

Lawyers push auto rates up

OUR VIEW You save 20% by giving up lawsuits. But you won't get that choice.

Car owners are rejoicing. Not only is gasoline at rock bottom prices, insurance premiums could drop by an average 1% this year, thanks to aging baby boomers, safer cars and lower medical costs.

Pretty good news. Now imagine chopping insurance premiums another 20%. It's possible, if car owners are willing to give up their right to sue for so-called pain and suffering awards. They'd still be able to recover medical costs and any economic losses from a crash.

A forthcoming study from the Rand Institute for Civil Justice finds that drivers who opt for such a strict "no-fault" plan would save an average 21% on their insurance bill. Given that the average premium is \$775, that amounts to more than \$160 a year.

Not a fortune, to be sure, but a sizable chunk of money, particularly for low-income families, whose premiums tend to be higher. For them, the savings are equal to about four months of electric bills.

Unfortunately, almost nobody has that choice, thanks to fierce opposition from trial lawyers. Only two states offer something like this option, and in those states drivers leave the lawyers out in the cold. About half of Pennsylvania drivers, for instance, opt for a cheaper no-fault type of plan.

Small wonder. Nearly 30 cents of every bodily injury premium dollar goes into lawyers' pockets. And lots of drivers goose medical bills to reap even bigger damage awards —

pushing up costs for everyone. Another Rand study found that some 10% of an average auto premium goes to excessive claims costs.

Trial lawyers complain that these choice plans will never work. The main argument: No-fault itself has failed to hold down premiums in states that tried it. And, faced with the higher costs, several states dropped their no-fault laws.

What critics don't tell you is that the trial bar itself is largely to blame for these failures. They made sure that most no-fault states have dollar thresholds — climb over them and you can start suing. The thresholds act like targets, encouraging accident victims to pad medical bills. Lawyers, meanwhile, continue to reap the rewards of litigation. Everyone else pays through the nose.

Opponents also make the ridiculous claim that drivers, liberated from fault, will drive more recklessly, despite a complete lack of evidence that this occurs in no-fault states.

In any case, critics seem to forget that the car owners would have an option. If the no-fault plan isn't cheaper — or if they want to keep their right to sue — they won't buy it.

The idea of insurance choice has been kicking around for years. Congress is once again toying with bi-partisan bills to make it an option nationwide. Lawmakers should get off the dime and make it happen.

In the end, critics of choice have to answer one simple question: Why shouldn't drivers have the chance to make up their own minds which kind of insurance is better for them? The trial lawyers' big fear is likely that people would much rather keep money in their own pockets than give to the lawyers.

Careful: Read small print

OPPOSING VIEW Auto insurers' plan is just 'no-fault' under another name

By Tim Ryles

Here's how no-fault works: If a reckless driver runs a stop sign, hits your car, kills your child, destroys your ability to ever have another child, and leaves you a paraplegic, you can never hold the errant driver or his insurance company personally or financially responsible. Ultimately, what you get — perhaps after suing your own insurance company — are your medical expenses, lost wages, and funeral costs. Nothing for your child.

Nothing for loss of fertility. Nothing for being left an invalid for life.

This first-time effort to federalize auto insurance is the insurance industry's same old-fashioned no-fault system, now dressed up as "choice" by an insurance-funded "think tank."

And, if you think auto insurers — which had \$18 billion in profits from your premiums over the past two years — will reduce profits or lower your premiums if federal no-fault succeeds, think again.

Insurance premiums and profits are higher in no-fault states. While I was Georgia's insurance commissioner, my state repealed no-fault, and premiums fell dramatically (down 6% the first year, while rates increased 7% in

no-fault states). Connecticut experienced similar results after no-fault repeal. Since 1977, no state has adopted no-fault, a majority of state legislatures (and by overwhelming margins, voters in California and Arizona) have rejected it, and three states have repealed no-fault.

When New Jersey's Gov. Christie Whitman proposed "choice" no-fault in 1997, she couldn't find one legislative sponsor, and insurers admitted they had no intention of reducing premiums anyway.

In any guise, this "Reckless Driver Protection Act" forces good drivers to pay for bad; protects reckless drivers from accountability; discriminates against women, children, the elderly and minorities; preempts state law; provides a windfall for wildly profitable insurance companies; and doesn't guarantee a penny of savings for any driver.

Drivers theoretically have the "choice" to buy "full coverage" — similar to what most of us have now. The auto insurers' trick is they don't have to offer anything but the one-size-fits-all no-fault that maximizes their profits and minimizes your family's protection.

Auto "choice" no-fault forces good drivers to pay for bad ones and offers no savings, no choice, and no accountability for wrongdoers. It's a bad choice for America.

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February 18, 1998

MEMORANDUM FOR ERSKINE BOWLES

THROUGH: Gene Sperling
Bruce Reed

FROM: John Orszag
Paul Weinstein

SUBJECT: **Auto Choice**

Overview

The purpose of the memorandum is to provide you information on auto-insurance reform and the "Auto Choice" legislation introduced last April by a bipartisan coalition of Members of Congress. Over the last several months, a NEC-DPC inter-agency working group has spent considerable time analyzing the Auto Choice proposal and putting together other reform options.

It is the strong view of the working group that the benefits of Auto Choice have been far overstated and the costs far understated. For example, proponents of Auto Choice argue that it will reduce insurance premiums by approximately \$250 per year for the average driver. Opponents however point out that states that currently mandate insurance companies to offer no-fault insurance plans have some of the highest rates in the country (New Jersey, Kentucky, and Pennsylvania) and that the proposal will benefit bad drivers at the cost of good drivers. In addition, economists argue that if Auto Choice does induce reduced premiums, more people will drive leading to more accidents, increased environmental degradation, and greater strain on our infrastructure.

Background

"No-fault" insurance, in its broadest sense, is defined as any auto insurance program that allows policyholders to recover financial losses *from their own insurance company, regardless of fault*. In its strictest form, no-fault applies only to state laws that both provide for the payment of no-fault first-party benefits *and* restrict the right to sue. "Pure" no-fault proposals go one step further, abolishing the right to sue in the majority of cases.

Under current state-level no-fault laws, motorists may sue for severe injuries and for pain and suffering only if the case meets certain conditions. These conditions, known as a "threshold," relate to the severity of injury. They may be expressed in verbal terms (a descriptive

or verbal threshold) or in dollar amounts of medical bills (a monetary threshold). Some laws also include the days of disability incurred as a result of the accident.

Options

The working group has considered three options. The first is the Auto Choice legislation introduced by Senators McConnell and Moynihan and Representative Armey. The second is a proposal developed by CEA to achieve the same ends as Auto Choice -- lower premiums -- but to do so while reducing environmental and human costs. The third is a proposal to attack the major reason for high insurance costs, fraud.

Option 1: Auto Choice -- Under this proposal, drivers in states who accept the new federal legislation have a choice between the existing system in their state and a strict no-fault plan (called 'personal protection insurance' (PPI). A driver who chooses the PPI option gets first-party coverage for economic damages (mostly medical and lost wages), without regard to fault; a PPI driver can sue or be sued for economic damages above policy limits. PPI drivers cannot sue or be sued for non-economic damages ('pain and suffering'), although exceptions are made for accidents involving drug or alcohol abuse. A driver who opts to stay in the state's current tort system must purchase tort maintenance coverage (TMC) to cover accidents with PPI drivers.

The Joint Economic Committee estimates that the Auto Choice Reform Act would save consumers \$45 billion per year. According to Senator McConnell, the average driver currently pays \$757 per year for auto insurance -- and the act would cut that amount by about a third (\$243 per driver). The plan achieves these supposed savings by trading lower premiums for agreeing to give up the right to sue for pain and suffering. Currently, drivers who sue after an auto accident may be awarded an amount to compensate for noneconomic (pain and suffering) as well as economic (out-of-pocket) damages.

Pros

- Reductions in premiums for PPI drivers -- Premium savings come both from the reduction of substantial, unnecessary transaction costs such as lawyers fees and the elimination of pay-outs for pain and suffering.
- Speedier processing of claims for PPI drivers -- PPI drivers will also have their claims processed faster under their first-party coverage than under the current third-party coverage.
- Benefits for low-income PPI drivers -- Low-income drivers who elect the PPI option will particularly benefit. The tort system works to the disadvantage of lower income drivers who are less likely to be able to afford to wait out costly litigation.
- Could reduce the number of uninsured motorists -- With the reduced premiums offered by PPI, some motorists who chose not to insure in a tort system may now be willing to

billion.

- Environmental Benefits -- A reduction in driving will reduce emissions of greenhouse gases and smog, providing another incentive for the Kyoto Agreement and the EPA PM/Ozone rule.

Cons

- Driving Tax -- The proposal will be attacked as a tax on gas and driving.
- Odometer Fraud -- Per-Mile premiums will provide individuals with an incentive to commit odometer fraud
- Big Government -- Consumers could be upset by the yearly inspection of odometers and having to pay insurance surcharges if they drive more than they estimated at the beginning of the year.
- No Pass Through of Savings -- No guarantee insurance companies will pass on savings of either Auto Choice or Per-Mile Premiums.

Option 3: Anti-Fraud Initiative -- A third option is to call for a series of initiatives to combat auto insurance fraud. According the FBI, fraud is the leading cause of higher insurance premiums (Tom what did Freeh's study say). Under this proposal, we would announce support for legislation that would 1) increase penalties on lawyers and doctors who participate in auto insurance fraud claims, including possibly taking away licenses to practice law or medicine; 2) encourage insurance companies to install V-Chips into odometers so they could check the mileage of drivers at random and reduce premiums for those who drive less and increase premiums for those who drive more.

Pros

- Politically Feasible -- This option would not probably meet the least political resistance from.
- Incremental Approach -- This proposal potentially could provide savings to consumers without radically altering the current system or challenging state control of auto insurance regulation.

Cons

- Less Concrete -- This proposal is less concrete and may not appeal to many voters. In addition anti-fraud initiatives often do not produce the type of savings that are advertised.
- No Certainty of Savings To Consumers -- There is no mechanism to insure that insurance companies pass on savings to consumers.

purchase insurance.

Cons

- More accidents, pollution, and congestion -- The reduction in premiums for those who choose no-fault will result in more drivers on the road. More driving means more accidents, pollution and congestion. In addition, reduced liability for negligence may result in less careful driving.
- Premiums for safe TMC drivers may increase -- A TMC driver's liability is reduced since PPI drivers whom they hit cannot sue them. However, TMC drivers must now insure their own economic and non-economic damages if they are not at fault and are hit by a PPI driver.
- Will there be a real choice? In a competitive market, premiums for bad drivers who switch to PPI will fall more than premiums for good drivers who switch. The resulting self-selection of bad drivers into PPI will exacerbate the above problem of rising TMC rates for safe drivers. As TMC premiums rise, more people will switch to PPI, thus further raising TMC premiums. These increases in TMC premiums could effectively remove any real 'choice' between the two systems. However, in the three states that currently offer Choice, state regulation prevents the competitive rate setting that would produce this self selection and hence 'choice' may be preserved.
- Federal/State role. Even though the Auto Choice bill allows states to opt out of the system, it nevertheless represents Federal involvement in an area that traditionally has been the responsibility of states governments.

Option 2: Per-Mile Premiums -- The CEA has developed an alternative proposal that sought to achieve the same ends as Auto Choice -- lower premiums -- but with the additional benefits of reduced greenhouse gases and smog pollutants and less traffic accidents.

The CEA proposal would amend the Auto Choice to require insurance companies to offer premiums on a per-mile basis. Per-mile premiums would be charged based on an estimate of miles, with a rebate or surcharge issued every year after an odometer reading. Odometers could be read at existing emissions or safety inspections or by firms under contract with insurance companies. Insurance companies would compete in their per-mile premium, subject to current regulations; premiums would consequently vary with region, driving record, type of car, and safety features, much as premiums vary now.

Pros

- Saves Lives -- CEA estimates Per-Mile Premiums could save 9,000 lives per year because of financial incentive to drive less miles.
- More Savings -- Potential \$20 billion in savings on top of Auto Choice savings of \$45

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**Better as a package:
Auto Choice and Per-Mile Premiums**

*1. without
2. without - per mile
3. no fault choice
4. no fault - per mile
choice*

Per-mile premiums plus Auto Choice package would save money AND increase safety

- By itself, Auto Choice would save \$ but could compromise safety *29- 8x/10)*
- Per-mile premiums plus Auto Choice will save lives and save more \$ *14"*
- Drivers will choose, if offered the package, to leave tort system to save \$

Per-mile premiums could save thousands of lives per year

- Linking premiums closely to miles driven will reduce driving and hence accidents

Potential \$20 billion in premium savings under per-mile plan in addition to \$45 billion in Auto Choice savings

- Initially insurance companies would set per-mile premiums to keep total premium constant, assuming driving patterns are unchanged
- Premiums would fall as people drive less and accident costs fall
- Premiums would fall for the vast majority of drivers; only those who drive more than twice as much as the average driver in their insurance pool (e.g. similar age, experience, part of country, etc.) would potentially see higher rates

Huge incidental benefits

- Reduced traffic congestion from fewer miles driven AND fewer accidents
- Reduced smog and health-harming pollutants from fewer miles AND less congestion
- Reduced emissions of greenhouse gases from fewer miles implies LOWER ABATEMENT COSTS. Carbon emissions would fall by about 5% of the 2010 baseline.

