

NO-FAULT MOTOR VEHICLE INSURANCE

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ISSUE DEFINITION

A major issue has developed over the best mechanism for the equitable and efficient compensation of losses to victims of motor vehicle accidents. A Department of Transportation study shows that motor vehicle accidents in 1967 resulted in more than \$10.5 billion in compensable economic loss. An estimated \$6.5 billion of this loss was compensated, about one-half through the existing liability system. The study concludes that the existing liability system results in compensation that is unevenly and inefficiently distributed and that it should be replaced by a "no-fault" system. Such a no-fault system consists of compensation of an accident victim by his own insurance company and a substantial limitation on the victim's right to sue the at-fault party for damages.

BACKGROUND AND POLICY ANALYSIS

The "motor vehicle reparations system" is the mechanism by which persons who have suffered loss as the result of motor vehicle accidents are compensated. Some sources of compensation, e.g., hospitalization insurance, are regarded as outside the system, since the benefits provided do not occur because the loss resulted from a motor vehicle accident. Within the system, some types of compensation are paid on a contractual rather than a fault basis, e.g., collision insurance, but the principal means of compensation is the liability or fault system. The liability system is composed of both a legal element and an insurance element. The legal element consists of the tort law principle of negligence, which is used to determine the liability for loss. The insurance element consists of liability insurance, which was originally intended to identify negligent drivers for their liability, but which is now recognized as a device to assure the victims of negligent drivers of compensation. This purpose is evident in statutory enactments that either compel the purchase of insurance or provide a strong incentive to do so.

As the result of the passage of a congressional resolution in 1968, the Department of Transportation (DOT) undertook a major study of the reparations system, particularly the liability system. The work resulted in 23 published studies and a report, which was issued in March 1971. The report concluded that the existing liability system has resulted in the inequitable distribution of benefits, with the overcompensation of smaller claims and the undercompensation of larger claims; the untimely distribution of benefits, particularly in the delay in payment of larger, more serious claims; and the costly and inefficient distribution of benefits, with more than one-half of each premium dollar paying legal fees and insurance overhead and less than one-half of each premium dollar compensating victims. Additionally, the DOT report concluded that the liability system has failed to reduce losses and has created various institutional stresses on the insurance industry, the public, and the judicial system. It has been suggested that the fundamental reason for these various problems is an inherent contradiction in the structure of the liability system between a fault-based legal element and a compensation-oriented insurance element.

Those who reject the view that there is no inherent contradiction in the liability system advocate continuation of the existing system or reforms that do not alter the basic fault principle. This principle holds that those who

are responsible for motor vehicle accidents must, as a matter of equity and for deterrent purposes, be legally liable for their conduct. Those who accept the view that there is an inherent contradiction in the existing system have proposed replacing it with a no-fault system. The two key elements of a no-fault system are comprehensive, first-party (owner-operator) insurance and a substantial limitation of tort liability.

A major question in the enactment of a no-fault plan is whether it should be instituted at the Federal or State level. In favor of the Federal approach, it is argued that the nature of motor vehicle travel requires basic uniformity throughout the country and that the States have been slow to enact genuine no-fault plans. In favor of State enactment, it is argued that it is the policy of the McCarran-Ferguson Act (15 U.S.C. 1011) to leave the matter of insurance to the States and that such an approach permits experimentation and a plan tailored to the needs of each State. At the Federal level, there is also the question of whether there should be one uniform plan or a plan that sets minimum standards.

Among the other major questions in considering no-fault insurance are the following: (1) Should no-fault benefits cover only personal injury loss or should they also cover property damage? (2) Should there be durational and/or dollar limits on no-fault benefits? (3) Should tort liability be preserved for damages exceeding no-fault benefits? (4) Should tort liability be preserved for general damages, e.g., pain and suffering? (5) Should an insurer who pays first-party benefits have subrogation rights against the other party's insurer? (6) Should no-fault benefits be primary or secondary to other sources? Aside from various policy questions, there is the issue of whether Congress has the constitutional authority to supplant the tort law of the States with a no-fault plan.

During the 94th Congress, no-fault motor vehicle insurance legislation was again introduced in both Houses. Two of the principal bills were S. 354, the National Standards for No-Fault Insurance Act, introduced by Sen. Magnuson, and H.R. 9650, the National Standards for No-fault Benefits Act, introduced by Rep. Van Deelen. Both bills required every State to enact no-fault laws meeting specified Federal standards. If any State failed to do so by the deadline, an alternate no-fault system would go into effect, to be administered by the Federal Government or, optionally, by the State itself. No final action was taken on either bill.

In the 95th Congress, several no-fault bills were again introduced, principally S. 1381 (Magnuson) and H.R. 6601 (Murphy), identical bills. Under this proposed legislation, the States were required to enact their own plans for motor vehicle accident insurance that would meet or exceed basic Federal standards. The States would remain solely responsible for the administration and regulation of insurance. Although similar to H.R. 9650 from the 94th Congress, this proposed legislation contained some modifications based on analysis of State experience with the no-fault concept. S. 1381 was reported out of the Senate Committee on Commerce, Science and Transportation and the House Interstate and Foreign Commerce Subcommittee on Consumer Protection and Finance favorably reported H.R. 6601 as a clean bill. However, the full House Committee on Interstate and Foreign Commerce rejected the clean bill by a vote of 22 to 19. No further action was taken on either bill.

