vehicle. In the

Nadeau case, the Court created a zone-of-physical-danger test. The claimant was injured when she slipped and fell on an icy driveway as she was attempting to avoid an oncoming motor vehicle. The Court said that the claimant's injury was caused through her reasonable reaction to the approaching danger of an oncoming vehicle and thus no-fault benefits would be applicable.

Another notable case in this area is the Haagenson v. National Farmers Union Prop. and Cas. Co. case,(18) in which the plaintiff was injured while slipping in opening the passenger door of a truck, thus falling onto a power line. The court said that since the injury occurred while the plaintiff was grasping onto the door handle to enter the vehicle it was his intent to become a passenger, and thus the vehicle was being used for transportation purposes.

Another case in this area is the West Bend Mutual Ins. Co. case,(19) in which a passenger grabbed the steering wheel of a moving car, thereby causing an accident. The Minnesota Court of Appeals held in this situation that grabbing the steering wheel was not the operation of a motor vehicle; it was, rather, interference with the operation of the car and thus no-fault benefits were denied.

In Krupenny v. West Bend Mutual Ins. Co.,(20) the plaintiff was injured in an accident while making rounds with a garbage truck owned by his employer. Plaintiff and his brother were standing at the rear of the truck when the foot holding the dumpster bent, permitting the dumpster to fall on the plaintiff. Because the plaintiff was neither occupying, entering into, or alighting from the truck at the time of the accident, the court held that the accident did not arise out of the use of the motor vehicle.

B. Uninsured-Underinsured Motorist Coverage.

One of the most perplexing problems in the no-fault area is uninsured-underinsured motorist coverage. Uninsured motorist coverage is intended to pay to the insured person first-party insurance benefits equal to the amount that the insured person would be legally entitled to recover from an uninsured motorist. Underinsured coverage is designed to provide coverage when the relevant insurance is not adequate to handle all obligations.

In 1985 the Minnesota Legislature made a number of changes to the statutes which establish the basic framework for uninsured and underinsured motorist coverage. After a general discussion of the nature of this coverage, reference will be made to two issues: the stacking of uninsured-underinsured motorist coverage; and the question of whether these are two separate coverages or a single coverage.

1. Uninsured Motorist Coverage

By statutory definition a vehicle is uninsured if it does not have a policy of insurance meeting the requirements of the no-fault act. After October 1, 1985, the minimum bodily injury liability limits of $30,000/$60,000 were established, and it is the absence of this liability coverage that triggers uninsured motorist coverage.

There are a number of court cases which have dealt with questions arising when the vehicle is insured but its limits are insufficient or unavailable. In the DiLuzio case,(21) because of the severity of the injuries of the parties and the number of claimants, the limits of liability coverage were exhausted before many of the claimants were paid anything. The Minnesota Supreme Court held that the vehicle is "uninsured" only if it does not carry the requisite insurance and not because there is inadequate compensation for all those injured.

A typical uninsured motorist policy defines "uninsured motor vehicle" to include a vehicle "for which an insuring or bonding company denies coverage."(22) Thus, a final legal adjudication of lack of coverage is not necessary to trigger uninsured motorist coverage. A claim may be made whenever the liability carrier denies for one reason or another that there is a valid policy in effect, such as when the insurer denies coverage because the operator's use was without permission.

2. Underinsured Motorist Coverage

Underinsured motorist coverage is also a form of first-party insurance in which the insurer agrees to pay directly to the insured person an amount equal to the damages suffered by the insured person which are uncompensated, because the damages are greater than the available liability coverage. Many of the issues that arise in an underinsured motorist claim are similar or identical to those which arise in an uninsured claim. The obvious difference between the two is that an underinsured motorist by definition has a valid policy of insurance providing a minimal amount of liability coverage.

There has been a historic progression in Minnesota law on underinsured motorist coverage. Prior to the no-fault period, underinsured motorist coverage was a supplemental coverage which had to be made available to insured persons.(23) The available coverage in the pre-no-fault period was the difference in limits between the underinsured motorist coverage which the claimant had and the liability coverage of the tortfeasor. The "tortfeasor" is the person liable for the tort damages.

On January 1, 1975, the optional underinsured motorist coverage then in existence was rewritten as part of the no-fault

act.(24) In section 65B.49, subdivision 6, paragraph (e), under the original no-fault system, whether or not a motorist was underinsured required a comparison of the insured person's damages with the tortfeasor's liability limits. If the insured person's damages exceeded the liability limit of the tortfeasor, no matter what those limits were, the underinsured motorist coverage was available as an additional reservoir of first-party coverage up to the amount of the total damages suffered by the insured person. This is called "add-on" coverage, as opposed to the "difference-of-limits" approach in the pre-no-fault period.

The pre-1975 difference-of-limits standard compared the two relevant limits and paid out the difference. The post-1975 add-on system augmented the original coverage with the entire additional underinsurance coverage. Now, as the result of court cases, Minnesota is back to a difference-of-limits test.

In Holman v. All Nation Ins. Co.,(25) Holman was a passenger in one of his own two vehicles when severely injured. He had requested the cheapest insurance coverage available and therefore had obtained liability coverage of $25,000/$50,000, no-fault coverage of $20,000 medical and $10,000 non-medical, and had no underinsured motorist coverage. Because the insurance company was unable to prove that it had made the mandatory offer of optional coverage which was at that time required, an additional $25,000 of liability coverage was imposed on the policy, and medical expense benefits of an additional $20,000 were also imposed. In addition, underinsured motorist coverage in the amount of $100,000 was imposed.

Thus, the "cheapest" form of insurance coverage ended up providing $230,000 of coverage to Mr. Holman because of the effect of the "mandatory offer" requirement. The Holman case was reported on January 11, 1980, and on February 7 of that year, a bill was introduced in the Minnesota House to repeal the mandatory offer requirement. In reaction to the Holman decision, the mandatory offer requirement and, therefore, all statutory definitions and descriptions of underinsured motorist coverage, were repealed on April 12, 1980.

From April 12, 1980, through October 1, 1985, there were no statutes describing or in any way defining underinsured motorist coverage. Many insurers refused to write the coverage and cited the American Family Mutual Ins. Co. case,(26) as authority for the proposition that it is a well-settled rule in the construction of insurance contracts that parties are free to contract as they desire, as long as any statutorially required coverage is not omitted.

On October 1, 1985, underinsured motorist coverage was elevated from a supplemental or optional coverage and was required with every policy of automobile insurance issued in

Minnesota.(27) The coverage now required is a minimum of $25,000 per person subject to a minimum of $50,000 per accident. The underinsured motorist carrier is not obligated to pay under the coverage unless there is a difference between the selected limits of underinsured coverage and the amounts paid by any tortfeasor.

Underinsured motorist coverage is no longer a floating or add-on limit. If there is a difference between liability and underinsurance coverages, the underinsured motorist carrier is liable for the difference in order to supplement the tortfeasor's payments and bring the total recovered up to an amount equal to the insured person's damages, or the selected underinsured coverage limit, whichever is less.

Under the old add-on system, an insured person might receive full liability benefits plus the full underinsured benefits. Now, if liability payments cover $50,000, and uninsured motorist coverage is $60,000, the injured person can receive an additional $10,000. If liability limits and underinsurance coverage are equal, the insured person receives no money from the underinsurance coverage.

C. Stacking of Uninsured-Underinsured Motorist Coverage and Single or Dual Coverage Questions.

There has been a great deal of confusion regarding the stacking of uninsured and underinsured motorist coverage, as the result of two conflicting statutes which were passed in the 1985 First Special Session. Both mandated the carrying of underinsured motorist coverage, along with what was previously required and called "uninsured or hit-and-run motor vehicle coverage." However, 1985 Minnesota Laws, First Special Session, chapter 10, section 68, prohibited the stacking of uninsured and underinsured motorist coverage while 1985 Minnesota Laws, First Special Session, chapter 13, required insurers to offer insured persons the option to stack uninsured and underinsured motorist coverage.

Stacking permits an insured person to combine the coverage limits of more than one policy to increase the available coverage to the insured person in a single accident. For example, if an insured person had two cars with uninsured-underinsured motorist coverage of $25,000/$50,000 on each car, with stacking the person would have an effective coverage limit of $50,000/$100,000. Stacking does not permit double coverage or payment for injuries from each policy for the same injury; it merely raises the applicable insurance limit for any one accident.

The basic question was, which of the two laws applied? Was the special session law prohibiting stacking in effect, or was the special session law offering the option to stack in effect?

A secondary question that existed was whether uninsured and underinsured motorist coverage is one single or two separate coverages. If these were two separate coverages, this would thereby permit an insured person to recover up to the policy limit for each type of coverage in a single accident. This question would be crucial in a situation where there was a multiple car accident with injuries sustained by an insured person from both an uninsured and an underinsured driver.