Better as a package:
Auto Choice and Per-Mile Premiums
Aaron Edlin with Amy Finkelstein and Mark Rainey

The Proposal:

Amend the Auto Choice plan so that in states that don't opt out, if a driver chooses no-fault her premium is quoted on a per-mile-driven basis. As under Auto Choice, drivers could opt to keep current insurance coverage instead.

Per-mile premiums could be charged based upon an estimate of miles, with a rebate or surcharge issued every year or two after an odometer reading. Odometers could be read at existing emissions or safety checks or by firms under contract with insurance companies.

Insurance companies would compete in their per-mile premium, subject to current regulations; premiums would consequently vary with region, driving record, type of car, and safety features, much as premiums vary now.

The Package Advantage: Saving Costs without Risking Safety.

Auto Choice could reduce premiums by 32%, according to the Joint Economic Committee. Many argue, however, that no-fault would increase drivers' carelessness and make driving more dangerous. One recent empirical study suggests that if everyone chose no-fault, there would be thousands of extra fatalities each year.

By packaging Auto Choice with a per-mile premium, however, safety should increase and premiums should fall still further. The reason is that a per-mile premium discourages driving.

Huge incidental benefits include reduced traffic congestion (from fewer miles driven and fewer accidents) and reduced smog and other health-harming pollutants (from fewer miles and less congestion). Reduced emissions of greenhouse gases from fewer miles implies **lower abatement costs** to achieve Kyoto agreement. Carbon emissions would fall by about 5 percent of baseline 2010 emissions under our package plan; they would rise under the current Auto Choice proposal.

Per-Mile Premiums could save 9,000 lives per year.

A fundamental problem with current auto insurance systems is that insured drivers face too little of the accident costs associated with the amount of driving they do. Accidents increase the more miles people drive. Insurance rates take this into account somewhat, but the connection is far too weak for two reasons:

Insurance firms typically have coarse mileage groupings---e.g. one rate for over 6000 miles and one for under 6000 miles/year. Odometers are rarely checked and under self-reporting, fraud and mistaken estimates of yearly mileage are big problems. Experience

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rating helps somewhat, but to a very limited extent. (If the cost of insurance rose for extra accidents by the cost of accidents, insurance would be a loan, not insurance.)

Furthermore, a driver's own insurance company does not face the full accident cost of the driver driving an extra mile: safe drivers, who are not at fault in accidents, cost their own insurance company little because the other driver's insurance company typically pays the accident costs. Yet, even safe drivers create a substantial social cost simply by being on the road because they are another potential target or obstacle for bad drivers.

As a result, drivers do not actually face and certainly do not perceive the true cost of driving an extra mile. Drivers consequently drive too many miles.

This problem is alleviated if mileage is verified every year or two and insurance premiums are proportionate to miles driven. Initially, per-mile premiums would probably be approximately 4 cents per mile. **Although this would not increase the total cost of driving** (since it would simply substitute for current premiums), it would increase the cost of driving an extra mile substantially. The increase in the *marginal* cost of driving would be roughly equivalent to an 80 percent increase in the retail price of gasoline! We might therefore expect **miles driven to fall by roughly 16 percent**, conservatively taking the low end of results from studies of the responsiveness of miles driven to the price of gasoline. Roughly 9,000 lives could be saved per-year under a mileage based premium system.

Potential \$20 billion in savings on premiums from Per-Mile Premiums in addition to Auto Choice Savings of \$ 45 billion

Insurance companies would set per-mile premiums in a competitive process subject to current regulations. Initially per-mile premiums would probably be set so that total premiums cover total accident costs, assuming that driving patterns remain unchanged. Total insurance premiums would quickly fall, however, because accident costs will fall as drivers drive less. A rough estimate of the fall in total premiums is 22% or \$21 billion, in addition to the fall of \$45 billion from Auto Choice.

A large pool of winners: savings for almost all drivers

Per-mile premiums would undoubtedly be set to vary with a driver's age, the region of the country, urban vs. suburban, driving record, car model, safety features, just as under the current insurance system. Competition would demand such market segmentation. Hence safe drivers, for example, would face lower per-mile rates, and hence lower total insurance costs, than bad drivers, just as they do under the current system.

And even though in some regions rural drivers drive much more than urban drivers, total insurance costs for these rural drivers would fall by the same proportion that urban drivers' total costs would fall. This is because insurance companies currently set rural drivers' rates to reflect both that they drive a lot more than urban drivers and that their chance of having an accident per mile driven is smaller than for an urban driver. With per-mile premiums, the

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insurance companies would no longer have to increase rural premiums to reflect their greater mileage; but they would set rural per-mile premiums lower than urban per-mile premiums to account for the former's lower per-mile accident rate. As a result, a typical rural driver and a typical urban driver would benefit equally from the package proposal.

Although total premiums would fall dramatically on average for a pool of drivers with a given risk profile, some very high-mileage drivers in a pool might pay higher accident rates. Drivers who drive more than twice the average mileage of drivers with their risk profile might face higher premiums. For example, although most rural drivers would see their insurance premiums plummet, a rural driver who drove over twice the average distance that a rural driver drives per year could see a rate increase. The same applies to very high-mileage urban drivers, safe drivers, bad drivers, etc.

Huge Incidental Benefits of Per-Mile Premiums

A 16% fall in vehicle miles would yield:

Abatement cost savings. The reduction in driving will reduce emissions of greenhouse gases substantially. This will save large abatement costs that would otherwise be incurred to meet the Kyoto agreement. Carbon emissions, for example, would fall by about 5% of baseline 2010 emissions. If marginal abatement costs were \$100/ton, abatement cost savings would be over \$8.5 billion.

Less smog and other pollution. Fewer miles would lead to a nationwide reduction in emissions of NO_x, a greenhouse gas that also contributes to smog and particulate pollution. In major metropolitan areas, NO_x emissions might fall by one-seventh of the amount needed to attain EPA's recently promulgated ozone air quality standard. These reductions in NO_x emissions from per-mile premiums could exceed the reductions that would result from **all** the controls identified by EPA in the analysis in support of its recent ozone air quality standard.

Less traffic congestion. Fewer miles implies less traffic congestion, because of less crowding. Reduced accidents will further alleviate congestion. The reduction in congestion-related travel delays in major metropolitan areas would be substantial. For example, in the San Francisco Bay area, and in the Los Angeles area, such delays per driver per year would fall by approximately 30 percent (20 and 23 hours respectively).

Better than gas taxes. Raising gas taxes to address these environmental issues raises the total cost of driving. But the per-mile premium package addresses the same issues while lowering the total cost of driving.

Linking Auto Choice with Per-mile Premiums to redress Auto-Choice's problem.

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States and individuals that opt into Auto Choice create a hazard for others. Per-mile premiums offset this hazard, and so they should be required for those who choose no-fault. Possibly, this linkage should be waived for states that already have no-fault, if this compromise is necessary to gain political support.

Linking the no-fault choice with per-mile premiums would give us the best of both worlds. Lives could be saved, not lost, and the total insurance cost of driving would fall on average by over 20% more than it would under Auto Choice alone.

CHOICE is central to this package proposal, as it is to Auto Choice

It is important to keep in mind that states can choose whether to opt into the package of Auto Choice and per-mile premiums or to keep their tort and insurance system as it is.

If a state opts in, drivers can choose whether to keep their current insurance or switch to the new package. Those who choose to keep their current insurance would not face per-mile premiums.

Drivers will also choose whether to keep driving their current amounts or reduce their driving. Unlike current gas taxes, per-mile premiums do not increase the total cost of driving. In fact, because of the savings from no-fault, total premiums should fall immediately, even if driving miles stayed constant. Furthermore, people will CHOOSE to reduce miles to save even more on premiums. The great feature is that one person's choice to reduce miles will actually reduce the per-mile charge for others!

Implementation.

A mileage-based premium system could be easily implemented. Insurance companies could simply read a car's odometer once every year or two. Alternatively, odometers could be read during existing emission or safety checks. Per-mile premiums could be charged based upon an estimate of miles, with a rebate or surcharge issued every year or two after an odometer reading.

It is difficult to be sure whether insurance fraud would increase or decrease under per-mile premiums. Currently, there is undoubtedly significant misreporting given that some insurance companies will cut premiums 15 percent for customers who claim to drive less than 7500 miles per year. Under a per-mile system, where odometers were checked, there would likewise be an incentive to tamper with odometers. Tampering with odometers is not, however, a trivial matter that the typical person can do for herself. Moreover, it is a crime, and probably not the easiest or safest way to steal a few hundred dollars a year.

For the vast majority of Americans, odometers are tamper-proof. Although everyone selling a used car already has a substantial financial incentive to set back the odometer (setting

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back the odometer 30,000 miles typically increases value by \$2,100), odometer fraud today occurs mostly in the wholesale used car business. Therefore, it is currently difficult for someone who might want to adjust his odometer to find someone who can do it. There is also a significant risk involved in such tampering. For example, whenever a franchised dealer services a vehicle manufactured by the company granting the franchise, a computerized record is made which includes the vehicle's mileage. Companies currently exist that use this and other sources to collect motor vehicle histories and sell them to prospective purchasers; these companies could similarly sell the histories to insurance companies to deter odometer tampering.

There are already large incentives to tamper with odometers to increase the value of a used car. The resale value of a used car may decline by as much as 7 cents per mile, whereas average per-mile premiums under the package plan would be about 4 cents per mile.

Odometer fraud is significantly more difficult than changing one's own oil. As an illustrative calculation, suppose that 20 percent of people currently change their own car oil, and suppose that 10 percent of these people would set their odometers back. If these people reduced their miles in half, this would raise premiums for everyone else by approximately one percent, much less than per-mile premiums are apt to save from accident reduction. Fear of insurance fraud is not a good reason to oppose per-mile premiums.

Maintaining existing insurance markets. Unlike Pay-at-the-Pump, per-mile premiums do not interfere with the free and competitive operation of insurance markets. Insurance companies would continue to compete for business in the same way under this package proposal. Per-mile premiums therefore do not raise the specter of increased government interference in insurance markets. Additionally, a per-mile charge would vary with the quality of the driver, which affects accidents, not with fuel efficiency, which does not. Insurance companies could continue to adjust insurance premiums for any characteristics of the driver or the car that they currently use to calculate expected accident costs; per-mile premiums would vary in the same way that fixed premiums currently do.

Why don't insurance companies already use per-mile premiums?

Externality. One reason insurance companies do not already use per-mile premiums is that many of the benefits from a per-mile charge are not realized by the driver or her insurance company, but are realized by other drivers and other insurance companies. The reason is that part of the cost of accidents that extra miles cause are borne by other drivers and their insurance companies. Keep in mind that even a safe driver causes accidents by being an extra target that bad drivers can hit. For this reason accident reductions are more than proportionate to the percentage reduction in miles. Driving is much like entering an obstacle course. The fewer times you enter, the fewer total obstacles you will hit. If the obstacle course were held

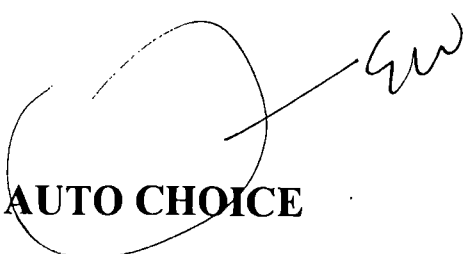
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constant as driving is reduced, then we would expect a roughly proportionate reduction in accidents. But there are fewer obstacles when there are fewer miles driven, so the per-mile collision rate will also fall!

Adverse Selection. Another reason insurance companies don't already offer per-mile premiums may be that if a company offers a per-mile package under the current system (without the cost savings from Auto Choice), this option would only be chosen by low mileage drivers, or by the few drivers who manage to tamper with their odometers. If the per-mile price is set to break even given present per-mile accident costs, insurance companies could potentially lose money for two reasons: first, fraud by the few who tamper with odometers; and second, although drivers who drive low miles have lower total accident costs, they may have somewhat higher per-mile costs, because they have less driving experience. If these reasons held, insurance companies would have to raise the per-mile charge. As they did so, however, the adverse selection could get worse: only odometer-tampering drivers and very low mile drivers would remain. Breaking even could therefore require a still-higher charge, leading to a still smaller and adversely selected group of buyers. Ultimately, the market might be too small to be viable or disappear entirely.

These worries may not be well founded, however. For one thing, drivers who drive fewer miles may not have higher per-mile accident rates. More importantly, this analysis neglected an important countervailing effect that tends to make the per-mile insurance market larger. Insurance rates will tend to rise in the regular insurance market because this market will tend to have only very high mileage drivers. This will cause even more low-mileage drivers to exit that market and drive up rates still further. Selection is also adverse in that market!

Cost/Hassle. A final reason that some companies may not have switched is that it seems like a costly hassle to check odometers. The hassle will be reduced, however, if many companies in a state switch to per-mile at once. Then, a single facility could check odometers for all insurance companies. Perhaps it could be done when emissions or vehicle safety is checked.



AUTO CHOICE

A bipartisan coalition of Senators has introduced a proposal for auto-insurance reform called 'Auto Choice.'