At the State level, 16 States have, to date, enacted what have been characterized as genuine no-fault laws — that is, plans with comprehensive first-party benefits and a significant abolition of tort liability. The 16

States are Colorado, Connecticut, Florida, Georgia, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Dakota, Pennsylvania, and Utah. Puerto Rico also has such a plan. Eight States have so-called add-on plans that provide for some first-party benefits, but do not limit tort liability. The eight States are Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas, and Virginia.

HEARINGS

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Consumer Protection and Finance. Hearings, 94th Congress, 1st session, on H.R. 285, H.R. 1272, H.R. 1900, H.R. 7985, and H.R. 8441. Washington, U.S. Govt. Print. Off., 1975. 908 p.
Hearings held June 17, 19; and July 8, 14, 17, 22-25, 1975.
Serial no. 94-42

----- Federal Standards for No-Fault Motor Vehicle Accident Benefits Act. Hearings, 95th Congress, 1st session, on H.R. 6601. H.R. 7476, H.R. 1597, H.R. 2300, H.R. 2508, and H.R. 5149. Washington, U.S. Govt. Print. Off., 1977. 763 p.
Serial No. 95-55.

----- State no-fault automobile insurance experiences. Hearings, 95th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1977. 815 p.
Serial no. 95-41.

U.S. Congress. Senate. Committee on Commerce. National Standards for No-Fault Motor Vehicle Insurance Act. Hearings, 94th Congress, 1st session, on S. 354. Washington, U.S. Govt. Print. Off., 1975. 646 p.
Hearings held Apr. 14, 22, 30; May 5; and June 5, 19, 1975.
Serial no. 94-20

U.S. Congress. Senate. Committee on Commerce, Science and Transportation. Standards for No-Fault Motor Vehicle Accident Benefits Act. Hearings, 95th Congress, 1st session, on S. 1381. Washington, U.S. Govt. Print. Off., 1977. 459 p.
Hearings held July 13, 15, 18, and 20, 1977.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. Senate. Committee on Commerce, Science and Transportation. Standards for No-Fault Motor Vehicle Accident Benefits Act; report on S. 1381, together with minority views. Washington, U.S. Govt. Print. Off., 1978. 63 p. (95th Congress, 2d session. Senate. Report no. 95-975).

----- National Standards for No-Fault Insurance Act; report on S. 354 together with minority views. Washington, U.S. Govt. Print. Off., 1975. 177 p. (94th Congress, 1st session. Senate. Report no. 94-283)

CHRONOLOGY OF EVENTS

- 08/01/78 -- The House Committee on Interstate and Foreign Commerce rejected H.R. 13048 by a vote of 22 to 19.
- 05/22/78 -- The House Commerce Subcommittee on Consumer Protection and Finance reported H.R. 6601 as a clean bill, H.R. 13048.
- 05/09/78 -- S. 1381 was reported out of the Senate Commerce Committee by a vote of 9 to 7.
- 07/15/77 -- Department of Transportation Secretary Brock Adams testified before the Senate Committee on Commerce, Science, and Transportation, expressing the Carter administration's support for S. 1381.
- 06/14/77 - 07/22/77 -- Hearings were held during this period on H.R. 6601 and related bills by the Subcommittee on Consumer Protection and Finance.
- 04/25/77 -- S. 1381 and H.R. 6601, identical bills, were introduced in the 95th Congress.
- 03/31/76 -- S. 354 was sent back to the Senate Committee on Commerce after debate, by a Senate vote of 49-45.
- 07/27/75 -- S. 354, as amended, was reported to the Senate from the Committee on Commerce.
- 01/23/75 -- S. 354 was reintroduced in the 94th Congress by Senator Magnuson, and was referred to the Committee on Commerce.
- 05/01/74 -- The Senate passed S. 354, as reported by the Committee on Commerce and as further amended by the Senate.
- 03/27/74 -- The Senate Committee on the Judiciary favorably reported S. 354, as amended by the Senate Committee on Commerce.
- 09/13/73 -- The Senate agreed to a unanimous-consent agreement of Sen. Warren Magnuson to refer S. 354 to the Committee on the Judiciary, with the understanding that the committee will report or discharge the bill by Feb. 15, 1974. This deadline was subsequently extended to Mar. 19, 1974.
- 08/00/73 -- The Senate Committee on Commerce favorably reported an amended S. 354, a "national standards" no-fault bill.
- 03/00/71 -- On the conclusion of its study of the reparations system, the DOT issued its report, Motor Vehicle Crash Losses and Their Compensation in the United States, which endorsed the no-fault principle and called upon the States to enact comprehensive no-fault plans.