Commerce Commissioner Michael Hatch, in an order dated January 30, 1986, required insurers to provide no-fault coverage containing separate uninsured and underinsured coverages. The commissioner had earlier rejected policy form filings by State Farm and Allstate Insurance which did not offer insured people the option to stack uninsured and underinsured motorist coverage.

He then ordered that insurers were thereafter not required to file policies or riders providing for the stacking of these coverages, if the insurer does not offer and therefore does not sell the stacking option to any of its clients. State Farm, Allstate, and other insurers petitioned the Minnesota Court of Appeals for review of the commissioner's final order, and the Court of Appeals issued its decision on August 13, 1986.(28)

Without going into a lengthy dissertation regarding the legal issues involved in the lawsuit, several major points ought to be noted as a result of the Court of Appeals decision:

1. The Court of Appeals held that chapter 10, passed in the 1985 Special Session, prohibiting stacking, takes precedence over chapter 13, also passed in the 1985 Special Session, which required optional stacking.

2. Even though chapter 13 was signed by the governor later on the same day as chapter 10, the order of enactment rule, which provides that the later statute controls when two irreconcilable statutes are passed at the same session of the Legislature, does not apply when the clear intention of the Legislature would be thwarted. The court said that the Legislature, on the basis of consideration of the anti-stacking provision by majority caucuses in both houses, and approval at those caucus meetings, intended to prohibit stacking. This was held to be the legislative intent, even though the optional stacking provision was added to the semi-states appropriation bill and passed as a part of that bill in the same session.

3. Since chapter 10 is the controlling statute, stacking of uninsured and underinsured motorist coverage is prohibited by that chapter.

4. Uninsured-underinsured motorist coverage was ruled to be a single coverage and not separate coverages as the commissioner, in his January 30, 1986, order, stated.

5. Stacking is still permitted for personal injury protection (PIP) benefits if the policyholder makes the specific election to stack the PIP coverage. This court decision prohibited only the stacking of uninsured-underinsured motorist coverage.

No petition for review by the Supreme Court was filed in this case, so this Court of Appeals decision, at least for the present, is the definitive law on stacking of uninsured-underinsured motorist coverage.

III. STATE-BY-STATE COMPARISONS

This section reviews the provisions of automobile insurance laws adopted among the states. The first part is a broad overview of all fifty states. The second part examines in detail the more important provisions of laws enacted in states with no-fault statutes.

A. General State Overview

Fifteen states currently have in effect no-fault motor vehicle insurance as the system of compensating accident victims. Nine other states have what is characterized as add-on compensation. Add-on blends certain aspects of no-fault with conventional tort-based insurance. The remaining 26 states still retain the traditional tort-based auto insurance.

Table 1A divides the states into categories based on their various no-fault auto insurance provisions. The first column indicates whether no-fault is mandatory or, in the add-on states, optional.

TABLE 1A

STATES GROUPED ACCORDING TO SELECTED NO-FAULT COMPENSATION RULES

No-Fault Insurance	Maximum No-Fault Medical Benefits	States	
Mandatory No-Fault	High ($50,000 or more)	Michigan New Jersey	New York Pennsylvania*
	Medium ($10,000 to $25,000)	Colorado Florida Hawaii	Kentucky Minnesota North Dakota
	Low ($5,000 or less)	Connecticut Georgia Kansas	Massachusetts Utah
Add-On No-Fault	Med. ($10 to $25,000)	Delaware	
	Low ($5,000 or less)	Maryland	Oregon
Add-On Optional	Med. ($10 to $25,000)	Washington	
	Low ($5,000 or less)	Arkansas S. Carolira S. Dakota	Texas Virginia

*Note: Pennsylvania no longer has no-fault but was included as part of the empirical analysis.

Source: Automobile Accident Compensation, Rand Corporation, 1985.

For no-fault and add-on states, Table 1A categorizes states based on maximum medical benefits. For tort states, Table 1B indicates something different, the rules for tort negligence. Rules concerning negligence have an important bearing on the outcome of a tort lawsuit.

TABLE 1B

STATES GROUPED ACCORDING TO
SELECTED TORT-LIABILITY COMPENSATION RULES

Negligence Rule		Compulsory Liability Insurance	
	Yes	Louisiana	
Pure comparative negligence	No	Alaska California Illinois Iowa	Mississippi New Mexico Rhode Island
Modified comparative negligence	Yes	Idaho Montana Nevada	Oklahoma West Virginia
	No	Maine Nebraska New Hampshire	Ohio Vermont Wisconsin
Contributory negligence	Yes	Arizona Indiana	N. Carolina
	No	Alabama Missouri	Tennessee

Note: Pennsylvania no longer has no-fault but was included as part of the empirical analysis.

Source: Automobile Accident Compensation, Rand Corporation, 1985.

Three sorts of tort-liability rules exist: pure comparative negligence; modified comparative negligence; and contributory negligence. Under pure comparative negligence, the final dollar sum of damages determined by a jury would be reduced to the percentage the plaintiff was found at fault. Under modified comparative negligence, a plaintiff loses all claims to damages if he is found to be more than 50 percent (in some states more than 49 percent) at fault. With contributory negligence, the plaintiff loses all rights to damages if he is found to be at fault to any degree. Thus in those states shown under contributory negligence, a plaintiff found to be only one percent at fault would not be able to collect any damages.

NO-FAULT STATES--MAJOR PROVISIONS

Although 15 states have currently adopted no-fault, major provisions covering benefits, mandatory coverages and tort thresholds can differ significantly. Differences among the more esoteric aspects of each state's statutes are even more dramatic. This particular section describes the major provisions in each state.

Medical Expenses

Medical expense benefits generally cover reasonable expenditures for direct medical services such as surgery, X-rays, drugs, ambulance services, hospital room and board, and rehabilitative services. Table 2 shows the maximum benefit in each state.

TABLE 2

MEDICAL EXPENSE MAXIMUM BENEFITS

1983

State	Maximum Benefit
Colorado (within five years of accident)	$ 50,000
Connecticut	5,000
District of Columbia	100,000
Florida	10,000
Georgia	2,500
Hawaii (adjusted annually by Consumer Price Index)	15,000
Kansas	2,000
Kentucky	10,000
Massachusetts	2,000
Michigan	unlimited
Minnesota	20,000
New Jersey	unlimited
New York	50,000
North Dakota	30,000
Utah	3,000

Source: Automobile Accident Compensation, Rand Corporation, 1985.

Income Loss

Income loss benefits compensate claimants for loss of present and future gross income due to the inability to work. This includes income for self-employed persons and those receiving unemployment compensation benefits. Table 3 shows the major provisions. In some states, other minor limitations may also apply.

TABLE 3

INCOME LOSS PROVISIONS

1983

State	Maximum Benefit
Colorado ($125/week for 52 weeks)	$20,800
Connecticut (85% up to $200/week maximum)	5,000
District of Columbia (85% up to $2,000/month)	24,000
Florida (60% of loss)	10,000
Georgia (85% up to $200/week)	5,000
Hawaii (80% up to $900/month)	15,000
Kansas (85% up to $650/month)	7,800
Kentucky (85% up to $200/week)	10,000
Massachusetts (75% of average weekly wage)	2,000
Michigan (85% up to $2,434/month)	53,100
Minnesota (85% up to $250/week)	20,000
New Jersey ($100/week)	5,200
New York (85% up to $1,000/month)	36,000
North Dakota (85% up to $150/week)	30,000
Utah (85% up to $250/week)	13,000

Source: Automobile Accident Compensation, Rand Corporation, 1985.

Essential Services Replacement

Expenses incurred to maintain services the injured person usually performed are reimbursable. These include such items as household services and maintenance. Table 4 indicates these benefits.

TABLE 4

ESSENTIAL SERVICES PROVISIONS

1983

State	Maximum Benefit
Colorado ($25/day)	$ 9,125
Connecticut	5,000
District of Columbia ($50/day)	24,000
Florida	10,000
Georgia ($20/day)	5,000
Hawaii ($800/month)	15,000
Kansas ($12/day)	4,380
Kentucky ($200/week)	10,000
Massachusetts	2,000
Michigan ($20/day)	21,900
Minnesota ($15/day)	20,000
New Jersey ($12/day)	4,380
New York ($25/day)	9,125
North Dakota ($15/day)	30,000
Utah ($20/day)	7,300

Source: Automobile Accident Compensation. Rand Corporation, 1985.

Survivors Benefits and Funeral Expenses

Funeral expenses are reimbursed under all states' statutory language. Some states also provide for survivors benefits for a period of time following the death. These are shown in the following table.