- Under this proposal, drivers in states who accept the new federal legislation have a choice between the existing system in their state and a strict no-fault plan (called 'personal protection insurance' (PPI)).
- A driver who chooses the PPI option gets first-party coverage for economic damages (mostly medical and lost wages), without regard to fault; a PPI driver can sue or be sued for economic damages above policy limits. PPI drivers cannot sue or be sued for non-economic damages ('pain and suffering'), although exceptions are made for accidents involving drug or alcohol abuse.
- A driver who opts to stay in the state's current tort system must purchase tort maintenance coverage (TMC) to cover accidents with PPI drivers.

Pros

- **Reductions in premiums for PPI drivers.** Drivers who choose the PPI option will see dramatically lower premiums. Premium savings come both from the reduction of substantial, unnecessary transaction costs such as lawyers fees and the elimination of pay-outs for pain and suffering. Premium reductions are estimated by the Joint Economic Committee (JEC) to be 32% of total auto insurance premiums (\$45 billion), if everyone chooses the PPI option. About one-fifth of the premium reduction comes from reductions in transaction costs; the vast bulk of the premium reduction comes from the cessation of payments for pain and suffering.
- **Speedier processing of claims for PPI drivers.** PPI drivers will also have their claims processed faster under their first-party coverage than under the current third-party coverage.
- **Benefits for low-income PPI drivers.** Low-income drivers who elect the PPI option will particularly benefit. The tort system works to the disadvantage of lower income drivers who are less likely to be able to afford to wait out costly litigation and who - with third party payers - must insure against the potential losses of other drivers who have higher incomes and hence higher economic losses (lost wages).
- **Could reduce the number of uninsured motorists.** With the reduced premiums offered by PPI, some motorists who chose not to insure in a tort system may now be willing to purchase insurance.
- **The appeal of 'choice.'** The Auto Choice plan offers drivers who elect PPI all of the potential benefits of no-fault insurance while avoiding the political unpopularity of denying

drivers their tort rights. Furthermore, the plan allows states the option to opt out of Auto Choice, in order to alleviate some of the federal-state issues.

Cons

- **More accidents, pollution, and congestion.** The reduction in premiums for those who choose no-fault will result in more drivers on the road. More driving means more accidents, pollution and congestion. In addition, reduced liability for negligence may result in less careful driving.
- **Premiums for safe TMC drivers may increase.** A TMC driver's liability is reduced since PPI drivers whom they hit cannot sue them. However, TMC drivers must now insure their own economic and non-economic damages if they are not at fault and are hit by a PPI driver. Therefore in a competitive insurance market, safe TMC drivers would see their premiums increase under Auto Choice; because safe drivers are by definition at fault less than 50 percent of the time, their reduction in premiums because in accidents in which they are at fault they do not have to compensate PPI drivers' economic and non-economic losses does not offset their increase in premiums from needing to now cover their own economic and non-economic losses when they are not at fault. This increase in TMC premiums for safe drivers would occur even if safe and bad drivers were randomly assigned to the two policy options. State regulation could in principle prevent the premium rise for safe TMC drivers, but it is not clear that current regulations in Choice states do this. *The JEC assertion that drivers who elect TMC will not see their premiums rise is thus highly suspect.*
- **Will there be a real choice?** In a competitive market, premiums for bad drivers who switch to PPI will fall more than premiums for good drivers who switch. The resulting self-selection of bad drivers into PPI will exacerbate the above problem of rising TMC rates for safe drivers. As TMC premiums rise, more people will switch to PPI, thus further raising TMC premiums. These increases in TMC premiums could effectively remove any real 'choice' between the two systems. However, in the three states that currently offer Choice, state regulation prevents the competitive rate setting that would produce this self selection and hence 'choice' may be preserved.
- **Federal / state issues.** Even though the Auto Choice law allows states to opt out, it nevertheless represents Federal involvement in an area that up until now has been left to the states.



● Paul J. Weinstein Jr.

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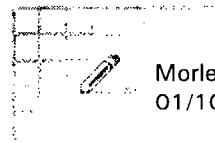
To: Jonathan Orszag/OPD/EOP, Thomas L. Freedman/OPD/EOP, Amy N. Finkelstein/CEA/EOP

cc:

Subject: Re: Auto Choice

We need to answer these in the next few days. Any ideas? Bruce asked me to share these with Morley to gauge any interest by the VP.

----- Forwarded by Paul J. Weinstein Jr./OPD/EOP on 01/12/98 02:17 PM -----



Morley A. Winograd @ OVP
01/10/98 02:43:48 PM

Record Type: Record

To: Paul J. Weinstein Jr./OPD/EOP

cc:

Subject: Re: Auto Choice

Paul:

I am simultaneously intrigued and repulsed by the proposal. It is certainly worth pursuing further. Here are some of my questions:

1. Why won't drivers in Auto Choice states who don't drive very much choose this option and all high mileage drivers stay with what they have? If this happens, the system collapses.
2. How would you define drivers in "Similar regions."? Critical to the CA issue since distances driven in LA for instance are much greater than distances driven in SV or SF, even though time in commute is about the same. So who would set boundaries of each market pool?
3. Michigan has had a no fault law since I believe 1968. Has anyone looked at their record of accidents and frequency of travel? Not sure the premise of the proposal holds up.
4. Given the recent announcements of alternative fuel and hybrid engines, would either the proposed reductions in emissions still hold and/or the estimated savings?
5. Smart highways with automated cars are now in demonstration stage and will be deployable in less than five years. This will allow cars to travel at high speeds in less congestion with no danger of accident (while on those highways). Would this proposal inhibit the deployment of such technology by charging users of such highways premiums as if the miles they were driving were just as unsafe as non-automated highways.
6. If the announced goal of the program is to reduce miles driven by ordinary citizen it is a deadly political program. Increasing consumer choice of insurance while denying them the freedom of the open road is not a saleable proposition.

I'd like to see more research on the issues I raised before deciding either way.

Morley Winograd



"CHOICE" NO-FAULT AUTO INSURANCE IS NO CHOICE AT ALL

Congress has begun to consider federal "choice" no-fault auto insurance legislation, proposed by Senators Mitch McConnell (R-KY), Daniel P. Moynihan (D-NY) and Joseph Lieberman (D-CT) in the Senate, and Majority Leader Dick Armey in the House. This bill (S. 625, H.R. 2021) would allow auto insurance companies to force motorists nationwide into one of two unfair auto insurance systems.

Under one system -- "pure" no fault -- consumers seriously injured in accidents completely forfeit their rights to recover non-economic damages (intangible losses like permanent disfigurement, serious impairment of a bodily function, loss of a limb, or pain and suffering), and their constitutional right to a jury trial is almost completely eliminated. This option is so unfair that no state in the country has allowed it. Under the other system -- a distorted version of the traditional tort system -- consumers are forced to pay much higher insurance rates and still only get limited access to the courts.

Although sounding fair on its face, this plan gives consumers two grossly unfair options. Moreover, this plan would authorize the federal takeover of an entire area of law, overriding all current state auto insurance laws, but contains no measures to actually bring down rates through regulation of the wasteful, inefficient and price-gouging practices of the insurance industry.

1. "Choice" No-Fault Is a Sham

✦ **Drivers have no choice.** Under the proposed legislation, motorists must choose between "no-fault" or a limited version of "traditional law" auto insurance coverage. *But the rights of those who "choose" traditional law coverage depend on the "choices" made by other drivers.* Full access to the courts under "traditional law" coverage is guaranteed only if the other driver involved in an accident has the same coverage. However, if the other driver has chosen "no-fault," full court access is denied. The "traditional law" policyholder must collect from his or her insurance company. This will be a common result not only because many drivers will choose "no-fault," but also because any motorist who does not choose a system is placed, by default, into no-fault.

2. "Choice" No-Fault Means Good Drivers Pay for Bad

An unfair system with no accountability. "Traditional law" operates on a basic principle of fairness: Those who cause auto accidents should be held fully accountable for their actions. In the event of an accident, the insurance company representing the driver responsible for the accident is the one that pays. But under "choice" no-fault both parties are held equally responsible no matter who caused the accident and each party goes to his or her own insurance company to recover loss. Bad drivers are immunized from suit and are not held accountable.

No-fault guts the principle that a consistently safe driver should be rewarded with lower insurance rates and that bad drivers are penalized with higher rates -- an incentive for safer driving. No-fault undermines this incentive by having both parties, regardless of fault, file claims with their insurance companies. Both parties are thus subject to higher insurance costs. *Good drivers wind up paying for the mistakes of bad drivers.*

3. "Choice" No-Fault Means Higher Premiums and Higher Costs

Industry claims are false. No-fault proponents claim the system will result in lower insurance premium costs, but they never promise actually to lower premiums.

In fact, data from the National Association of Insurance Commissioners (NAIC), indicates that "choice" systems have the highest premiums in the nation -- almost 25% higher than premiums in "traditional law" states. In 1995, six of the top ten states (including D.C.) with the highest average liability premiums were no fault systems. States with mandatory no fault systems saw their liability rates increase an average of 45.6% between 1989-1995, nearly one-fourth faster than the average rate of growth of the average liability premium in non-no-fault states, which saw an average 36.8% increase over the same period.

Proponents of no-fault insurance claim that this is because of the certain demographic features in no-fault states, such as dense population or urban areas. However, the percent of people living in urban areas is only 11.9% higher in no-fault states, vehicles theft is only 9.6% higher in no-fault states, and the average cost of a day in the hospital is actually higher in traditional law states. Nonetheless, the average insurance premium is a whopping 17.3% higher in no-fault states. The problem is not one of demographics, but rather that no-fault insurance has not, and will not, produce savings.

4. No-Fault Is a Discredited System

No state has switched from "traditional law" to no-fault since 1976. In the two states that repealed no-fault laws since 1991, premiums dropped while they increased in states retaining no-fault. In Georgia, premiums went down 6% in 1992, the year after it repealed no-fault. In Connecticut, premiums went down 7% in 1994, the year after it repealed no-fault. NAIC.

5. No-Fault "Choice" Is a Bad Deal for States and Consumers

S. 625 mandates a more restrictive policy than current state no-fault laws. All state no-fault plans currently contain "thresholds," measured either by the seriousness of injury or death, or a specific monetary amount of medical expenses incurred. If injuries rise above the threshold level, injured parties may try to recover non-economic damages from reckless drivers, holding them fully accountable through the civil justice system. Thresholds are burdensome obstacles for injured parties trying to recover full compensation. But as restrictive as thresholds are, the McConnell plan eradicates all state threshold provisions, providing no means for good drivers to hold bad drivers fully accountable for non-economic damages they cause. No allowance is made even for individuals who suffer the trauma of severe burns or a lifetime disability that is the result of obvious carelessness. *No state in the country has gone as far as this proposal in eliminating rights to recover non-economic damages or holding reckless drivers accountable.*

The bill would impose complicated legal choices on every driver. Faced with a complicated choice of two or more different liability systems, drivers would find it difficult to make an informed decision about waiving their legal rights. Worse still, this legislation acknowledges that misunderstandings are likely by immunizing insurance agents from liability if they fail to adequately explain or disclose the complex choices to their clients. If policyholders have been in a serious accident and do not have adequate coverage, they have no legal recourse against their insurance company, the agent who may have inadequately advised them, or in most cases, the driver who caused their injuries. **This bill leaves consumers out in the cold.**

**For more information, contact Joanne Doroshow at (202)
546-4996, x. 315.**

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Harvey Rosenfield or Philip Roberto
(310) 392-0522
Joanne Doroshow
(202) 546-4996

NEW REPORT FINDS INSURANCE PREMIUMS IN NO-FAULT STATES CONTINUE TO SOAR

REPEALING NO-FAULT FASTEST WAY TO LOWER PRICE OF INSURANCE

Beleaguered motorists in no-fault states have seen their insurance premiums increase an average of 45.6% between 1989-95, according to a new study of insurance industry data released today by California's Proposition 103 Enforcement Project and national consumer group Public Citizen. This is nearly one-fourth faster than the average premium increase in states without no-fault. The study's release coincides with today's U.S. Senate Commerce Committee hearing to consider legislation to impose a so-called auto "choice" no-fault system on motorists nationwide.



Prop. 103 Enforcement Project Director Harvey Rosenfield, who is testifying at today's hearing, said "After nearly twenty-five years of experimentation with no-fault throughout the country, the only conclusion that can be drawn is that this grossly unfair system is an absolute failure. The best way to lower auto insurance premiums is to limit the profiteering and inefficiency of insurance companies, as California did eight years ago."

According to Public Citizen President Joan Claybrook, "Auto choice makes good drivers pay for bad drivers. It is a testament to the massive power and pervasive influence of the insurance industry that no-fault has suddenly appeared on the congressional agenda, while remaining in effect in some states where beleaguered motorists want to escape its costly tyranny."

The study summarizes data drawn from annual reports published by the National Association of Insurance Commissioners, State Average Expenditures & Premiums for Personal Automobile Insurance in 1995 (January 1997). Among the findings are:

No-fault states have the highest average auto premiums. In 1995, six of the top ten most expensive states (including D.C.) had no-fault systems. Hawaii, as it has since 1991, remained the most expensive in the nation.

No-fault premiums rose nearly one-fourth faster than premiums in states without no-fault. States with mandatory no-fault systems saw their rates increase an average of 45.6% between 1989-95, nearly one-quarter higher than the average rate of growth of the average premium in states without no-fault, which saw an average 36.8% increase over the same period.