TABLE 5

SURVIVOR AND FUNERAL PROVISIONS

1983

State	Funeral Benefit/Survivor
Colorado	$ 0/$ 1,000
Connecticut ($200/week)	2,000/ 5,000
District of Columbia	2,000/ 0
Florida	1,750/ 0
Georgia	1,500/ 0
Hawaii	1,500/ 0
Kansas ($650/month)	1,000/ 5,000
Kentucky	1,000/ 10,000
Massachusetts	2,000/ 0
Michigan ($2,434/month)	1,000/ 53,100
Minnesota ($200/week)	2,000/ 20,000
New Jersey	1,000/ 9,580
New York	2,000/ 0
North Dakota ($150/week)	1,000/ 15,000
Utah	1,500/ 3,000

Source: Automobile Accident Compenslation, Rand Corporation, 1985.

Tort Thresholds

Under no-fault laws, the negligent party in an accident cannot be sued for non-economic losses unless certain thresholds are met. These are verbal or monetary thresholds or both, and are a key element in the success of a no-fault statute in meeting its policy goals.

With no-fault laws, injured persons give up certain rights. In turn, they receive insurance benefits more quickly, usually without the services of an attorney. But if injuries are too large, the injured person can sue. Table 6 shows the various thresholds adopted in each of the no-fault states. Monetary thresholds usually require damages to reach a certain level before actions can be brought. Verbal thresholds describe certain conditions that must be met prior to the suit.

TABLE 6

TORT THRESHOLDS

State	Tort Threshold
Colorado	Monetary: More than $2,500 worth of medical and rehabilitation costs. Verbal: Death, dismemberment, permanent disability or disfigurement or loss of more than 52 weeks of wages.
Connecticut	Monetary: More than $400 worth of medical expenses. Verbal: Death, permanent injury, fracture of any bone, permanent significant disfigurement, permanent loss of any bodily function, or loss of a body member.
District of Columbia	Monetary: Lawsuit permitted if medical expenses exceed $5,000 (but this provision was held unconstitutional in Dimond v. District of Columbia, 1984.) Verbal: Death, a medically demonstrable impairment which prevents the accident victim from performing substantially all of his usual and customary daily activities for more than 180 continuous days, substantial permanent scarring or disfigurement, or substantial and medically demonstrable permanent impairment that has significantly affected the victim's ability to perform his usual daily activities.
Florida	Monetary: None. Verbal: Death, significant and permanent loss of an important body function, injury that is permanent within a reasonable degree of medical probability other than scarring or disfigurement, or

	significant and permanent scarring or disfigurement.
Georgia	Monetary: More than $500 in reasonably incurred medical expenses. Numerical: More than 10 days of disability. Verbal: Death, a fractured bone, permanent disfigurement, dismemberment, permanent loss of bodily function, or permanent partial or total loss of sight or hearing.
Hawaii	Monetary: More medical and rehabilitation expenses than the dollar amount which the insurance commissioner calculates annually as an amount which is larger than that which was paid in 90% of last year's "motor vehicle medical rehabilitative claims." The amount is now $5,000. Verbal: Death, significant permanent loss of use of a part or function of the body, or a permanent serious disfigurement which subjects the victim to mental or emotional suffering.
Kansas	Monetary: Injury requires medical treatment having a reasonable value of $500 or more. Verbal: Death, permanent disfigurement, a weight-bearing bone fracture or a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, or permanent loss of a bodily function.
Kentucky	Monetary: More than $1,000 in medical expenses. Verbal: Death, permanent disfigurement, fracture of a weight-bearing bone or a compound,

	comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, or permanent loss of a bodily function.
Massachusetts	Monetary: More than $500 worth of reasonable and necessary medical expenses. Verbal: Death, loss of a body member, permanent and serious disfigurement, substantial loss of sight or hearing, or a fracture.
Michigan	Monetary: None. Verbal: Death, serious impairment of a body function, or permanent serious disfigurement.
Minnesota	Monetary: More than $4,000 worth of medical expenses. Numerical: 60 days or more of disability. Verbal: Death, permanent disfigurement, or permanent injury.
New Jersey	Monetary: Motorist may choose a medical-expense threshold (not including hospital costs) of $1,500, adjusted annually, or one of $200. If no election is made, monetary threshold is $200. Verbal: Death, permanent disability or significant disfigurement, permanent loss of a bodily function, or loss of a body member.
New York	Monetary: None. Numerical: 90 days inability on the part of the victim (during the 180 days following the accident) to perform substantially all of the material acts that constituted his usual pre-accident daily activities.

	Verbal: Death, dismemberment, significant disfigurement, a fracture, permanent loss or use of a body organ, member, function or system, permanent consequential limitation of use of a body organ or member, or significant limitation of use of a body function or system.
North Dakota	Monetary: More than $1,000 in medical expenses. Numerical: Disability for more than 60 days. Verbal: Death, dismemberment, or serious and permanent disfigurement.
Utah	Monetary: More than $1,000 in medical expenses. Verbal: Death, dismemberment, a fracture, permanent disfigurement, or permanent disability.

Source: Automobile Accident Compensation, Rand Corporation, 1985.

Uninsured/Underinsured Motorists

For no-fault to work properly, insurance coverage should be universal among all drivers. In practice, this is unlikely to occur. In Minnesota, the Department of Public Safety estimates that between three and five percent of all drivers may be uninsured. To provide for this, no-fault states require companies to offer--and some states mandate--coverage for uninsured or underinsured motorists. "Uninsured" covers situations where the driver at fault has no insurance. "Underinsured" is defined by statute to cover situations where coverage for bodily injury is in force, but its limit is less than the amount needed to compensate the insured person for actual damages. Table 7 describes provisions concerning uninsured and underinsured coverages.

TABLE 7

UNINSURED-UNDERINSURED PROVISIONS

State	Uninsured Coverage/Limits	Underinsured Coverage/Limits
Colorado	Optional $15,000/$30,000	Not required
Connecticut	Compulsory $20,000/$40,000	Included in uninsured
District of Columbia	Compulsory $10,000/$20,000	Compulsory if requested by insured
Florida	Optional $10,000/$20,000	Included in uninsured
Georgia	Optional $15,000/$30,000	Must be offered $15,000/$30,000
Hawaii	Optional $10,000/$20,000	Must be offered
Kansas	Compulsory	Must be offered
Kentucky	Optional	Must be offered
Massachusetts	Compulsory $10,000/$20,000	Included in uninsured
Minnesota	Compulsory $25,000/$50,000	Included in uninsured
New Jersey	Compulsory $15,000/$30,000	Must be offered
New York	Compulsory $10,000/$20,000	Must be offered
North Dakota	Compulsory $25,000/$50,000	Not required
Utah	Optional $20,000/$40,000	Not required

Source: Automobile Accident Compensation, Rand Corporation, 1985.

Other Provisions

There are a number of other lesser provisions that are different in each of the states.

Nine states require insurance companies to offer deductibles against medical or wage loss benefits to the insured. Minnesota is not one of these states. These deductibles range from $100 to $2,000 and may result in lower premiums for the insured.

The coordination of benefits between no-fault and other insurance policies, usually health policies, is a provision in some states. Only Colorado and Michigan require the coordination of benefits between auto insurers and other insurance companies. Minnesota allows coordination if the other insurance company provides an appropriately reduced premium. North Dakota and New York also have provisions allowing coordination of benefits.

IV. MEETING THE GOALS FOR NO-FAULT INSURANCE

No-fault insurance has been in effect in Minnesota since 1975, and in the other states that have adopted this approach since the early 1970s. While the form of the compensation system for automobile injuries differs from state to state, three general goals are shared:

* The deterrence of accidents.

The structure of the liability system is only one element of many that affects the way we drive. Road and traffic conditions, mechanical conditions, and fear of injury to ourselves and our families play an important role. It seems unlikely that the Legislature would structure rules that would for any reason lead to more automobile accidents. In this section we present some studies on the accident deterrence effect of no-fault insurance.

* An effectively administered system.

Effectively administering the compensation system requires an efficient use of the court system, the legal profession, and the insurance industry. Since automobile accidents involve injured parties, an efficiently structured system is one that minimizes the cost of administration while providing for the just compensation of victims.

* Just compensation of victims.

Assuring that victims of accidents are justly compensated means that victims can expect to be fully compensated for their losses with certainty and in a timely manner. Further, similarly injured victims should be treated similarly and overcompensation or undercompensation should be minimized.

No-fault involves the trade-off of rights and benefits. The right to sue in certain instances is traded for prompt financial benefits. This trade-off affects the costs of the system, including motor vehicle insurance premiums. The last part of this section deals with the impact of no-fault on premium costs.

A. THE DETERRENCE OF ACCIDENTS.

Opponents of no-fault insurance argue that moving to a first-party compensation system removed important deterrent aspects of tort-based liability. While a number of factors are involved in any accident, evidence presented by the American Mutual Insurance Alliance indicates that "improper driving is a factor in nine out of ten fatal and injury producing accidents... and that drinking is the dominant factor in higher

fatalities."(29) Studies by the U.S. Department of Transportation support the view that human error is an important cause in automobile accidents.

The empirical questions are: Does the structure of the compensation system influence the driving habits of people on the road? Is no-fault insurance more likely than a tort-based system to result in automobile accidents?

One study of this effect was undertaken by academic researchers Paul Kochanowski and Madelyn Young. Based on their review of a number of studies, they conclude that:

> Of the sixteen regressions reported . . . and of countless other formulations estimated by the authors, they can unequivocally say that, other things being constant, no-fault automobile insurance is not associated with higher fatality rates. Indeed, it is much more likely that whether a state has fault or no-fault coverage has little to do with fatality rates.(30)

In a recent study of automobile insurance, the U.S. Department of Transportation reports similar findings.(31) The report reviews the experience of each of the no-fault states individually. For no-fault in general, the report concludes:

> The data do not support the hypothesis that no-fault insurance influences fatal and injury accident rates.

Each individual no-fault state was analyzed. While a few of the states do show a statistical difference in accident rates, Minnesota is not one of these. The change to no-fault insurance in 1975 had no statistically supportable impact on driving habits in Minnesota.

B. ADMINISTRATION OF THE SYSTEM.

Automobile insurance was originally viewed as a device to protect the financial position of a policy holder. Today, the view is that insurance is a system for compensating victims.(32) One important objective of the compensation system is to assure that the administration of the system is efficient. This reduces overall costs of automobile insurance, which is socially beneficial to all.

One measure of cost efficiency is the percentage of premium dollars collected that is paid to claimants as benefits. The most efficient system is one that results in the highest payment percentage when compared to alternative systems. The U.S.

Department of Transportation reports that in 1983 the average payment ratio of no-fault states was 50.2 percent; of tort states, 43.2 percent. This seven percent is considered a major difference in efficiency by many experts.

Another measure was presented in that same report, comparing only the no-fault states. The formula measures the benefits retained by injured auto accident victims after deducting the estimated expense of attorneys. Table 8 shows these measures for each of the no-fault states.

TABLE 8

RELATIVE EFFICIENCY OF NO-FAULT INSURANCE STATES

State	Efficiency*
Michigan	89.7%
Pennsylvania	88.0
Georgia	87.5
Hawaii	86.5
Colorado	86.1
New Jersey	85.4
Minnesota	85.3
Kentucky	85.2
North Dakota	84.5
New York	83.9
Florida	83.3
Utah	82.8
Kansas	82.2
Connecticut	79.1
Massachusetts	78.2
Average	84.5

*Efficiency is defined as victim's benefits after deducting attorney expenses.

Source: Automobile Accident Compensation, Rand Corporation, 1985.

At 85.3 percent, Minnesota is slightly above the average and is seventh among the 15 states. Interestingly, Michigan, which has the highest benefit level and most restrictive tort threshold, is the most efficient in getting payments to victims.

A reduction in caseloads was expected to occur under no-fault. The absence of a uniform system across the states for measuring caseloads precludes a definitive analysis of this

issue. However, individual no-fault states, including Minnesota, have gathered data on the impact.

In a 1983 report, the Minnesota Department of Commerce examined court records in Hennepin County and found the number of filings of automobile-related personal injury complaints had decreased 44 percent between 1974 and 1979.(33) In Michigan, the number of lawsuits filed between July 1975 and July 1977 declined by more than 31 percent. Studies in Florida, Massachusetts, and New York indicated large declines in automobile-related case filings.(34)

C. VICTIM COMPENSATION.

Critics of a tort-based insurance system contend that, as a basis for compensating victims, the system had fundamental shortcomings. An early study by the U.S. Department of Transportation found that under a tort system, many victims are undercompensated for their losses. In fact, the study indicated that more than half of all seriously injured claimants received no compensation at all.

Moreover, the tort system was found to overcompensate victims suffering small economic losses and undercompensate those suffering serious personal injury. It has been suggested that insurance companies, to avoid litigation, overpay small losses but resist payment of large claims for serious injury where legal expenses can be justified. In the latter case, certainty and promptness of payment might encourage the victim to accept less than his economic loss, rather than enduring a lengthy legal battle.

No-fault insurance was in part passed to address these perceived problems. Table 9 shows the percentages of victims receiving compensation for their damages. The data is grouped by states based on the compensation system.

TABLE 9

PERCENT OF VICTIMS PAID FOR DAMAGES

1983

State Group	Wage Loss	Medical Loss	Total Loss
Tort	59%	78%	80%
Add-on	20	87	91
No-fault	77	83	87
Total	68	81	84

Source: Automobile Accident Compensation, Rand Corporation, 1985.

More victims receive compensation for both wage and medical loss in no-fault states than tort states. Add-on states compensate more victims for their medical losses than strictly tort or no-fault states.

The probability of payment may differ with size of loss. Table 10 shows the percentage of victims paid based on size of loss.

TABLE 10

PERCENTAGE OF VICTIMS PAID BASED ON SIZE OF LOSS

Total Loss	Tort	Add-on	No-fault
$ 1 - $ 55	75%	87%	79%
56 - 141	77	94	89
142 - 468	79	92	88
469 - 80,000	89	92	91

Source: Automobile Accident Compensation, Rand Corporation, 1985.

No-fault states compensate victims slightly more often [illegible] loss than do tort states. Add-on states [illegible] than either tort or no-fault. Except for the very smallest claims, no-fault compensates victims roughly at the same percentage for all sizes of loss, while the experience in tort states is that large claims are more often compensated than smaller claims.

Recall that one criticism of tort-based liability was that small claims were overcompensated and large claims undercompensated. The evidence on this is shown in Table 11.

TABLE 11

PERCENTAGE OF PAID VICTIMS UNDERPAID, EXACTLY PAID, AND OVERPAID BY AMOUNT OF LOSS AND STATE GROUP: TOTAL LOSS SAMPLE

Total Loss (Dollars)	TORT				ADD-ON				NO-FAULT			
	Under-Paid	Exact Payment	Over-Paid	Total	Under-Paid	Exact Payment	Over-Paid	Total	Under-Paid	Exact Payment	Over-Paid	Total
$ 1 - 55	7	67	27	100%	5	64	31	100%	11	71	18	100%
56 - 141	27	39	35	100%	28	41	31	100%	27	49	23	100%
142 - 468	25	38	38	100%	33	26	41	100%	30	44	26	100%
468 - 80,000	45	18	37	100%	53	17	29	100%	49	17	34	100%

Source: Automobile Accident Compensation, Rand Corporation, 1985.

The data show that payments in no-fault states are more often closer to damages than in tort states and that overcompensation occurs less frequently.

The first party payment structure of no-fault was intended to assure payments to victims as quickly as possible. One of the perceived problems of tort-based insurance was the tardiness with which payments were made. Table 12 shows the evidence.

TABLE 12

TIMING OF PAYMENTS:

DAYS FROM REPORT OF INJURY TO FIRST PAYMENT

Days from Report of Injury to First Payment	No-Fault Personal Injury Protection Claims — Cumulative % Claimants	No-Fault Personal Injury Protection Claims — Cumulative % Payments	Tort-Liability Bodily Injury — Cumulative % Claimants	Tort-Liability Bodily Injury — Cumulative % Payments
0 - 30 days	37.1%	33 %	26.0%	8.3%
0 - 90	80.6	76.7	46.2	19.1
0 - 180	93.5	90.5	61.9	32.3
0 - 365	97.9	95.5	78.2	51.7
over 1 year	100	100	100	100

Source: Automobile Injuries and Their Compensation in the United States, All Industry Research Advisory Committee, 1979.

Claims made under no-fault insurance receive their first payment within 90 days 80.6 percent of the time. This compares to only 46.2 percent for bodily injury claims in tort states. The difference in cumulative percentage of payments made is even more dramatic. Within the first 90 days, 76.7 percent of payments to victims had been made to no-fault claimants, only 19.1 percent to tort claimants.

D. NO-FAULT PREMIUM COSTS.

In moving from a tort-based to a no-fault compensation system, the Legislature made very explicit trade-offs between victims' rights under common law and first party payments. While victims were precluded from filing actions unless certain thresholds were breached, they were guaranteed speedier and more

certain payments for their damages. Total costs would increase since more victims would be compensated. On the other hand, with fewer victims going to court, administrative costs, including attorney fees, would decline.