States with no-fault are typically among those with the greatest increases in rates. Of the 15 states with the greatest increases in the nation in auto liability premiums between 1989 and 1995, nine states have some form of no-fault -- either mandatory or mixed.

Repealing mandatory no-fault and regulating insurers lowers auto insurance premiums. The NAIC data demonstrate that repealing no-fault and instituting rollbacks and effective regulation of the insurance industry results in substantial rate reductions. California voters passed Proposition 103 in 1988, mandating a rollback in auto, homeowner and business premiums and instituting stringent controls on insurance company profiteering. The average auto liability insurance premium decreased by 0.1% in California between 1989 and 1995, while the average premium throughout the rest of the nation increased 32.2% in the same period.

Consumer advocate Ralph Nader said, "No-fault is an unfair and exceptionally consumer-costly system that defies the American tradition of justice and fair play and forces good drivers to pay for bad drivers. It is ironic that members of Congress would take a system that deprives the wrongfully injured of compensation for pain and suffering, has collapsed in state after state, and been rejected by the people of other states, and attempt to impose it on the entire nation through federal legislation. To lower insurance premiums, the solution is first to improve highway safety, second, to help reduce auto theft, and third, to promptly institute consumer protections against the notorious price-gouging, waste and inefficiencies of the insurance industry."



RAND'S PROJECTED COST SAVINGS: DON'T BELIEVE THE HYPE

Proponents of the federal "choice" no-fault insurance bill often toss around figures like "30% savings" and "\$40 billion in total savings." They also toss around slogans like "huge savings" and "biggest tax cut in history that's painless, too." To justify these figures, advocates rely almost exclusively on a series of related studies by the insurance industry-funded Rand Corporation Institute for Civil Justice.

Various no-fault schemes in the past have promised huge savings, but they have always failed to deliver what was promised. A closer inspection reveals several serious problems with Rand's findings as well.

Rand's model is purely speculative. The model is based upon what costs to insurance companies should be under certain hypothetical conditions. The problem with hypothetical models is that they, by definition, cannot account for unforeseen consequences. Thus, they often fail to include unforeseen costs. If we have learned anything from previous no-fault schemes, it is that unforeseen costs drive up insurance premiums.

An example of an unforeseen cost under the Rand study would be the costs involved in one-car accidents. Rand overexaggerated its cost savings because its closed claim data fails to include the 40-45% single-car claimants who will be eligible for recovery under a no-fault system, and who are presently ineligible for recovery. There is no quantifiable empirical evidence that any type of no-fault arrangement has produced any savings anywhere.

The Rand model assumes lower insurance company costs, not lower premiums. The model is built upon the premise that cost savings will be passed onto consumers. Why should we believe this will happen? Past experience has shown that insurance companies simply turn cost savings into higher profits. Additionally, insurance companies prefer not to lower premiums because it reduces the money they have available for investment -- which is how they make their money.

Savings are produced by drastically lowering benefits.

According to former Texas Insurance Commissioner and Federal Insurance Administrator J. Robert Hunter (an actuary now with the Consumer Federation of America), in order to achieve an overall 30% reduction in personal auto costs, the liability portion of the premium would have to be reduced by 54.2%. Insurance companies would, at best, only obtain a 2% increase in efficiency. In other words, to achieve these purported savings, benefits would have to be reduced by a Draconian 50% or more. Statement of J. Robert Hunter before the Joint Economic Committee, March 19, 1997.

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THE ROAD TO LOWER AUTO INSURANCE PREMIUMS

STATE SOLUTIONS

In addition to repealing costly no-fault laws, states should:

Increase State Regulation. Consumers would benefit from giving increased authority to state insurance commissioners to approve or reject rate requests, or to advocate the rollback of insurance rates. For example, in 1988 California voters mandated a 20% rate rollback in auto insurance premiums, saving consumers an estimated \$12.2 billion over the past eight years, according to data from the National Association for Insurance Commissioners (NAIC). Other steps include increased funding to state insurance departments for needed investigators, auditors and other professionals to recommend appropriate insurance rates, disclosure legislation or "sunshine laws" to reveal insurance industry data on premiums, investments, payouts, settlements, reserves and expenditures.

Repeal Anti-group and Anti-rebate Laws. Most states currently prohibit consumers from banding together in groups to increase leverage with auto insurance companies, as they can with health insurance companies. Most states also prevent competition among insurance agents, making it illegal for agents to sell policies at lower prices by reducing their commission. Repealing these anti-competitive laws will lead to lower rates.

Establish a Consumer Advocate Office. States that have a consumer advocate in the Insurance Commissioner's office to monitor insurance industry waste, inefficiencies and price-gouging have much lower premiums. In 1995, drivers in states without a consumer advocate paid almost 20% more in auto insurance premiums than drivers in states that had a consumer advocate. (NAIC, 1995 Insurance Department Resources Report)

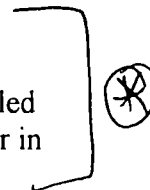
Use Consumer Complaint Analysts. States with complaint analysts in the Insurance Commissioner's office are better able to address industry fraud and inefficiencies. In 1995, drivers in states without complaint analysts paid almost 20% more in premiums than

in states with analysts. (NAIC, 1995 Insurance Department Resources Report)

FEDERAL SOLUTIONS

Congress should consider real insurance reform, including:

Repeal The Industry's Anti-trust Exemption. The McCarran-Ferguson Act granted the insurance industry an exemption from anti-trust laws. The legislation should be repealed to alleviate price fixing and lack of competition. Rates are lower in states with more competition among insurance companies.



Crack Down on Deceptive Insurance Practices. Federal laws are needed to hold insurance companies accountable for knowingly deceiving consumers in order to boost their profits.

Require Greater Disclosure of Financial Data. Minimum standards for disclosure of insurance industry financial records should be required in order to better assess its need for rate hikes.

SAFETY SOLUTIONS

Innovative efforts to stop car thefts, cracking down on drunk drivers, modernizing highways, mandatory air bag retrofitting, better side impact and rollover protections, and improved truck and van safety standards, all promote safety, reduce accidents, and contribute to lower premiums.

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WHAT CONSUMER ADVOCATES ARE SAYING ABOUT THE McCONNELL "CHOICE" NO-FAULT AUTO INSURANCE SCAM

RALPH NADER

"No-fault is an unfair and exceptionally costly system that defies the American tradition of justice and fair play and forces good drivers to pay for bad drivers. It is ironic that members of Congress would take a system that has collapsed in state after state, and been rejected by the people of other states, and attempt to impose it on the entire nation through federal legislation."

"To lower insurance premiums, the solution is first to improve highway safety, second, to help reduce auto theft, and third, to promptly institute consumer protections against the notorious price-gouging, waste and inefficiencies of the insurance industry, driven by its cost-plus approach."

J. ROBERT HUNTER, Director of Insurance, Consumer Federation of America; Federal Insurance Administrator under Presidents Ford and Carter; former Texas Insurance Commissioner; insurance actuary

"The claim of "choice" is a fraud. The plan is two sorts of no-fault, one a classic no-fault that pays only for injuries to the insured and the other a no-fault that pays for injuries others do to you. Choice plans do not allow suits as we know them except in the case of fault driver hitting fault driver. Choice rhetoric does not reveal this so people are confused."

"Choice no-fault has not gained consumer support in the many years it has been pushed and defeated at the state level... Choice is designed to minimize consumer benefits. It is not a fair trade-off for giving up your right to sue."

JOAN CLAYBROOK, President, Public Citizen; former Director, National Highway Transportation and Safety Administration (NHTSA)

"No-fault is an experiment that has utterly failed. Auto choice

makes good drivers pay for bad drivers. It is a testament to the massive power and pervasive influence of the insurance industry that no-fault remains in effect in some states, where beleaguered motorists want to escape its costly tyranny."

**HARVEY ROSENFELD, author of California's 1988
insurance reform initiative, Proposition 103**

"Like all no-fault plans, [choice no-fault] would permit a reckless driver to avoid paying full compensation to motorists he or she injured. This diminution of personal responsibility is one reason why no state has adopted no-fault since 1976. Insurance companies, which prosper under no-fault, crafted the consumer's choice' plan as a palliative. But its promise is an illusion: when a bad driver chooses' to be fault-free, that decision overrides a good driver's choice to hold the bad driver accountable.... The best way to lower auto insurance premiums is to limit the profiteering and inefficiency of the insurance companies as California did eight years ago."

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January 30, 1997

Auto Choice Makes Good Drivers Pay for Bad

Nader Calls Insurance Companies Profiteers of the 1990s

"No-fault" auto insurance systems have proved a financial, legal and philosophical disaster for motorists across the United States, consumer advocates say, pointing to voluminous data on premiums and litigation in no-fault states. A "no-fault"/"auto choice" conference in Washington, D.C., promoted by insurance industry-funded organizations and consultants, is the opening gambit in a public relations campaign to rescue the failed no-fault concept through federal legislation that would preempt state auto insurance laws.

Auto insurance companies are making huge profits while trying to limit recoveries by drivers. Based on National Association of Insurance Commissioners' data, *Auto Insurance Report* has found that the profit margins for auto insurance are rising. In 1989, the rate of return on net worth for auto insurers was 4.7%. In 1995, the rate of return was 11.6%. In New York, the insurers made a profit of \$841 million in 1995. Consumer advocate Ralph Nader said, "To arbitrarily limit payments to innocent drivers while making billions of dollars in profits is unconscionable. The insurance companies, seeking to impose limits on wounded motorists, want no limits on their profiteering."

No-fault/auto choice would strip Americans of their right to legal representation if they are injured in an auto accident and to have a citizen jury decide who should pay. No-fault means it's always your fault because, when an accident occurs, each side submits a claim to his or her own insurer.

Studies show that no-fault increases premiums; does not reduce litigation costs; is extremely unpopular with motorists; arbitrarily imposes harmful limits on full compensation, transferring the burden to victims and ultimately taxpayers; contradicts traditional notions of responsibility and accountability; and stacks the deck in the insurance companies' favor. ([See no-fault fact sheet.](#))

"No-fault is an unfair and exceptionally costly system that defies the American tradition of justice and fair play and forces good drivers to pay for bad drivers," says Nader. "It is ironic that members of Congress would take a system that has collapsed in state after state, and been rejected by the people of other states, and attempt to impose it on the entire nation through federal legislation."

"To lower insurance premiums, the solution is first to improve auto and highway safety," Nader said. "Second, to help reduce auto theft, and third, to promptly institute consumer protections against the notorious price-gouging, waste and inefficiencies of the insurance industry, driven by its cost-plus approach."

"No-fault is an experiment that has utterly failed," said Joan Claybrook, President of Public Citizen and former Director of the National Highway Transportation and Safety Administration (NHTSA). "Auto choice makes good drivers pay for bad drivers. It is a testament to the massive power and pervasive influence of the insurance industry that no-fault remains in effect in some states, where beleaguered motorists want to escape its costly tyranny."

So-called "Consumer Choice" No-Fault is a Fraud

With no-fault facing extinction, insurance companies, which prosper under no-fault, crafted the "consumer's choice" plan as a palliative. Under the "choice" proposal, motorists ostensibly get to choose whether they want "no-fault" coverage or "traditional liability" coverage. But the promise of a "choice" is an illusion; when a bad driver who causes an accident "chooses" fault-free insurance, that decision overrides a good driver's choice to hold the bad driver accountable through the tort system. Thus, "choice" really offers consumers no choice at all -- they are still subject to no-fault.

This proposal also tramples on states' rights, by imposing a Washington-Knows-Best auto insurance scheme on the states. At present, the majority of states apportion fault in auto cases; their laws would be run over by auto choice.

Industry Gears up for Federal Effort

The insurance industry is gearing up a major political and public relations campaign to keep no fault alive. One component of this campaign is a no-fault/auto choice conference which begins today in Washington, D.C. The conference is sponsored by the Auto Accident Compensation Project (AACP) and a new group called The Committee for Comprehensive Automobile Restitution and Rate Reductions (CAR). AACP is funded by the insurance industry; CAR is an unknown group. Many of the attendees are consultants who have worked with the insurance industry to support no-fault

and oppose regulation of the insurance industry. For example, corporate consultant Andrew Tobias worked closely with State Farm and other insurance companies to unsuccessfully support industry-drafted no-fault legislation in Hawaii and California. University of Virginia Law Professor Jeffery O'Connell also campaigns on behalf of insurance companies for various measures that restrict injured people's right to sue. In California, for example, O'Connell was paid \$67,000 by the insurance industry to unsuccessfully support no-fault legislation and to oppose the successful Proposition 103 rate regulation and roll back law. And the latest "choice" no-fault proposal is promoted by Michael Horowitz of the Hudson Institute, which, like Horowitz's former employer, the Manhattan Institute, is funded by insurers and other big corporations.

"Unable to win support for no-fault at the state level, the insurance industry wants the U.S. Congress to adopt a no-fault insurance system that has failed in every state in which it has been tried," said Harvey Rosenfield, who authored California's insurance reform initiatives. "This shows how desperate the insurance industry is to save no-fault. This 'Auto Insurance Reform' conference, despite the effort to cloak it in an academic guise, has been convened to buttress the insurance industry's no-fault agenda. The conference's failure to even discuss rate regulation and accountability reform, bitterly opposed by the industry, but which has saved Californians billions of dollars in the last eight years, shows that it is the insurance industry which is pulling this conference's strings. It is the insurance companies' interest in fat profits and no accountability which is being protected by these lobbyists masquerading as reform advocates," Rosenfield added.