Whether or not these costs offset each other depends on the way the no-fault system is structured. The key element is the verbal and/or monetary threshold that must be met before a victim can bring an action for non-economic damages. Other important factors are (1) the maximum levels of personal injury benefits, (2) controls (such as medical fee schedules) on the amount of personal injury benefit paid to providers, (3) whether meeting the threshold is a question of law (to be decided by a judge) or fact (to be decided by a jury), and (4) controls on liability judgments such as limits on pain and suffering payments.

States where the savings from no-fault are roughly equal to the additional costs can be said to be in "balance." Balance can be measured by changes in auto premiums before and after no-fault. The Alliance of American Insurers has estimated premiums in no-fault states had they remained tort states. These premiums are not those actually paid by policyholders but rather are constructed "pure premiums." Pure premium is an insurance term and means the portion of premium paid by policy holders which the insurer uses to pay losses and some administrative costs. Table 13 shows the difference in pure premiums (these estimates are for 1982) between no-fault and tort insurance.

TABLE 13

PREMIUM COST DIFFERENCES - NO-FAULT AND TORT

State	Change in Personal Injury Insurance Costs From What Those Costs Would Have Been If No-Fault Had Not Been Law*
Verbal Threshold Only	
Florida	-21%
Michigan	-17
New York	- 6
Dollar Threshold of $1,000 or More	
Hawaii	+37%
Minnesota	- 2
Kentucky	-29
North Dakota	-19
Dollar Threshold of Less than $1,000	
Pennsylvania (Repealed as of 10-1-84)	+53%
Colorado	+15
Georgia	+15
Kansas	- 9
Massachusetts	-33
Utah	-13
Connecticut	+14
New Jersey	+65
No-Threshold	
Oregon	- 8%
Delaware	+17
Maryland	+26

*Positive figures are an increase in premium costs, negative are a decrease.

Source: Alliance of American Insurers, 1982.

The data indicate that a slight saving in premiums has occurred in Minnesota with the change to no-fault.

With a relatively high dollar threshold of $4,000 in Minnesota, some analysts have expressed surprise that savings have not been higher. This mixed result on savings may stem from two sources. First, of the threshold criteria needed to be met in order to bring an action in court, the medical dollar threshold is used only about 15 percent of the time. (This estimate may be conservative since it was made when the threshold was still $2,000.) In other no-fault states the percentage of cases using financial thresholds exceeds 47 percent. Nearly 55 percent of actions in Minnesota use the verbal threshold test of "permanent disfigurement or disability." This is higher than for most other states. Other states have more restrictive verbal thresholds requiring "serious" disfigurement or disability before an action for non-economic damages can be brought.(35)

The second reason for the mixed savings results is that the determination of a breach of the threshold is a question of fact to be decided (36) by the jury. That is, the plaintiff and defendant have already incurred court costs before they know whether they should even be in court.

V. PROBLEMS WITH THE NO-FAULT ACT.

This section discusses problems with no-fault that have been identified during the process of writing this report.

1. Percentage of wage loss covered.

Current law (M.S. 65B.44, subd. 3) provides that 85 percent of lost income up to $250 per week shall be compensated under no-fault. This compares to 66-2/3 percent compensation under workers' compensation laws. Since these benefits are not taxed, the 85 percent represents a notion of take-home (after tax) income. The Department of Revenue indicates this percentage is high and should be more in the range of 75 percent to 80 percent. The higher percentage of reimbursement may act as a disincentive to return to work.

2. Underinsurance and liability limits.

The 1985 amendments to the no-fault act defined the liability on underinsured vehicles (M.S. 65B.49, subd. 4a):

> Maximum liability of an insurer is the lesser of the difference between the limit of the underinsured motorist coverage and the amount paid to the insured by or for any person or organization who may be held legally liable for the bodily injury; or the amount of damages sustained but not recovered.

Underinsurance is mandatory coverage under the no-fault act with minimum limits of $25,000 per person and $50,000 per accident. Coverage for residual liability is also required at minimum limits of $30,000/$60,000.

The difference-of-the-limits language appears to codify the old "Lick rule" (Lick v. Dairyland Ins. Co., 258 N.W.2d 791), which said that underinsurance did not exist when the tortfeasor's liability limits were equal to the plaintiff's underinsurance limits. Under this rule, regardless of the amount of the limits, when they are the same underinsurance coverage is without effect.

In Minnesota, the minimum required amount of underinsurance coverage is provided free by insurance companies. This is easy to do, because this amount of coverage is almost irrelevant. Because all Minnesota drivers must carry $30,000/$60,000 liability coverage, in an accident involving Minnesota drivers the difference-of-limits method with minimum underinsurance levels of $25,000/$50,000 yields no underinsurance coverage.

Individuals can get higher levels of underinsurance coverage, for a price.

A related case, Schmidt v. Clothier, 338 N.W.2d 256, found that in situations where the underinsurance limit was higher than the liability limit, the underinsurance obligor was responsible only for the amount of damages in excess of the liability limit and not for any "gap" that occurred if the plaintiff settled with the tortfeasor for an amount less than the limit.

Plaintiffs' attorneys are interpreting the language more literally. They are first settling with the injured party's company for the underinsurance, contending nothing has been "paid" by the tortfeasor's company. They then pursue the tortfeasor to collect any outstanding damages. The intent of the Legislature is unclear. Should the "Lick rule" apply or is the interpretation of plaintiffs' attorneys correct? Or should the state go back to the add-on system?

3. Mandatory offers of optional coverages.

The proof that an offer has been made under mandatory offer requirements has been at issue in a number of cases [Siesels v. American Family Mutual Ins. Co.,(37) Henriksen v. Illinois Farmers Insurance Co.,(38) Hauer v. Integrity Mutual Ins. Co. (39)]. The 1985 amendments to the act created another situation where similar cases may be filed. Section 65B.47, subdivision 7, dealing with the choice to stack personal injury benefits, reads in part:

> ....An insurer shall notify policyholders that they may elect to have two or more policies added together.

The requirement "shall notify" is ambiguous, and it is difficult to determine whether it has been met. One solution to this and similar notification problems would be to have insurance companies include in their forms filed with the Commissioner of Commerce the means they intend to use to meet notification provisions. These would be subject to approval in the same manner as the rest of the forms. Another solution would direct the Commissioner of Commerce to develop rules and a standard form of notification used by all companies.

4. Uninsurance/underinsurance combined coverage.

The 1985 amendments to the no-fault act combined uninsured and underinsured coverages. As the Minnesota Court of Appeals decided in the State Farm case, this is a single coverage, and there is a single limit for both. In those limited situations where both parts of the single coverage would apply, such as when there is a multi-car accident involving both an uninsured and an

underinsured motorist, both liable for a portion of the insured person's damages, it is unclear how the coverage would operate.

5. Access to assigned claims plan.

The no-fault act prohibits access to the assigned claims plan (M.S. 65B.64, subd. 3) for members of the owner's household other than minor children if the owner of the vehicle failed to have the required insurance.

This could create a problem in a situation such as when a college-age student, who may be unaware that his father had dropped insurance on a vehicle, was involved in an accident with an uninsured motorist. Under current law, the assigned claims plan is not available to the young adult who is residing in the household where there is an uninsured motor vehicle.

6. Survivors economic loss benefits.

Survivors economic loss benefits are limited to $200 per week (M.S. 65B.44, subd. 6). In many cases, these may consist mainly of wages the decedent was earning for the household. The weekly cap on the wage benefit for injured persons is $250 per week. It seems reasonable that these limits should be comparable.

7. Underinsured and liability limits.

Section 65B.49, subdivision 3a, paragraph 3, reads:

> No reparation obligor is required to provide limits of uninsured and underinsured motorist coverages in excess of the bodily injury liability limit provided by the applicable plan of reparation security.

Does this mean that companies must provide uninsured and underinsured limits equal to the liability limit? The argument being used is that the agent had a common-law obligation to make the offer and that policies should be reformed to reflect this obligation.

8. Uninsurance/underinsurance limits.

The 1985 amendments made uninsurance and underinsurance coverages mandatory, eliminated stacking of these coverages, and increased the minimum liability limits from $25,000/$50,000 to $30,000/$60,000. Since stacking has been eliminated, higher minimum uninsured and underinsured limits, such as $50,000/$100,000, may be more reasonable.

9. Adverse medical examination.

Insurers can require claimants to submit to medical examinations to determine if additional treatment and attendant insurance benefits are needed (65B.56). It is clear that the industry has a number of physicians that regularly do such examinations and regularly find that benefits can be discontinued since the claimant is "ready to return to work." A claimant's only recourse to this perceived stacked deck is court or arbitration. An alternative would be to develop a pool of physicians and randomly select the necessary doctor to undertake such examinations.