Fact Sheet on No Fault Auto Insurance

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FACT SHEET ON NO-FAULT AUTO INSURANCE

1. No-fault increases premiums. Insurance companies, which make most of their profits from the investments of premiums, prefer no-fault because it generates higher revenues. Paying the reckless as well as the innocent driver leads to far higher costs; restrictions on tort rights do not offset these higher costs. On average, according to data from the National Association of Insurance Commissioners, premiums in mandatory no-fault states rose 45.6% between 1989 and 1994, a third higher than the average in liability states (33.7% increase). In 1994, six of the top ten most expensive auto insurance states (including D.C.) had no-fault systems.

States that repeal no-fault obtain immediate rate decreases. Of the ten states where auto insurance was the most expensive in 1989, eight were no-fault states. Since then, three of those states -- Pennsylvania, New Jersey and Connecticut -- have repealed their mandatory no-fault systems (no-fault remains optional in Pennsylvania and New Jersey). Georgia repealed its no-fault system in 1991; its average premium dropped 4.8% between 1989 and 1994 -- the greatest decrease in the nation. Connecticut repealed its no-fault system effective January 1, 1994; rates dropped 9.7% that year.



2. No-fault does not reduce litigation costs. One of the great myths of no-fault -- that it dramatically reduces litigation -- is belied by the facts. In no-fault states, suits by motorists against their own insurance company for failure to pay no-fault benefits have skyrocketed. An article in the *Insurance Council Journal*, a publication for insurance defense attorneys, concluded: "Whatever the advantages of no-fault, a reduction in court cases and court costs would not appear to be one of them." (July 1986, Page 389) During the period 1977-89, of the 1,119 appellate opinions in Michigan dealing with no-fault, a whopping 73% (826) were first party cases in which insurers wound up having to sue their own insurance company to receive benefits (Sinas, George T., "No-Fault: a Perspective From Michigan," June 30, 1990. P. 15). Traditional no-fault systems also spawn enormous litigation over whether a particular individual has met the threshold over which claims for pain and suffering may be requested. Another 22% of the reported cases (241) in Michigan concerned the bodily injury threshold requirement, where the question was whether a suit could

be appropriately filed against a third party because the injuries were serious enough (Id). Moreover, litigation over property damage -- the vast majority of car accidents involve property damage -- continues under traditional no-fault systems which retain the liability system for property claims.

3. No-fault is extremely unpopular with motorists. No state has adopted a no-fault law since 1976. Four states have repealed their mandatory no-fault systems since 1989. Voters have rejected no-fault proposals by landslide margins twice in California (1988 and 1996). In recent years, motorists in Hawaii and Massachusetts have petitioned their legislature to get rid of no-fault.

4. No-fault arbitrarily imposes harmful limits on full compensation, transferring the cost of irresponsibility to victims and ultimately taxpayers. No-fault places cruel, arbitrary and unjustified restrictions on the compensation victims of auto accidents may receive by eliminating non-economic damages, commonly known as pain and suffering damages. Under auto choice, motorists who suffer gross disfigurement, blindness or permanent loss of health most likely would go uncompensated for such losses. Consumers could buy insurance to cover pain and suffering damages, but it would be so expensive that most people would forgo this false "choice." Eliminating pain and suffering damages is particularly unfair to women, children, seniors and people of modest means, because they tend to receive most of their compensation in the form of pain and suffering. For example, pregnant women who are hit by a driver and become permanently sterilized would only be entitled to limited compensation for medical costs, but not pain and suffering. (And if the person was a homemaker, she would receive virtually nothing other than payment of medical bills, since she would not be entitled to wages.)

5. No-fault makes good drivers pay for bad drivers. Under the "choice" proposal, motorists ostensibly get to choose whether they want "no-fault" coverage or "traditional liability" coverage. But the promise of a "choice" is an illusion; when a bad driver who causes an accident "chooses" fault-free insurance, that decision overrides a good driver's choice to hold the bad driver accountable through the tort system. Thus, "choice" really offers consumers no choice at all -- they are still subject to no-fault.

6. No-fault leads to more accidents. Studies suggest that no-fault leads to more accidents. In their 1987 book *The Economic Structure of Tort Law*, conservative theorists William M. Landes and Richard A. Posner found that tort law leads to lower accident rates because if the incentive to take care is reduced, people will be less careful, and the cumulatively significant result will be more fatal accidents. Another recent study concludes that no-fault encourages drunk driving. ("Effects of Tort Liability and Insurance on Heavy Drinking and Driving," Sloan, et al., *Journal of Law and*

MEMORANDUM

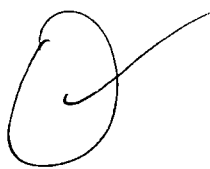
TO: TOM FREEDMAN, MARY SMITH, PAUL WEINSTEIN
FROM: SKYE PHILBRICK
RE: AUTO INSURANCE FRAUD
DATE: DECEMBER 8, 1997

BACKGROUND INFORMATION: Recent surveys have revealed increased support for tougher penalties pertaining to auto-insurance fraud. Although there has been no federal legislation concerning criminal penalties of auto-insurance fraud, many states are attempting to crack down on fraudulent claims. Some states are beginning to look at penalties for auto-insurance fraud and their effectiveness. New Jersey has received a lot of attention due to its high auto-insurance rates. Governor Whitman has proposed increased penalties for fraudulent claims and fining insurance companies \$25,000 each time they fail to report a fraudulent case. Currently, most states impose civil fines, instead of prosecuting cases criminally. Many critics have argued that civil fines will not reduce the amount of fraudulent claims due to the amount of money that people are able to collect from insurance companies.

FEDERAL CRIMINAL PENALTIES: After completing a preliminary search on auto-insurance fraud, I did not find any federal legislation regarding criminal penalties.

STATE CRIMINAL PENALTIES:

NEW JERSEY

Governor Whitman's proposed insurance reform increases penalties for fraud and requires that licenses be revoked for lawyers and medical professionals involved in such schemes. 

The Whitman administration wants to hire 50 more fraud investigators, impose stiffer penalties on insurers who fail to report suspected fraud cases, and pass laws that would make it easier to revoke the licenses of professionals, including lawyers, who engage in fraud. 

Governor Whitman maintains that these measures would reduce insurance rates by 5 percent.

State Senator Cardinale is also introducing "peer review" legislation that would have panels of doctors, not attorneys, decide disputed medical claims.

An earlier Whitman insurance proposal provided drivers with their current \$250,000 worth of coverage, but it only allowed pain-and-suffering lawsuits in the most extreme cases, such as those involving death or verifiable serious injury.

Governor Whitman proposed fining insurance companies \$25,000 for each fraud case they 

uncover and fail to report. The administration pointed out that every family in the nation spends \$161 each year for fraudulent auto insurance claims.

Whitman's insurance reform plan promises a reduction in annual insurance premiums of up to 25% for motorists who agree to give up their right to sue for pain and suffering. Insurance Commissioner Elizabeth Randall argues, however, that anti-fraud initiatives will help lower insurance rates even for motorists who retain their right to sue.

Some other anti-fraud proposals include:

Increasing penalties for medical professionals found guilty of fraud, including license revocation.

Hiring 25 state fraud investigators.

Auto insurers are required to maintain their own fraud divisions and report claims they determine to be fraudulent to the state.

TEXAS

(This is the only material I found on Texas state laws and auto-insurance fraud)

Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting:

The insurer or an agent authorized by an insurer to act on its behalf must release to the authorized governmental agency any relevant information that the authorized governmental agency requests and that the insurer has relating to any specific motor vehicle insurance fraud.

Insurance Fraud Unit:

The insurance fraud unit is created in the Texas Department of Insurance to enforce laws relating to fraudulent insurance acts.

NEW YORK

The New York legislature has created the New York Motor Vehicle Theft And Insurance Fraud Prevention Demonstration Program, the goals of which are as follows: to provide an integrated means to prevent, deter and reduce the incidence of automobile theft and automobile insurance fraud by developing and providing funding for demonstration programs which include education on theft and fraud prevention, programs on automobile theft and insurance fraud prevention and specialized law enforcement units to combat automobile theft and insurance fraud.

FLORIDA

State Treasurer and Insurance Commissioner Bill Nelson has proposed that rewards be paid to insurance crime tipsters. This is in response to a recent probe, Crash for Cash, which has resulted in 100 arrests after an informer called a police hotline. Commissioner Nelson says he will propose a bill to the 1998 Legislature that would allow tipsters to receive cash rewards for information resulting in convictions. Under the proposal, the insurance commissioner would recommend cases in which rewards should be given, and the money would come from fines and penalties imposed on those who violate the state's insurance laws.

The commissioner's anti-fraud proposal also would toughen penalties for insurance fraud artists by increasing the statute of limitations on insurance-fraud crimes from three years to five years; and, by increasing the penalties for insurance-fraud crimes.

Also, under Nelson's proposal, a third-degree insurance-fraud violation would involve less than \$20,000. A second-degree offense would involve from \$20,000 to \$100,000. And a first-degree crime would involve losses of more than \$100,000. Longer prison sentences is also an option for more costly and serious insurance crimes.

MICHIGAN

A new Michigan statute has made it a felony to intentionally file a false report of a stolen vehicle to any law enforcement agency. People who falsely report their cars stolen will face a felony charge with a sentence of four years in prison and up to a \$2,000 fine. ✓

"National experts estimate that 16 percent of every insurance claim dollar goes to pay for fraud."

CALIFORNIA

California Insurance Commissioner Chuck Quackenbush announced legislation making involvement in a staged auto accident a "serious" felony. Currently, a suspect faces a two year sentence and \$50,000 fine if a staged auto accident is committed. Under SB 334, a staged auto accident would be considered a serious felony and it would be subject to the "three strikes and you're out law." Criminals would face a doubled prison sentence if they already have one violent felony conviction, and criminals with two such convictions are subject to life in prison.

ILLINOIS

(I found information on insurance fraud but not specifically on auto-insurance fraud)

Insurance fraud: A person who knowingly obtains, attempts to obtain, or causes to be obtained, by deception, control over the property of an insurance company by the making of a false claim on any policy of insurance issued by an insurance company, intending to deprive an insurance company permanently of the use and benefit of that property, commits insurance fraud.

Sentence:

A violation of this Section in which the value of the property obtained or attempted to be obtained is \$300 or less is a Class A misdemeanor.

A violation of this Section in which the value is more than \$300 but less than \$10,000 is a Class 3 felony.

A violation of this Section in which the value is more than \$10,000 but not more than \$100,000 is a Class 2 felony.

A violation of this Section in which the value is more than \$100,000 is a Class 1 felony.

INSURANCE COMPANIES

IRC estimates that insurance companies' direct spending on fraud detection and prevention

grew significantly from around \$200 million in 1992 to at least \$650 million in 1996. Most insurers surveyed said they plan to increase spending on anti-fraud programs through 1999. More than one-fourth said they would increase their spending on fighting fraud by 10% or more. Key factors contributing to the success of insurers in detecting fraud were identified as training, special investigation units, centralized claims index databases, and the support of claims management. Also, more than half of the insurance companies surveyed have developed anti-fraud public information programs.

Also, the public has expressed interest in combatting auto-insurance fraud. A 1996 IRC study found that 75% of the public are willing to pay one extra dollar to investigate and prosecute insurance criminals.

11 am 1/19

MEMORANDUM

TO: TOM FREEDMAN, MARY SMITH

FROM: SKYE PHILBRICK

RE: AUTO CHOICE REFORM ACT OF 1997

DATE: NOVEMBER 19, 1997

- Auto Choice → GW
- ① Choice Show
 - ② Good drivers pay for bad
 - ③ Higher premiums
 - ④ Empirical
 - ⑤ State

Access points
Insurance forms
1500 forms

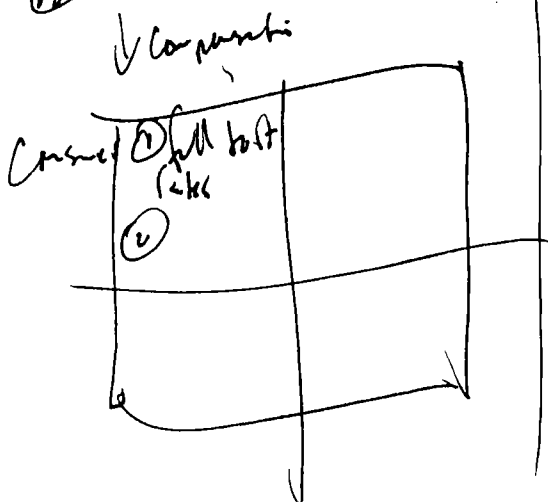
Senator Lott's bill, National Motor Vehicle Safety, Anti-Theft, Title Reform, and Consumer Protection Act of 1997, does not pertain to auto insurance. Senator Lott's bill refers to establishing uniform requirements regarding the titling and registration of salvage, non-repairable, and rebuilt vehicles.

Also, Senator Coverdell's bill, Volunteer Protection Act of 1997 refers to providing certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

Senator McConnell (R-KY) and Representative Armev (R-TX) both introduced the same bill, Auto Choice Reform Act of 1997. The bill states it is to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form on insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

NJ. - 4 choices

- ① Current system
- ② non-econ.
- ③ schedule benefit - limits
- ④ Series - current no fault



- ① fed'l state
- ②

- ① tort language - get less
- ②
- ③ fed'l / state
- Insurance forms
- Choice
- No-fault

- 1 S543 Coverdell (R-GA) 04/09/97
Volunteer Protection Act of 1997.
(BILLTRACK; BillWatch 06/25/97; CRS 07/10/97 -- digest 88 lines)
Item Key: 2139
- ✓ 2 S625 McConnell (R-KY) 04/22/97
Auto Choice Reform Act of 1997.
(BILLTRACK; BillWatch 08/12/97; CRS 06/05/97 -- digest 67 lines)
Item Key: 2413
- 3 S852 Lott (R-MS) 06/09/97
National Motor Vehicle Safety, Anti-Theft, Title Reform, and
Consumer Protection Act of 1997.
(BILLTRACK; BillWatch 10/02/97; CRS 11/06/97 -- digest 78 lines)
Item Key: 3181
- 4 HR501 Ackerman (D-NY) 02/04/97
Car Find Act of 1997.
(BILLTRACK; BillWatch 09/05/97; CRS 02/25/97 -- digest 32 lines)
Item Key: 911
- 5 HR911 Porter (R-IL) 03/04/97
Volunteer Protection Act of 1997.
(BILLTRACK; BillWatch 06/25/97; CRS 07/14/97 -- digest 90 lines)
Item Key: 1561
- 6 HR1024 Mink (D-HI) 03/11/97
A bill to establish requirements for the cancellation of
automobile insurance policies.
(BILLTRACK; BillWatch 04/04/97; CRS 04/14/97 -- digest 28 lines)
Item Key: 1729
- 7 HR1167 Inglis (R-SC) 03/20/97
Volunteer Protection Act of 1997.
(BILLTRACK; BillWatch 06/25/97; CRS 05/02/97 -- digest 46 lines)
Item Key: 2004
- 8 HR1720 Dingell (D-MI) 05/22/97
Surface Transportation Safety Act of 1997
(BILLTRACK; CRS 09/12/97 -- digest 366 lines)
Item Key: 2985
- 9 HR1839 White (R-WA) 06/10/97
National Salvage Motor Vehicle Consumer Protection Act of 1997.
(BILLTRACK; BillWatch 11/10/97; CRS 11/06/97 -- digest 85 lines)
Item Key: 3210
- ✓ 10 HR2021 Arney (R-TX) 06/24/97
Auto Choice Reform Act of 1997.
(BILLTRACK; BillWatch 07/02/97; CRS 09/19/97 -- digest 67 lines)
Item Key: 3506

11 HR2038 Canady (R-FL) 06/25/97
MSPA Clarification Act of 1997.
(BILLTRACK; CRS 10/03/97 -- digest 65 lines)
Item Key: 3535

Enter one or more numbers or ALL to display item(s),
Enter another display command and one or more numbers or ALL,
Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
Or enter BACK, HELP, or STOP
>

① → Does NOT Pertain to Auto Insurance

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Enter another display command and one or more numbers or ALL,
Enter MARK or SAVE and one or more numbers to limit or save your set,
Enter SMARTMATCH and a number to find comparable items,
Or enter BACK, HELP, or STOP
>

p. H3120) (WR p. 1199)

05/21/97 STEVENS, R-Alaska, unanimous consent request that the Senate concur in the House amendment, agreed to by unanimous consent. (see CR p.S4918) (CR p. S4915-S4918)

05/21/97 Measure has now been cleared for enrollment. (CR p. S4918)

06/11/97 Enrolled measure signed in the House. (CR p. H3719)

06/12/97 Enrolled measure signed in the Senate. (CR p. S5594)

06/12/97 Submitted to the president. (CR p. S5594)

06/18/97 Signed by the president.

06/18/97 PL 105-19 111 Stat. 218

2 of 11 items

CQ's WASHINGTON ALERT 11/18/97

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: S625

SPONSOR: McConnell (R-KY)

BRIEF TITLE: Auto Choice Reform Act of 1997.

OFFICIAL TITLE: A bill to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form on insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

QUICK REFERENCE: Grant consumers a choice between two types of car insurance

INTRODUCED: 04/22/97

COSPONSORS: 7 (Dems: 2 Reps: 5 Ind: 0)

COMMITTEES: Senate Commerce, Science and Transportation

RELATED BILLS: See HR2021

CQ BILLWATCH BRIEF:

S625 would grant automobile drivers the choice between two types of insurance: traditional liability coverage and personal injury

protection.

The bill takes aim at the "excessive costs of personal injury lawsuits and their impact on auto insurance premiums," said sponsor ^① Mitch McConnell, R-Ky. *liberals now claim*

Liability coverage would let policyholders injured in an accident collect against their own insurers for economic and non-economic losses if they show that another party caused the accident. ~~Personal injury protection~~ would allow an injured person to collect against his own policy for economic losses only, regardless of fault. *②*

Under both policies, if an injured person's economic losses exceed his limits, he could sue the negligent party for the remaining losses, including a reasonable attorney's fee. *③* *personal on per*

McConnell said enactment of the bill would save consumers about \$40 billion annually in reduced auto insurance premiums. Supporters hope it would reduce "excessive and unnecessary" medical costs claimed in auto accidents.

CQ BILLWATCH INSIGHT:

S625 was referred to the Senate Commerce, Science and Transportation Committee, which held a hearing on the bill July 17, 1997.

Opponents of the bill said it would take away the right to sue for damages, but supporters said it would reduce fraud and abuse in auto-accident lawsuits.

A similar bill was introduced in the 104th Congress. Hearings were held, but no further action occurred.

SHORT TITLE AS INTRODUCED:

Auto Choice Reform Act of 1997

CRS DIGEST:

Auto Choice Reform Act of 1997 - Affords a person the right to choose between: (1) a personal protection system (personal system) providing insurance for that person and any resident relative or dependent; and (2) a tort maintenance system (tort system) providing for the form of motor vehicle insurance otherwise required in the State in which the person is insured. *④*

Sets forth personal system minimum requirements, including regarding waiver of certain tort rights. Supersedes State laws inconsistent with this Act.

Sets forth tort system minimum requirements, allowing State laws (not inconsistent with this Act) regarding uninsured or underinsured motorist coverage.

Provides for: (1) the effect of a person's choice on resident relatives and dependents; (2) underwriting rules to encourage choice uniformity within a household; and (3) the failure of a person to choose.

Requires States to maintain a program to inform consumers (comparing the two systems) about costs, benefits, rights, and obligations.

(Sec. 6) Requires that a person who chooses: (1) a tort system and

is involved in an accident be subject to tort law for injury except that, based on fault, the person may claim against (and be claimed against by) a personal system person only for uncompensated economic loss; and (2) a personal system be compensated only for economic loss, without regard to fault. Provides for the handling of accidents involving: (1) persons with personal protection and unlawfully uninsured persons; and (2) motorists under the influence of alcohol or illegal drugs or engaging in intentional misconduct.

(Sec. 8) Declares that this Act does not apply to a State if: (1) the State so elects; or (2) the State finds that average premiums will not be reduced by at least 30 percent for persons choosing the personal system.

CRS SUBJECT INDEX TERMS:

- Transportation
- Actions and defenses
- Automobile insurance
- Business
- Choice of law
- Consumer education
- Consumer protection
- Consumers
- Damages
- Drug abuse
- Drunk driving
- Federal preemption
- Finance
- Insurance agents
- Insurance companies
- Insurance premiums
- Insurance rates
- Law
- Liability (Law)
- Liability insurance
- Limitation of actions
- Negligence
- No-fault automobile insurance
- State and local government
- State laws
- Torts
- Traffic accidents and safety
- Uninsured motorists

LEGISLATIVE ACTION:

04/22/97 Referred to Committee on Commerce, Science and Transportation (Text of bill appears on pgs. S3428-S3436 of the April 22, 1997, Congressional Record) (CR p. S3419)

04/22/97 MCCONNELL, R-Ky., Senate speech: Introduces the Auto Choice Reform Act of 1997. (Colloquy with several

senators) (Text of bill) (CR p. S3428-S3436)

04/22/97 Original cosponsor(s): 4

Gorton, S. (R-WA) Lieberman (D-CT)
Grams, R. (R-MN) Moynihan (D-NY)

04/30/97 Cosponsor(s) added: 1

Allard (R-CO)

06/18/97 Cosponsor(s) added: 1

Hutchison, K. (R-TX)

06/24/97 *** Related measure (HR2021) introduced in House. ***

07/17/97 Committee hearings held by the Senate Commerce, Science,
& Transportation Committee. (CR p. D777)

07/31/97 NICKLES, R-Okla., Senate speech: Supports the Auto
Choice Reform Act of 1997. (CR p. S8505-S8506)

07/31/97 Cosponsor(s) added: 1

Nickles (R-OK)

3 of 11 items

CQ's WASHINGTON ALERT 11/18/97

*** FULL REPORT -- DIGEST, LEGISLATIVE ACTION, COSPONSORS, SPEECHES ***

MEASURE: S852

SPONSOR: Lott (R-MS)

BRIEF TITLE: National Motor Vehicle Safety, Anti-Theft, Title Reform,
and Consumer Protection Act of 1997.

OFFICIAL TITLE: A bill to establish nationally uniform requirements
regarding the titling and registration of salvage,
non-repairable, and rebuilt vehicles.

QUICK REFERENCE: Establish national standards for registering rebuilt
vehicles

INTRODUCED: 06/09/97

COSPONSORS: 32 (Dems: 13 Reps: 19 Ind: 0)

COMMITTEES: Senate Commerce, Science and Transportation

RELATED BILLS: See HR1839

CQ BILLWATCH BRIEF:

S852 would establish a national standard for the registration of

MEASURE: HR2021

SPONSOR: Armey (R-TX)

BRIEF TITLE: Auto Choice Reform Act of 1997.

OFFICIAL TITLE: A bill to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

QUICK REFERENCE: Grant consumers a choice between two types of car insurance

INTRODUCED: 06/24/97

COSPONSORS: 11 (Dems: 3 Reps: 8 Ind: 0)

COMMITTEES: House Commerce

RELATED BILLS: See S625

CQ BILLWATCH BRIEF:

HR2021 would grant automobile drivers the choice between two types of insurance: traditional liability coverage and personal-injury protection.

The bill takes aim at the "excessive costs of personal injury lawsuits and their impact on auto insurance premiums," said Kentucky Republican Mitch McConnell, the sponsor of a Senate companion measure (S625).

Liability coverage would let policyholders injured in an accident collect against their own insurers for economic and non-economic losses if they show that another party caused the accident. Personal-injury protection would allow an injured person to collect against his own policy for economic losses only, regardless of fault.

Under both policies, if an injured person's economic losses exceed his limits, he could sue the negligent party for the remaining losses, including a reasonable attorney's fee.

McConnell said enactment of the bill would save consumers about \$40 billion annually in reduced auto insurance premiums. Supporters hope it would reduce "excessive and unnecessary" medical costs claimed in auto accidents.

CQ BILLWATCH INSIGHT:

No action has been scheduled on HR2021, which was referred to the House Commerce Committee.

SHORT TITLE AS INTRODUCED:

Auto Choice Reform Act of 1997

CRS DIGEST:

Auto Choice Reform Act of 1997 - Affords a person the right to choose between: (1) a personal protection system (personal system) providing insurance for that person and any resident relative or dependent; and (2) a tort maintenance system (tort system) providing for the form of motor vehicle insurance otherwise required in the State in which the person is insured.

Sets forth personal system minimum requirements, including regarding waiver of certain tort rights. Supersedes State laws inconsistent with this Act.

Sets forth tort system minimum requirements, allowing State laws (not inconsistent with this Act) regarding uninsured or underinsured motorist coverage.

Provides for: (1) the effect of a person's choice on resident relatives and dependents; (2) underwriting rules to encourage choice uniformity within a household; and (3) the failure of a person to choose.

Requires States to maintain a program to inform consumers (comparing the two systems) about costs, benefits, rights, and obligations.

(Sec. 6) Requires that a person who chooses: (1) a tort system and is involved in an accident be subject to tort law for injury except that, based on fault, the person may claim against (and be claimed against by) a personal system person only for uncompensated economic loss; and (2) a personal system be compensated only for economic loss, without regard to fault. Provides for the handling of accidents involving: (1) persons with personal protection and unlawfully uninsured persons; and (2) motorists under the influence of alcohol or illegal drugs or engaging in intentional misconduct.

(Sec. 8) Declares that this Act does not apply to a State if: (1) the State so elects; or (2) the State finds that average premiums will not be reduced by at least 30 percent for persons choosing the personal system.

CRS SUBJECT INDEX TERMS:

- Transportation
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- Consumers
- Damages
- Drug abuse
- Drunk driving
- Federal preemption
- Finance
- Insurance agents
- Insurance companies

organization" means--

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) STATE.--The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) VOLUNTEER.--The term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive--

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation, in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

SEC. 7. EFFECTIVE DATE.

(a) IN GENERAL.--This Act shall take effect 90 days after the date of enactment of this Act.

(b) APPLICATION.--This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

Auto Choice Reform Act of 1997.