10. Location of adverse medical examination.

Minnesota statute (65B.56, subd. 3) requires that:

> Such examination shall be conducted within the city, town or statutory city of residence of the injured person.

Often the insurer is requiring claimants to travel to other cities to be examined by the physician of choice. While the company does pay for the trip, the reason for such a request is clear, with results similar to those indicated above. Complaints to the Department of Commerce about this action are said to be ineffective.

11. Rehnelt v. Stuebee Supreme Court Decision.

On December 15, 1986, the Supreme Court found that an injured plaintiff who failed to obtain the required coverage under the Minnesota No-fault Automobile Insurance Act may not recover economic loss benefits in a negligence action against the driver of the other vehicle. There are provisions in the act (65B.51, subd. 2) defining when an action can be brought for economic loss not paid or payable. The arguments in the case turned in part on the issue of whether these provisions were exclusive. Justice Yetka also argued in dissent that "A common law right is not lost absent clear legislative mandate."

APPENDIX A

LEGISLATIVE HISTORY OF THE MINNESOTA NO-FAULT ACT (40)

In 1925 Connecticut enacted the first legislation dealing with compensation of automobile accident victims. In 1933 Minnesota followed Connecticut's lead.

The Minnesota Financial Safety Responsibility Act of 1933 provided that a person convicted of or forfeiting bond given for a number of offenses, ranging from manslaughter to failure to stop at the scene of an accident resulting in injury or death, would have his license revoked. The license was not to be renewed nor was the person to be permitted or licensed to operate a motor vehicle until proof of financial responsibility in the amount of at least $5,000, or $10,000 maximum for any one accident, was provided.

The original act also provided for the suspension of the driver's license of anyone who failed to satisfy a judgment in excess of $100 resulting from the operation of a motor vehicle. Furthermore, it required the license to be suspended until the person provided proof of his ability to respond to damages in future accidents. This initial Minnesota financial liability law required proof only of financial responsibility for <u>future</u> accidents. By emphasizing responsibility for future accidents, the 1933 act ignored liability for the first accident, the accident which brought the motorist to the attention of the authorities. These laws were therefore known as "first bite" laws.

The Safety Responsibility Act of 1933 was in effect until 1945 when a new law, the Safety Responsibility Act of 1945,(41) was enacted. The 1945 act, unlike the 1933 act, required a driver or owner involved in a motor vehicle accident causing personal injury, death, or property damage in an amount greater than $50 to actually furnish security in an amount sufficient to satisfy any judgment arising from the current accident. Proof of future financial responsibility also was required under certain circumstances, but the 1945 act was the initial step in requiring actual satisfaction of damages sustained as a result of the negligent operation of a motor vehicle.

The 1945 act was amended several times over the next several decades, but there were no significant changes to the Minnesota automobile insurance laws until 1967. That year, the Legislature amended the act to provide for cancellation of motor vehicle insurance by insurance companies (42) and added uninsured motorist coverage as a requirement.(43)

In 1969, and in a 1971 amendment, provisions were added which required insurers to offer accidental death benefits of at

least $60 a week for a period of at least 52 consecutive weeks and medical expense coverage of at least $2,000 for each injured person.(44) The 1971 amendment required that underinsured motorist coverage be offered as an option beginning January 1, 1972.(45)

These requirements of a mandatory offer of optional first-party insurance coverage were the beginning of the concept of no-fault automobile insurance in Minnesota. However, there were no restrictions on the right to sue in tort for injuries arising out of the use of a motor vehicle, and the coverages were not compulsory.

In the late 1960s and early 1970s, when the Legislature was expanding the available coverages arising out of automobile accidents, the first no-fault proposals began making their appearance in the Minnesota Legislature. Senator Jack Davies introduced bills in 1967,(46) 1969,(47) and 1971,(48) but each of these early bills died in committee. Competing no-fault bills were introduced in 1973,(49) the year in which the House and Senate positions on no-fault began to solidify. In 1974, following referral of the various no-fault bills to conference committee, the Minnesota No-Fault Automobile Insurance Act was passed.(50)

Below is a brief description of the no-fault bills introduced in the 1967, 1969, and 1971 sessions by Senator Jack Davies.

(1) The 1967 bill - S. F. No. 634. This first no-fault bill provided for compulsory first-party coverage in the amount of $10,000 per person, subject to a $100,000 per accident limitation. The first-party benefits covered accrued economic detriment from accidental injury, including survivors' benefits if the injury caused death. Property damage was not included in the first bill and benefits were subject to a standard deduction of the first $100 of net loss and 10 percent of all work-related loss. Work loss benefits were subject to a limit of $750 per month, and benefits were to be paid monthly as the loss accrued. The bill imposed restrictions on the settlement of claims for first-party benefits, and lump-sum settlements were allowed only under specified circumstances.

Insurers were required to offer added protection coverage for pain and inconvenience during periods of complete or partial inability to work. The original no-fault bill did not require insurers to offer liability insurance, and no minimum coverage levels were specified in the bill.

The 1967 bill contained a priority provision making the insurance covering the vehicle the primary source of coverage for occupants, including drivers. Injured persons who were not

occupants of a motor vehicle would be entitled to recover first-party benefits under any insurance covering an involved motor vehicle. An assigned claims plan provided coverage for injured persons not otherwise covered under any first-party benefits.

The 1967 bill contained limits on the ability of an injured person to sue. If injuries were below certain levels, called "thresholds," the injured person could not sue the person causing the accident. One of the thresholds was financial, limiting liability to damages over $10,000. The other was a "verbal" threshold, allowing liability and tort claims to go forward if the injury met a test of severity, such as major physical damage or death.

(2) The 1969 bill - S.F. No. 753. This second no-fault bill was considerably more detailed than the 1967 bill. It provided more extensive first-party benefits, but also totally eliminated tort liability for injuries arising out of the maintenance or use of a motor vehicle. First-party benefits were unlimited, except that all benefits injured persons were entitled to receive from sources other than no-fault insurance were to be subtracted from the loss before paying out no-fault benefits. The bill also included coverage for allowable medical, rehabilitation, and occupational training expenses, funeral and burial expenses, work loss, survivors' loss, and medical impairment coverage for permanent bodily injury.

The benefits were subject to individual limitations: a 25 percent exclusion of all work loss in calculating compensable loss; work-loss benefits were limited to $750 per month; allowable expense for a hospital room was limited to a semi-private room; and funeral and burial expenses were limited to $500. A schedule of benefits for medical impairment was included, and the bill also provided for the award of attorneys' fees.

The 1969 bill required that insurers offer deductibles, including deductibles of 35 or 45 percent of all work loss, and a deductible of $100, $200, or $300 per accident as a credit against work loss percentage deduction. The 1969 bill made liability insurance mandatory in the amount of $50,000 per person, $100,000 per accident, with a $5,000 property damage coverage.

(3) The 1971 bill - S.F. No. 568. The 1971 bill was almost identical to the 1969 bill, except it included a schedule of benefits drawn from the Workers' Compensation Act as a guide for the payment of medical impairment benefits. Payments ranged from $225 for loss of a small toe to $25,000 for a permanent total disability.

The 1971 bill became the focal point for initial drafting efforts of the National Conference of Commissioners on Uniform State Laws when it undertook the drafting of a Uniform Motor Vehicle Accident Reparations Act. This uniform act eventually became S.F. No. 96, the no-fault bill introduced in the 1973 session of the Minnesota Legislature by Senators Davies, Novak, and Knutson; that bill, with some amendments, was the bill enacted in 1974.

Thus there was a significant degree of similarity between the initial 1967 bill and S.F. No. 96, which eventually became the 1974 Minnesota No-Fault Act. During this time period, the basics of a modified no-fault insurance plan had solidified in the Minnesota Legislature.

In 1971 the Legislature provided for the creation of a commission to study the feasibility and necessity of no-fault automobile insurance in Minnesota. This commission, chaired by Senator George Pillsbury, recommended that an "add-on" no-fault plan be adopted, rather than the alternative of prohibiting tort actions, unless certain tort thresholds were met.

An add-on no-fault system makes first-party no-fault insurance an optional coverage, in addition to the tort-liability system, which is left in place. The commission wanted Minnesota to adopt a plan similar to the plans adopted in South Dakota and Texas. In these states, add-on no-fault is a supplement to the tort-liability system, rather than a replacement for it.

The commission also favored broadening first-party benefits to the point where most accident victims would be compensated for most of the economic loss they sustained, thereby rendering tort actions unnecessary in most cases. The commission drafted a bill to implement its proposals. The bill was similar to other no-fault proposals with the exception that it did not include restrictions on tort recoveries. The commission proposal provided the model for many of the provisions in the competing House no-fault bill of 1973, except that the House bill also incorporated a tort threshold limiting tort actions for general damages.