Special typefaces used in this bill version:

// \ \ Italic
!! !! Bold roman

Item Key: 2877

105TH CONGRESS
1ST SESSION

S. 625

To provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

=====

IN THE SENATE OF THE UNITED STATES

April 22, 1997

Mr. MCCONNELL (for himself, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GORTON, and Mr. GRAMS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

=====

A BILL

To provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, \\

!!SECTION 1. SHORT TITLE.!!

This Act may be cited as the "Auto Choice Reform Act of 1997".

!!SEC. 2. FINDINGS.!!

Congress finds that--

(1) the costs of operating a motor vehicle are excessive due in substantial part to the legal and administrative costs associated with the resolution of claims under the tort

liability insurance system;

(2) the tort liability insurance system often results in--

(A) the failure to provide compensation commensurate with loss;

(B) an unreasonable delay in the payment of benefits; and

(C) the expenditure of an excessive amount for legal fees;

(3) the incentives of the tort liability insurance system for motor vehicles are distorted, and result in--

(A) significant fraud in the claims process, which exacerbates the level of distrust of many individuals in the United States with respect to the legal process and the rule of law;

(B) significant, wasteful, fraudulent, and costly overuse and abuse of scarce health care resources and services;

(C) unbearable cost burdens on low-income individuals, imposing on them the Hobson's choice of driving on an unlawful, uninsured basis or foregoing essential needs, such as food and adequate shelter;

(D) significant reductions in, access to, and purchases of, motor vehicles, which--

(i) damage the economic well-being of many low-income individuals; and

(ii) cause unnecessary harm to a critical component of the economy of the United States;

(E) significant deterioration of the economic well-being of the majority of major cities in the United States through the imposition of a massive tort tax that--

(i) places a disproportionate burden on urban residents; and

(ii) contributes to the abandonment of the cities by many taxpayers who are able to achieve substantial after-tax savings on automobile insurance premiums by moving to adjacent suburban communities; and

(F) significant inability to achieve market-based discounts in insurance rates for owners of safer cars, which reduces the level of safety for drivers and passengers of motor vehicles;

(4) insurance to indemnify individuals for personal injuries arising from motor vehicle collisions is frequently unavailable at a reasonable cost because of the potential liability for third-party tort claims;

(5) a system that gives consumers the opportunity to insure themselves and that separates economic and noneconomic damages for the purposes of purchasing insurance would provide significant cost savings to drivers of motor vehicles;

(6) a system that enables individuals to choose the form of motor vehicle insurance that best suits their needs would--

(A) enhance individual freedom;

(B) reduce the cost of motor vehicle insurance; and

(C) increase average compensation in the event of an accident; and

(7) a system that targets and emphasizes the scourge of those individuals who drive under the influence of drugs or alcohol will further deter such dangerous and unlawful conduct.

!!SEC. 3. PURPOSE.!!

The purpose of this Act is to allow consumers of motor vehicle insurance to choose between--

- (1) an insurance system that provides substantially the same remedies as are available under applicable State law; and
- (2) a predominately first-party insurance system that provides for--

(A) more comprehensive recovery of economic loss in a shorter period of time; and

(B) the right to sue negligent drivers for any uncompensated economic losses.

!!SEC. 4. DEFINITIONS.!!

In this Act:

(1) ACCIDENT.--The term "accident" means an unforeseen or unplanned event that--

(A) causes loss or injury; and

(B) arises from the operation, maintenance, or use of a motor vehicle.

(2) ADD-ON LAW.--The term "add-on law" means a State law that provides that persons injured in motor vehicle accidents--

(A) are compensated without regard to fault for economic loss; and

(B) have the right to claim without any limitation for noneconomic loss based on fault.

(3) ECONOMIC LOSS.--The term "economic loss" means any objectively verifiable pecuniary loss resulting from an accident, including--

(A) reasonable and necessary medical and rehabilitation expenses;

(B) loss of earnings;

(C) burial costs;

(D) replacement services loss;

(E) costs of making reasonable accommodations to a personal residence to make the residence more habitable for an injured individual; and

(F) loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(4) FINANCIAL RESPONSIBILITY LAW.--The term "financial responsibility law" means a law (including a law requiring compulsory coverage) penalizing motorists for failing to carry defined limits of tort liability insurance covering motor vehicle accidents.

(5) INJURY.--The term "injury" means bodily injury, sickness, disease, or death.

(6) INSURER.--The term "insurer" means--

(A) any person who is engaged in the business of

issuing or delivering motor vehicle insurance policies (including an insurance agent); or

(B) any person who is self-insured within the meaning of applicable State law.

(7) INTENTIONAL MISCONDUCT.--

(A) IN GENERAL.--Except as provided in subparagraph (B), the term "intentional misconduct" means conduct--

(i) with respect to which harm is intentionally caused or attempted to be caused by a person who acts or fails to act for the purpose of causing harm, or with knowledge that harm is substantially certain to result from that action or failure to act; and

(ii) that causes or substantially contributes to the harm that is the subject of a claim.

(B) CLARIFICATION.--For purposes of this paragraph, a person does not intentionally cause or attempt to cause harm--

(i) solely because that person acts or fails to act with the understanding that the action or failure to act creates a grave risk of causing harm; or

(ii) if the act or omission by that person causing bodily harm is for the purpose of averting bodily harm to that person or another person.

(8) MOTOR VEHICLE.--The term "motor vehicle" means a vehicle of any kind required to be registered under the provisions of the applicable State law relating to motor vehicles.

(9) NO-FAULT MOTOR VEHICLE LAW.--The term "no-fault motor vehicle law" means a State law that provides that--

(A) persons injured in motor vehicle accidents are paid compensation without regard to fault for their economic loss that results from injury; and

(B) in return for the payment referred to in subparagraph (A), claims based on fault including claims for noneconomic loss, are limited to a defined extent.

(10) NONECONOMIC LOSS.--The term "noneconomic loss" means subjective, nonmonetary losses including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and humiliation.

(11) OCCUPY.--The term "occupy" means, with respect to the operation, maintenance, or use of a motor vehicle, to be in or on a motor vehicle or to be engaged in the immediate act of entering into or alighting from a motor vehicle before or after its use for transportation.

(12) OPERATION, MAINTENANCE, OR USE OF A MOTOR VEHICLE.--

(A) IN GENERAL.--The term "operation, maintenance, or use of a motor vehicle" means occupying a motor vehicle.

(B) EXCLUSIONS.--The term "operation, maintenance, or use of a motor vehicle" does not include--

(i) conduct within the course of a business of manufacturing, sale, repairing, servicing, or otherwise maintaining motor vehicles, unless the conduct occurs

outside of the scope of the business activity; or
(ii) conduct within the course of loading or unloading a motor vehicle, unless the conduct occurs while occupying the motor vehicle.

(13) PERSON.--The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(14) PERSONAL PROTECTION INSURANCE.--The term "personal protection insurance" means insurance that provides for--

(A) benefits to an insured person for economic loss without regard to fault for injury resulting from a motor vehicle accident; and

(B) a waiver of tort claims in accordance with this Act.

(15) REPLACEMENT SERVICES LOSS.--The term "replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services from other persons who are not members of the injured person's household, in lieu of the services the injured person would have performed for the benefit of the household.

(16) RESIDENT RELATIVE OR DEPENDENT.--The term "resident relative or dependent" means a person who--

(A) is related to the owner of a motor vehicle by blood, marriage, adoption, or otherwise (including a dependent receiving financial services or support from such owner); and

(B)(i) resides in the same household as the owner of the motor vehicle at the time of the accident; or

(ii) usually makes a home in the same family unit as that owner, even though that person may temporarily live elsewhere.

(17) STATE.--The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and any other territory or possession of the United States.

(18) TORT LIABILITY.--The term "tort liability" means the legal obligation to pay damages for an injury adjudged to have been committed by a tort-feasor.

(19) TORT LIABILITY INSURANCE.--The term "tort liability insurance" means a contract of insurance under which an insurer agrees to pay, on behalf of an insured, damages that the insured is obligated to pay to a third person because of the liability of the insured to that person.

(20) TORT MAINTENANCE COVERAGE.--

(A) IN GENERAL.--The term "tort maintenance coverage" means insurance coverage under which a person described in subparagraph (B), if involved in an accident with a person covered by personal protection insurance, retains a right to claim for injury based on fault for economic and noneconomic losses under applicable State law, without modification by any other provision of this Act.

(B) TORT MAINTENANCE INSURED.--A person described in this subparagraph is a person covered by the form of insurance described in section 5(a)(2).

(C) RESPONSIBILITY FOR PAYMENT.--The responsibility for payment for any claim under subparagraph (A) is assumed by the insurer of the person with tort maintenance coverage to the extent of such coverage.

(21) UNCOMPENSATED ECONOMIC LOSS.--

(A) IN GENERAL.--The term "uncompensated economic loss" means economic loss payable based on fault.

(B) ATTORNEYS' FEES.--The term includes a reasonable attorney's fee calculated on the basis of the value of the attorney's efforts as reflected in payment to the attorney's client.

(C) EXCLUSIONS.--The term does not include amounts paid under--

- (i) personal protection insurance;
- (ii) tort maintenance coverage;
- (iii) no-fault or add-on motor vehicle insurance;
- (iv) Federal, State, or private disability or sickness programs;
- (v) Federal, State, or private health insurance programs;
- (vi) employer wage continuation programs; or
- (vii) workers' compensation or similar occupational compensation laws.

(22) UNINSURED MOTORIST.--The term "uninsured motorist" means the owner of a motor vehicle, including the resident relatives or dependents of the owner, who is uninsured under either the personal protection system or the tort maintenance system described in section 5(a)--

(A) at the limits prescribed by the applicable State financial responsibility law; or

(B) an amount prescribed under section 5(b)(1)(A).

!!SEC. 5. AUTO CHOICE INSURANCE SYSTEM.!!

(a) OPERATION OF THE RIGHT TO CHOOSE.--Under this Act, a person shall have the right to choose between the following insurance systems:

(1) PERSONAL PROTECTION SYSTEM.--A person may choose insurance under a system that provides for personal protection insurance for that person and any resident relative or dependent of that person.

(2) TORT MAINTENANCE SYSTEM.--A person may choose insurance under a system that provides for the form of motor vehicle insurance (including tort liability, no-fault, add-on, or uninsured motor vehicle insurance) that is otherwise required in the State in which the person is insured.

(b) PERSONAL PROTECTION SYSTEM.--

(1) MINIMUM POLICY REQUIREMENTS.--In order for a personal protection insurance policy to be covered by this Act, a motor vehicle insurance policy issued by an insurer shall, at a

minimum--

- (A) provide personal protection insurance coverage--
 - (i) with no per accident limit; and
 - (ii) in coverage amounts equal to the greater of--
 - (I) the minimum per person limits of liability insurance for personal injury under the applicable State financial responsibility law; or
 - (II) in a State covered by a no-fault motor vehicle insurance law, the minimum level of insurance required for no-fault benefits;
- (B) contain provisions for a waiver of certain tort rights in accordance with this Act; and
- (C) contain provisions under the applicable State financial responsibility law relating to liability for--
 - (i) property damage; and
 - (ii) bodily injury to protect third parties whose rights to recover both economic and noneconomic loss are not affected by the immunities provided under this Act for those persons choosing personal protection insurance coverage.

(2) SUPERSEDING PROVISION.--This Act supersedes a State law to the extent that, with respect to the issuance of a personal protection insurance policy, the State law--

- (A) would otherwise bar a provision that provides for the personal protection authorizations and accompanying immunities set forth in this Act; or
- (B) is otherwise inconsistent with the requirements of this Act.

(3) PRIMACY OF PAYMENT.--

(A) IN GENERAL.--Personal protection insurance benefits shall be reduced by an amount equal to any benefits provided or required to be provided under an applicable Federal or State law for workers' compensation or any State-required nonoccupational disability insurance.

(B) REIMBURSEMENT OF PAYORS.--

(i) IN GENERAL.--A personal protection insurer may take appropriate measures to ensure that any person otherwise eligible for personal protection benefits who has been paid or is being paid for losses payable by personal protection insurance from a source other than the applicable personal protection insurer shall not receive multiple payment for those losses.

(ii) ACCRUAL OF RIGHTS.--Any right to payment for losses referred to in clause (i) from a personal protection insurer accrues only to that payor. Payments by a payor referred to in clause (i) shall not be counted against personal protection limits for personal protection insurance until such time as the payor is reimbursed under this subparagraph.

(4) PROMPT AND PERIODIC PAYMENT.--

(A) IN GENERAL.--A personal protection insurer may pay personal protection benefits periodically as losses accrue.

(B) LATE PAYMENT.--Unless the treatment or expenses related to the treatment are in reasonable dispute, a

personal protection insurer who does not pay a claim for economic loss covered by a personal protection insurance policy issued under this Act within 30 days after payment is due, shall pay--

(i) the loss compounded at a rate of 24 percent per annum, as liquidated damages and in lieu of any penalty or exemplary damages; and

(ii) a reasonable attorney's fee calculated on the basis of the value of the attorney's efforts as reflected in payment to the attorney's client.

(C) ADMINISTRATION OF PERSONAL PROTECTION BENEFITS.--To the extent consistent with this Act, any applicable provision of a State no-fault motor vehicle law or add-on law governing the administration of payment of benefits without reference to fault shall apply to the payment of benefits under personal protection insurance under this subsection.

(5) MOTOR VEHICLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.--A personal protection insurer may offer, but shall not require, personal protection coverage of any motor vehicle that has fewer than 4 load-bearing wheels, not including the wheels of an attachment to the motor vehicle.

(6) AUTHORIZATIONS FOR PERSONAL PROTECTION INSURERS.--A personal protection insurer may write personal protection coverage--

(A)(i) without any deductible; or

(ii) subject to a reasonable deductible, applicable in an amount not to exceed \$1,000 per person per accident;

(B) with an exclusion of coverage for persons whose losses are caused by driving under the influence of alcohol or illegal drugs;

(C) at appropriately reduced premium rates, deductibles and exclusions reasonably related to health, disability, and accident coverage on an insured person; and

(D) the deductibles and exclusions described in subparagraphs (A) and (C) shall apply only to--

(i) the person named in the applicable insurance policy; and

(ii) the resident relatives or dependents of the person described in clause (i).

(c) TORT MAINTENANCE SYSTEM.--

(1) REQUIRED TORT MAINTENANCE COVERAGE.--The coverage for a person who chooses insurance under subsection (a)(2) shall include tort maintenance coverage at a level that is at least equivalent to the level of insurance required under the applicable State financial responsibility law for bodily injury liability.

(2) ADMINISTRATION OF TORT MAINTENANCE COVERAGE BENEFITS.--To the extent consistent with this Act, any applicable provision of a State law governing the administration of payment of benefits under uninsured or underinsured motorist coverage applies to the payment of benefits under tort maintenance coverage under section 5(c).

(d) EFFECT OF CHOICE ON RESIDENT RELATIVES AND DEPENDENTS.--

(1) IN GENERAL.--Except as provided in paragraph (2), a person who chooses either personal protection insurance or tort maintenance coverage also binds the resident relatives and dependents of that person.

(2) EXCEPTION.--An adult resident relative or a dependent of a person described in paragraph (1) may select the form of insurance that that person does not select if the adult relative makes that selection expressly in writing.

(3) IMPLIED CONSENT.--In any case in which the resident relative or dependent is injured in a motor vehicle accident, the coverage of such person shall be the same as the person described in paragraph (1).

(4) TERMS AND CONDITIONS.--Insurers may specify reasonable terms and conditions governing the commencement, duration, and application of the chosen coverage depending on the number of motor vehicles and owners thereof in a household.

(e) RULES TO ENCOURAGE UNIFORMITY OF CHOICE.--In order to minimize conflict between the 2 options described in subsection (d), insurers may maintain and apply underwriting rules that encourage uniformity within a household.

(f) FAILURE TO ELECT TYPE OF INSURANCE.--

(1) IN GENERAL.--Any person who fails to elect a type of insurance under this section shall be deemed to have elected insurance under the tort maintenance system in effect in that State.

(2) RULE OF CONSTRUCTION.--This subsection shall not be construed to prevent a State from enacting a law that deems a person who fails to elect a type of insurance under this section to have elected insurance under the personal protection system.

(g) CONSUMER INFORMATION PROGRAM.--The State official charged with jurisdiction over insurance rates for motor vehicles shall establish and maintain a program designed to ensure that consumers are adequately informed about--

(1) the comparative cost of insurance under the personal protection system and the tort maintenance system; and

(2) the benefits, rights, and obligations of insurers and insureds under each system.

!!SEC. 6. SOURCE OF COMPENSATION IN CASES OF ACCIDENTAL INJURY.!!

(a) ACCIDENTS INVOLVING PERSONS CHOOSING THE TORT MAINTENANCE SYSTEM.--A person described in section 5(a)(2) who is involved in an accident with another person shall be subject to applicable tort law for injury except that, based on fault, that person--

(1) may claim against any person covered by personal protection insurance only for uncompensated economic loss; and

(2) may be claimed against by a person covered by personal protection insurance only for uncompensated economic loss.

(b) ACCIDENTS INVOLVING PERSONS WITH PERSONAL PROTECTION

INSURANCE.--

(1) RIGHT TO RECOVER ECONOMIC LOSS.--A person covered by a personal protection insurance policy who is injured in an accident is compensated under that policy only for economic loss, without regard to fault.

(2) RIGHT TO SUE FOR UNCOMPENSATED ECONOMIC LOSS BASED ON FAULT.--If a person who chooses personal protection insurance is-

(A) involved in an accident with a person insured under either the personal protection system or tort maintenance system under section 5(a); and

(B) sustains uncompensated economic loss, that person shall have the right to claim against the other person involved in the accident for that loss based on fault.

(c) ACCIDENTS INVOLVING PERSONS WITH PERSONAL PROTECTION INSURANCE AND PERSONS WHO ARE UNLAWFULLY UNINSURED.--

(1) IN GENERAL.--A person covered by personal protection insurance who is involved in an accident with an uninsured motorist shall--

(A) be compensated under that insured person's insurance policy for economic loss without regard to fault; and

(B) have the right to claim against the uninsured motorist for economic loss and for noneconomic loss based on fault.

(2) FORFEITURE OF RIGHTS.--An uninsured motorist forfeits the right to claim against a motorist who has chosen personal protection insurance for--

(A) noneconomic loss; and

(B) economic loss in an amount up to the amount of per-person bodily injury limits mandated by the applicable State financial responsibility law.

(d) ACCIDENTS INVOLVING MOTORISTS UNDER THE INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS OR ENGAGING IN INTENTIONAL MISCONDUCT.--A person who is insured under personal protection insurance shall have the right to claim, and be subject to a claim, for--

(1) driving under the influence of alcohol or illegal drugs (as those terms are defined under applicable State law); or

(2) intentional misconduct.

(e) PRIORITY OF BENEFITS.--A person who is insured under the personal protection system or tort maintenance system under section 5(a) may only claim benefits under such coverage up to the limits selected by or on behalf of such person in the following priority:

(1) The coverage under which the injured person was an insured at the time of the accident.

(2) The coverage of a motor vehicle involved in the accident, if the person injured was an occupant of, or was struck as a pedestrian by, such motor vehicle at the time of the accident, except that such person shall not recover under the coverage of both paragraph (1) and this paragraph.

(f) SUBROGATION RIGHTS.--A personal protection insurer is subrogated, to the extent of the obligations of that insurer, to all of the rights of the persons insured with personal protection insurance issued by the insurer with respect to an accident caused in whole or in part, as determined by applicable State law, by--

- (1) the negligence of an uninsured motorist;
- (2) operating a motor vehicle under the influence of alcohol or illegal drugs;
- (3) intentional misconduct; or
- (4) any other person who is not affected by the limitations on tort rights and liabilities under this Act.

(g) RIGHTS OF LAWFULLY UNINSURED PERSONS.--Nothing in this Act shall be construed to affect the tort rights of any person lawfully uninsured under the terms of an applicable State law for insurance under either the personal protection system or tort maintenance system under section 5(a).

(h) RIGHTS OF PERSONS OCCUPYING MOTOR VEHICLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.--Nothing in this Act shall be construed to affect the tort rights of a person who occupies a motor vehicle with fewer than 4 load-bearing wheels or an attachment thereto, unless an applicable contract for personal protection insurance under which that person is insured specifies otherwise. The preceding sentence applies without regard to whether the person is otherwise legally insured for personal protection insurance or tort maintenance coverage.

(i) RENEWAL OR CANCELLATION.--An insurer shall not cancel, fail to renew, or increase the premium of a person insured by the insurer solely because that insured person or any other injured person made a claim--

- (1) for personal protection insurance benefits; or
- (2) if there is no basis for ascribing fault to the insured or one for whom the insured is vicariously liable, for tort maintenance coverage.

(j) IMMUNITY.--Unless an insurer or an insurance agent willfully misrepresents the available choices or fraudulently induces the election of one motor vehicle insurance system described in paragraph (1) over the other, no insurer or insurance agent, employee of such insurer or agent, insurance producer representing a motor vehicle insurer, automobile residual market plan, or attorney licensed to practice law within a State, shall be liable in an action for damages on account of--

- (1) an election of--
 - (A) the tort maintenance system under section 5(a); or
 - (B) the personal protection system under section 5(a);or
- (2) a failure to make a required election.

!!SEC. 7. RULES OF CONSTRUCTION.!!

Nothing in this Act shall be construed--

(1) to waive or affect any defense of sovereign immunity asserted by any State under any law or by the United States;

(2) to affect the awarding of punitive damages under any State law;

(3) to preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(4) to affect the right of any court to transfer venue, to apply the law of a foreign nation, or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum;

(5) subject to paragraph (1), to create or vest jurisdiction in the district courts of the United States over any motor vehicle accident liability or damages action subject to this Act which is not otherwise properly in the United States District Court;

(6) to prevent insurers and insureds from contracting to limit recovery for lost wages and income under personal protection coverage in such manner that only 60 percent or more of lost wages or income is covered;

(7) to prevent an insurer from contracting with personal protection insureds, as permitted by applicable State law, to have submitted to arbitration any dispute with respect to payment of personal protection benefits;

(8) to relieve a motorist of the obligations imposed by applicable State law to purchase tort liability insurance for bodily injury to protect third parties who are not affected by the immunities under this Act;

(9) to preclude a State from enacting, for all motor vehicle accident cases including cases covered by this Act, a minimum dollar value for defined classes of cases involving death or serious bodily injury;

(10) to preclude a State from providing that forms of insurance other than those listed in section 5(b)(3) shall be subtracted from personal protection insurance benefits otherwise payable for injury;

(11) to preclude a State from enacting a law that--

(A) allows litigation by tort maintenance insureds against personal protection insureds for economic and noneconomic loss; and

(B) assures through a reallocation device that the advantage of tort claim waivers by personal protection insureds against tort maintenance insureds is reflected in the premiums of personal protection insureds; or

(12) to alter or diminish the authority or obligation of the Federal courts to construe the terms of this Act.

!!SEC. 8. APPLICABILITY TO STATES; CHOICE OF LAW; AND JURISDICTION.!!

(a) ELECTION OF NONAPPLICABILITY BY STATES.--This Act shall not apply with respect to a State if such State enacts a statute that--

(1) cites the authority of this subsection;

(2) declares the election of such State that this Act shall

not apply; and
(3) contains no other provision.

(b) NONAPPLICABILITY BASED ON STATE FINDING.--

(1) IN GENERAL.--This Act shall not apply with respect to a State, if--

(A) the State official charged with jurisdiction over insurance rates for motor vehicles makes a finding that the statewide average motor vehicle premiums for bodily injury insurance in effect immediately before the effective date of this Act will not be reduced by an average of at least 30 percent for persons choosing personal protection insurance (without including in the calculation for personal protection insureds any cost for uninsured, underinsured, or medical payments coverages);

(B) a finding described under subparagraph (A) is supported by evidence adduced in a public hearing and reviewable under the applicable State administrative procedure law; and

(C) a finding described under subparagraph (A) and any review of such finding under subparagraph (B) occurs not later than 90 days after the date of enactment of this Act.

(2) COMPARISON OF BODILY INJURY PREMIUMS.--For purposes of making a comparison under paragraph (1)(A) of premiums for personal protection insurance with preexisting premiums for bodily injury insurance (in effect immediately before the date of enactment of this Act), the preexisting bodily injury insurance premiums shall include premiums for--

(A) bodily injury liability, uninsured and underinsured motorists' liability, and medical payments coverage; and

(B) if applicable, no-fault benefits under a no-fault motor vehicle law or add-on law.

(c) CHOICE OF LAW.--In disputes between citizens of States that elect nonapplicability under subsection (a) and citizens of States that do not make such an election, ordinary choice of law principles shall apply.

(d) JURISDICTION.--This Act shall not confer jurisdiction on the district courts of the United States under section 1331 or 1337 of title 28, United States Code.

(e) STATUTES OF LIMITATIONS.--Nothing in this Act shall supersede an applicable State law that imposes a statute of limitations for claims related to an injury caused by an accident, except that such statute shall be tolled during the period wherein any personal protection or tort maintenance benefits are paid.

!!SEC. 9. EFFECTIVE DATE.!!

This Act shall take effect 90 days after the date of enactment of this Act.

compensation for accident victims, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

June 24, 1997

Mr. ARMEY (for himself, Mr. MORAN of Virginia, Mr. SAXTON, Mr. COX of California, and Mr. MCINTOSH) introduced the following bill; which was referred to the Committee on Commerce

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A BILL

To provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,\\

!!SECTION 1. SHORT TITLE!!

This Act may be cited as the "Auto Choice Reform Act of 1997".

!!SEC. 2. FINDINGS!!

Congress finds that--

(1) the costs of operating a motor vehicle are excessive due in substantial part to the legal and administrative costs associated with the resolution of claims under the tort liability insurance system;

(2) the tort liability insurance system often results in--

(A) the failure to provide compensation commensurate with loss;

(B) an unreasonable delay in the payment of benefits; and

(C) the expenditure of an excessive amount for legal fees;

(3) the incentives of the tort liability insurance system for motor vehicles are distorted, and result in--

(A) significant fraud in the claims process, which exacerbates the level of distrust of many individuals in the United States with respect to the legal process and the rule of law;

(B) significant, wasteful, fraudulent, and costly overuse and abuse of scarce health care resources and services;

(C) unbearable cost burdens on low-income individuals,