While the language in the House and Senate bills in 1973 differed, there was a great deal of consistency in the concept used in the two bills, which are briefly summarized in Appendix B. The stage was set for a Minnesota no-fault law, which passed in 1974.

APPENDIX B

COMPARISON OF HOUSE AND SENATE BILLS ENACTED AS FIRST MINNESOTA NO-FAULT ACT IN 1974

1. Insurance coverages. S. F. No. 96 as introduced provided limited medical expense benefits, but the bill as passed by the Senate provided for a total of $46,000 in first-party benefits subject to a $10,000 limitation for economic loss arising out of death. The House bill was considerably leaner than the Senate bill, providing for a total of only $10,000 in first-party benefits. The law as enacted took a middle ground between these two benefit limits, providing for benefits of $30,000, with $20,000 allocated to medical expense loss and $10,000 to other types of economic loss. This basic limitation on first-party benefits remained the law until the limits were raised in the 1985 legislative session.

First-party insurance in both the Senate and House bills covered similar types of losses as each bill provided for the payment of 85 percent of gross income loss, although the House bill required seven consecutive days of disability before any benefits could be paid. As enacted, the law provided for the payment of 85 percent of gross income loss, up to a maximum of $200 per week.

Both bills provided for payment of replacement service loss at a rate of $200 per week for the losses, with loss sustained on the date of injury and the first seven days thereafter excluded from coverage. As enacted, the law retained the coverage exclusion, but benefits were reduced to a maximum of $15 per day.

Survivors' benefits were limited to $200 per week in both the House and Senate bills, but the Senate bill contained a provision limiting survivors' benefits to 85 percent of gross income up to $200 per week. The House position, which did not contain this 85 percent limitation, was eventually adopted by the conference committee.

The positions of the two Houses on funeral expenses appear to be a classic case of conference committee compromise. The Senate bill provided a limit of $1,500, whereas the House position was a $1,000 limit on funeral expenses. The conference committee bill set the funeral expense benefit at exactly the middle, or $1,250. Again this limitation remained a law until 1985, when the funeral expense benefit was increased to $2,000 after numerous complaints that a good funeral simply could not be had any more for the sum of $1,250.

The House and Senate bills differed on the coverage of property damage. The House bill maintained the fault system of resolution of all property damage disputes, whereas the Senate bill abolished tort action for damage to motor vehicles and their contents, substituting a motor vehicle coverage option which motor vehicle owners could elect to obtain. The Senate position was rejected in the conference committee and the House position accepted, thus preserving the fault system for resolution of property damage claims.

Both bills required liability insurance. The House bill required 25-50-10 coverage and the Senate bill initially provided for $25,000 bodily injury per person with no per accident limitation and a $10,000 property damage coverage. The Senate bill as it passed included a $100,000 per accident limitation, double the House limit, but this position was rejected in conference committee and the House limit of $50,000 per accident was incorporated.

The House bill required uninsured or hit-and-run motor vehicle coverage in an amount of $25,000 to $50,000, whereas the Senate bill did not require uninsured motorist coverage. The House position was adopted by the conference committee.

In addition to the compulsory coverages, insurers were required to offer a variety of additional coverages and deductibles. The House bill required insurers to offer $100 and $300 deductibles from all first-party benefits, whereas the Senate bill included a $500 deductible as a required offer. The Senate bill also required an offer of a ten percent work loss and survivors' economic loss exclusion, exclusion of all replacement service loss and survivors' replacement service loss, an exclusion of funeral expense in excess of $500, a $2,500 per accident deductible from first-party benefits for motorcyclists, and a $100 deductible on collision coverage. The Senate bill also required insurers to offer optional coverages for physical damage to motor vehicles.

The final act included a compromise position taken on the mandatory offers and deductibles as it included a $100 deductible for medical expenses and a $200 deductible from disability and income loss benefits. It also required the offer of an additional $10,000 and $20,000 medical expense coverage, an additional liability insurance coverage of $25,000 per person and $50,000 per accident involving two or more persons, basic economic loss benefits coverage to motorcyclists, and underinsured motor vehicle coverage in an amount equal to the liability insurance coverages.

2. Coordination of benefits. Both the House and Senate bills required coordination of workers' compensation and Social Security benefits, but as enacted only included workers' compensation benefits as subject to mandatory coordination.

3. Exclusions from coverage. The exclusion from coverage in both bills was similar. The House bill excluded persons intentionally causing accidents, knowingly operating stolen motor vehicles to elude apprehension or arrest, operating a motor vehicle without a driver's license, or committing a felony which contributed to the accident or injury. Survivors were not excluded from coverage. The Senate bill additionally excluded persons occupying vehicles as living quarters or persons injured in the course of an official race or in practice for the race. Survivors were disqualified from collecting benefits under the Senate bill if the survivor was insured under his own no-fault coverage.

The Senate position on exclusions was adopted without the provision for persons injured while occupying vehicles as living quarters. This latter exclusion would probably be applied anyway, as a person injured while occupying a vehicle as living quarters would not come within the definition of a person injured in an accident arising out of the maintenance or use of a motor vehicle, the primary definition for coverage under the no-fault act.

4. Scope of coverage. Both the House and Senate bills required coverage for motor vehicles registered or present in Minnesota. The Senate bill would have included motorcycles, but motorcycles were excluded from first-party coverage in the House bill. As mentioned above, the Senate bill required motorcyclists to elect a $2,500 deductible on first-party benefits. A loss allocation provision in the Senate bill provided for an adjustment of losses in accidents between motor vehicles and motorcycles. The House position was eventually adopted. It excluded motorcyclists from the no-fault act, but mandatory offers of first-party benefits had to be made to motorcycle owners.

Both bills provided the same coverage for injuries resulting in loss. The bills provided a right to basic economic loss benefits for any accident occurring in Minnesota. For out of state accidents, coverage was provided for insured persons and drivers or other occupants of an insured vehicle, other than the vehicle used in the course of the business of transporting persons or property if the vehicle was one of five or more under common ownership. Vehicles owned by governments other than those in Minnesota were also excluded.

5. Sources of coverage. Both bills had similar provisions relating to priority of payments. Each bill provided that persons injured while drivers or occupants of vehicles used in the transportation of persons or property would recover under the policy covering that vehicle. Both bills provided that in other cases, the first priority coverage would be the insurance under which the injured individual is insured. The second priority

would be the insurance covering the vehicle the injured person was riding in or driving. For persons who were not insured or drivers or occupants of an insured vehicle, the applicable insurance is the plan covering any involved motor vehicle. The House position on priority of payments relating to business vehicles was adopted.

For individuals not otherwise covered, both bills provided for an assigned claims plan, which in the absence of a voluntarily created plan would be created by the Commissioner of Insurance. The circumstances for participation in the assigned claims plan was similar in both bills although the Senate added two additional circumstances in which participation would be made:

(a) benefits were inapplicable in the situation where the injured person stole the motor vehicle and was under 15 years of age; and

(b) the benefits were inadequate to compensate the injured persons because of the financial inability of the insurer to fulfill its contractual obligation.

The House bill contained an exclusion for owners who were required to insure but failed to do so, and while the Senate did not exclude these owners it did subject them to all the optional deductibles and exclusions to the maximum required in the bill and to deduction in the amount of $500 for each year in which they fail to have insurance in effect.

The notice provisions of the two bills were slightly different. The House bill provided for subrogation by the insurer assigned the claim under the assigned claims plan to any rights of the claim against any person. The House method of qualifying for the assigned claims plan was eventually adopted in conference committee as well as the House subrogation provision and the House exclusion for owners of motor vehicles that should have been insured but were not. The Senate position on notice to the assigned claims bureau was eventually adopted.

6. An insurer's obligation to respond to claims. Both the House and Senate bills required work loss or disability benefits to be paid every two weeks, and the House bill required income loss to be paid every two weeks. The remaining benefits were to be paid monthly as loss accrued. The Senate bill required income loss to be paid monthly instead of every two weeks as in the House bill, and the final bill adopted by the conference committee required all benefits to be payable monthly as the loss accrues.

Both bills provided penalties for overdue payments. The Senate bill provided for an 18 percent interest and the House

bill for ten percent, and the House position was eventually adopted. The Senate bill also provided for award of attorneys' fees incurred in bringing an action for overdue benefits and for defending a claim for benefits that is fraudulent or so excessive as to have no reasonable foundation, but the Senate position on attorneys' fees was not adopted.

7. Settlement of claims. The Senate bill imposed a variety of restrictions on lump sum and installment settlements as well as judgments for future benefits, whereas the House bill contained no restrictions on the settlement of claims. The House position was eventually adopted.

8. Tort actions. The restrictions on tort actions differed substantially in the House and Senate bills, as the House bill was considerably less restrictive than the Senate bill. The House bill provided that any tort recovery would be reduced by any basic economic loss benefits paid or payable; and damages for pain and suffering were not recoverable unless certain tort thresholds were met. A $2,000 medical expense threshold as well as the following additional descriptive thresholds were met: (1) permanent disfigurement; (2) fracture of a weight-bearing bone; (3) a compound, comminuted or dislocation fracture; (4) a compression fracture of the vertebrae; (5) loss of a bodily member; (6) permanent injury determined within a reasonable medical certainty; (7) permanent loss of a bodily function; (8) a death; or, (9) disability for 60 days or more. Actions for property damage were not restricted by the tort restrictions and were in all cases defined as accidents arising out of the ownership, maintenance, or use of a motor vehicle.

The Senate bill took the position that tort actions were abolished except in the following circumstances:

(1) actions against motor vehicle owners if the insurance covering the vehicle was not in effect at the time of the accident;

(2) liability of a person in the business of repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in the repair, servicing, or other maintenance of a vehicle in the course of his business;

(3) liability of a person intentionally causing harm to a business or property;

(4) liability of a person for harming property other than a motor vehicle and its contents;

(5) liability of a person in the business of parking and storing motor vehicles for the harm done to the motor vehicle and its contents;

(6) actions for damages not recoverable because of the limitations on the benefits;

(7) actions for noneconomic detriment if the injured person (a) dies, (b) sustains permanent disfigurement or permanent injury, or (c) sustains an injury resulting in not less than a 90-day disability period.

A compromise position between the Senate and House bills was reached. The final no-fault act retained the offset provision in the House bill and included the provision stating that damages were not recoverable. The final bill contained restrictions on recovery for non-economic detriment that were less restrictive than those in the Senate bill and more restrictive than the House bill. Actions for non-economic detriment were allowed on proof of reasonable medical expense in excess of $2,000, death, permanent injury, permanent disfigurement, or a disability for 60 days or more. Provision was made for suits against defendants in the business of repairing, servicing, manufacturing, distributing, or selling motor vehicles, and the act explicitly provided for unrestricted tort actions for negligent acts or omissions.

9. Subrogation and indemnity. Subrogation is the shifting or substituting of one claimant for another. For example, an insurance company might pay an injured person, and then subrogate, or take over the rights of the injured person to sue those who caused the injury. The House bill provided for subrogation in all cases in which an insurer paid benefits, but was limited to the amount of the first-party benefits. It provided for mandatory good faith in binding inter-company arbitration between two insurance companies when a wrongdoer was covered by another plan of insurance.

The Senate bill provided for subrogation whenever a person receiving or entitled to receive first-party benefits had a cause of action against any other person. The subrogation right was exercisable separately from the rights of the claimant. A right of indemnity was provided against a person (converting a motor vehicle owner) or against one who intentionally caused injury.

A compromise position on subrogation was adopted. Subrogation was initially provided for in the act in all cases including those where a tort action existed against an insured motor vehicle owner. Subrogation was provided for an insurer paying or obligated to pay first-party benefits and existed to the extent of benefits paid or payable. The insurer was subrogated to any cause of action to recover damages for economic loss which the person to whom the benefits were paid or payable brought against

any other person whose negligence was the direct approximate cause of the injury for which the first-party benefits were payable. In order for subrogation rights to arise in a negligence action, cause of action had to be commenced and the tort thresholds met.

10. Arbitration. The House bill provided for the promulgation of rules adopted by the Supreme Court for submission to arbitration, at the plaintiff's election, of all cases where a claim in the amount of $5,000 or less was made by a motor vehicle accident victim. The Senate bill provided for the creation of arbitration rules, but made arbitration mandatory when a $5,000 or smaller claim was made. Arbitration on mutual agreement was provided for in cases involving claims of more than $5,000.

11. Penalties. Both the House and Senate bills provided that a motor vehicle owner who failed to have the required insurance was liable in tort without limitation and that a motor vehicle owner who failed to have the required insurance was guilty of a misdemeanor. The Senate bill required a showing that the owner knew or should have known that the insurance was not in effect, and that position was eventually adopted as well as the provision opposing unrestricted tort liability on uninsured automobile owners. The act also contained a House provision that any person operating a motor vehicle with the knowledge that it did not carry insurance was also guilty of a misdemeanor.

The Senate bill provided for a six-month suspension of the owner's driver's license for failure to carry the required insurance, and the House bill provided that an operator who is convicted of a misdemeanor would have his license suspended from six to twelve months. Both bills provided for the suspension or revocation of a Minnesota license upon notification that the operating privilege has been suspended or revoked in any other state. Essentially, the House position on penalties was adopted in the final bill.

12. Cancellation and nonrenewal. Both bills contained provisions relating to the cancellation or nonrenewal of insurance which were eventually deleted, and the existing law maintained, with the exception that insurers are not required to give notice of the reasons for cancellation of an application for insurance. The final act provided no provision for the Commissioner of Insurance to suspend the right of a company to do business for failure of the company to comply with an order to reinstate a policy, or for tort liability of an insurer for the damages suffered by a person injured by an insurer's neglect or willful failure to conform to the act.

APPENDIX C

ENDNOTES

1. Minnesota Statutes, section 65B.48.
2. Minnesota Statutes, section 65B.44; subdivision 1, section 65B.48, subdivision 1.
3. Minnesota Statutes, section 65B.48, subdivision 1; section 65B.49, subdivision 3a.
4. Minnesota Statutes, section 65B.49, subdivision 3a.
5. Laws 1974, chapter 408, section 9.
6. Laws 1980, chapter 539, section 7.
7. Minnesota Statutes, section 65B.49, subdivision 3a.
8. Minnesota Statutes, section 65B.47.
9. Minnesota Statutes, section 65B.47, subdivision 1.
10. Minnesota Statutes, section 65B.47, subdivision 3.
11. Minnesota Statutes, section 65B.47, subdivision 4(a).
12. Minnesota Statutes, section 65B.47, subdivision 4(b).
13. Minnesota Statutes, section 65B.51, subdivision 3.
14. Id.
15. 307 N.W.2d 772 (Minn. 1981).
16. 309 N.W.2d 305 (Minn. 1981).
17. 350 N.W.2d 368 (Minn. 1984).
18. 277 N.W.2d 648 (Minn. 1979).
19. West Bend Mutual Ins. Co. v. Milwaukee Mutual Ins. Co., 372 N.W.2d 438 (Minn. App. 1985).
20. 310 N.W.2d 133 (Minn. 1981).
21. 289 N.W.2d 749 (Minn. 1980).

22. Minnesota Statutes 1971, section 65B.25.

23. Id. Minnesota Statutes, section 65B.26, subdivision d.

24. Minnesota Statutes 1974, section 65B.49.

25. 288 N.W.2d 244 (Minn. 1980).

26. 330 N.W.2d 113 (Minn. 1983).

27. Laws 1985, First Special Session chapter 10, section 68.

28. In the Matter of State Farm Mutual Ins. Co. and Allstate Ins. Co., 391 N.W.2d 1 (Minn. App. 1986).

29. Quoted in "Deterrent Aspects of No-fault Automobile Insurance--Some Empirical Findings", Paul Kochanowski and Madelyn Young, The Journal of Risk and Insurance.

30. Ibid.

31. Compensating Auto Accident Victims, U.S. Department of Transportation, May 1985.

32. Report of the Minnesota Automobile Liability Study Commission, 1973.

33. Automobile Insurance in Minnesota, Minnesota Department of Commerce, 1983.

34. Compensating Auto Victims, U.S. Department of Transportation, May 1985.

35. See Minnesota Automobile Liability Study Commission Report, 1973, p. 27.

36. Murray v. Walter, 269 N.W.2d 47.

37. 374 N.W.2d 220.

38. 364 N.W.2d 896.

39. 352 N.W.2d 406.

40. Much of the following section is loosely based on Minnesota's No-Fault Insurance by Michael K. Steenson.

41. Laws 1945, chapter 285.

42. Laws 1967, chapter 463.

43. Laws 1967, chapter 867.

44. Laws 1969, chapter 713, sections 2 and 3.

45. Laws 1971, chapter 581, section 1.

46. S. F. No. 634, 1967 session.

47. S. F. No. 753, 1969 session.

48. S. F. No. 568, 1971 session.

49. S. F. No. 96, S. F. No. 216, S. F. No. 356, S. F. No. 417, S. F. No. 982, S. F. No. 1153, H. F. No. 151, H. F. No. 742, H. F. No. 744, 1973 session.

50. Laws 1974, chapter 408, currently encoded in Minnesota Statutes, sections 65B.41-.71 (1986).