

RESEARCH ORGANIZATION

focus

Texas House of Representatives

October 9, 1996

Cars, courts, insurance and torts: Is no-fault worth a try?

U.S. GOVERNMENT DOCUMENT
DEPOSITORY LIBRARY NO. 610

APR 12 1997

UNIVERSITY OF TEXAS-PAN AMERICAN
FOUNDRY, TEXAS 78500-8991

Suggestions that Texas amend its laws governing how drivers collect for damages done to them by other drivers and enact no-fault insurance have recurred for more than 20 years and may be debated again when the Legislature convenes in 1997.

Texas and 26 other states base their auto insurance law on determinations of which driver is responsible for an accident — who is at fault. This system, known as tort liability or third-party insurance, requires the person who is primarily responsible for the accident to pay for the damages to other parties. The driver who is at fault is considered the third party in the system.

Thirteen states and Puerto Rico have a different system of insurance liability — called no-fault or first-party insurance. Under no-fault the insured driver — the first party — receives payment from his or her insurance company without involving the other driver. This system is intended to reduce the number of liability claims that wind up in court by imposing statutory limits on the kinds of lawsuits permitted. Some argue that no-fault insurance, by limiting litigation, helps curb insurance premium rates. No-fault advocates say the current system drives up rates by inflating awards with court costs and payment of non-economic, or “soft,” damages such as pain and suffering. Critics, however, say the no-fault system’s limits on lawsuits put deserving accident victims at an unfair disadvantage.

Under a no-fault system injured drivers are compensated mostly by *their own* insurers, and court actions involving auto accidents are restricted to certain types of cases or certain amounts of damage. Only when these criteria, called “thresholds,” are met can the injured person recover damages from the *other driver’s* insurance company.

Ten states combine the two systems into what is called “add-on” insurance: Drivers have the right to sue and recover from the party at fault, but they also may buy their own insurance to guarantee a recovery.

Texas initiatives

Bills to broaden the use of the no-fault system nationwide have been introduced in Congress, and the Texas Legislature has considered several no-fault proposals. In 1995 three bills proposing no-fault auto insurance were introduced during the 74th Texas Legislature. HB 149 by Clemons was reported favorably by the House Insurance Committee but died in the Calendars Committee. HB 212 by McCall and SB 1048 by Nelson died without a committee hearing.

In Texas a movement to limit damage suits and awards through “tort reform” legislation and criticism of auto insurance rates were cited by some political leaders as reasons to consider no-fault legislation. Gov. George W. Bush during his 1994 campaign urged the Legislature to consider a no-fault system. He proposed no-fault insurance as a way to reduce auto insurance premiums and modeled his proposal on the Michigan system.

Bush argued that while rates in Michigan exceeded Texas rates, they were 17 percent lower than they would have been without a no-fault system. Others, however, including J. Robert Hunter, then the Texas commissioner of insurance, said no-fault insurance would not necessarily result in any savings for consumers.

Texas ranks 12th highest among the states in the average auto liability premium and in the average total premium. (New Jersey, a no-fault state, has the highest average premium. *See table on page 5*.) The

average annual premium for vehicle liability insurance in Texas is \$495, according to the Insurance News Network, and the average total premium, including liability and all other types of insurance coverage, is \$833. Texas drivers spent about \$5.7 billion on vehicle liability insurance in 1995, out of a total of about \$8.8 billion on premiums for all types of auto insurance. About 77 percent of that amount was sold by companies whose rates were regulated by the state, according to the Texas Department of Insurance (TDI).

Settling damage claims

Texas drivers file over 425,000 auto insurance claims a year and recover nearly \$3.7 billion annually on those claims, according to recent estimates by TDI. On average, injured drivers recover \$8,600 for each bodily injury claim and \$1,800 for each property damage claim, the agency estimates.

A driver in Texas must be financially able to pay for a certain amount of damages done to others while driving. Texas law requires drivers to prove their ability to pay for any damages they cause others by maintaining a bond or, far more usual, by purchasing a certain amount of liability insurance. This proof of financial responsibility must be shown in order to renew a driver's license, vehicle registration or highway safety inspection sticker.

It is unlawful to drive without liability insurance or other proof of financial responsibility, and a driver found driving without insurance can be fined \$175 to \$350 for the first offense. Subsequent offenses may carry fines of \$350 to \$1,000, driver's license suspension and impoundment of the driver's car.

While liability insurance policies generally are issued for periods of six months, many drivers pay for premiums quarterly or monthly. "One-month insurance" has become commonplace in Texas as drivers seek to evade the law and carry insurance only long enough to renew a vehicle's license or inspection.

Many drivers, however, purchase not only the state-required liability insurance, but coverage that protects them, their property and their passengers when no other party is at fault. Examples include coverage to pay for damages from a one-car accident or vandalism.

Types of coverage

Liability coverage. Liability insurance pays for injuries and damages, including legal bills, caused by the policyholder, family members or others who have permission to drive the policyholder's car or when the policyholder drives another person's car. Liability coverage limits are commonly expressed in a series of three components divided by slash marks: maximum bodily injury coverage per person/maximum total bodily injury coverage per accident/and maximum property damage protection.

Texas law requires that every driver carry liability insurance covering \$20,000 per injured person, up to \$40,000 for everyone in an accident, and \$15,000 for property damage. Using insurance shorthand, this would be a 20/40/15 coverage requirement. Examples of required coverage in other tort liability states include Virginia, 25/50/20, Oregon and Wisconsin, 25/50/10, and Ohio, 12.5/25/7.5.

Some no-fault states also require a liability component of insurance. Often, this component is priced as part of the no-fault coverage because it is not used except when the damages exceed the thresholds specified in state law as the minimum for bringing a lawsuit. For example, Pennsylvania requires 15/30/5 liability coverage, New York requires 25/50/10 and Massachusetts requires 20/40/5 coverage. Florida requires 10/20/10 liability coverage but only when the driver has a poor driving record, as determined by the Department of Highway Safety and Motor Vehicles. Michigan, however, has no financial responsibility or liability requirement.

Collision and comprehensive coverage. Collision insurance, which, unlike liability insurance, is optional rather than mandatory, pays for damage to the *policyholder's* vehicle. Collision protection is usually limited to the depreciated value of the vehicle, which is not the same as the vehicle's replacement cost. Normally the most expensive component of auto insurance, collision coverage premiums vary depending on the deductible amount (what the policyholder must pay for repairs). Comprehensive insurance pays for non-collision damages to a vehicle, including theft, vandalism and natural disasters. Collision and comprehensive insurance are almost always required by a lender before financing the purchase of a vehicle and for the duration of the financing agreement.

No state, including Texas, requires collision or comprehensive insurance for every driver. In some no-fault states a fixed dollar amount of collision insurance is included as part of the standard no-fault coverage, but it is rarely mandated by law.

Medical coverage. Medical coverage pays the medical expenses of the policyholder and family members if injured in their own car or when passengers in someone else's car. These expenses can

stem from accidents in the policyholder's car, accidents in other vehicles driven (with the owners' permission) by the policyholder and auto injuries when the policyholder is a pedestrian. These payments are made regardless of who is at fault, but the insurance company may seek to recoup them from the other party if that party is liable for the accident. Personal injury protection (PIP) and no-fault coverage are expanded forms of medical payments coverage that are required in some states but are optional in

Definitions in the no-fault v. tort-liability debate

Economic damages — Clear and calculable damages such as medical expenses, lost wages and replacement costs. Replacement costs can include expenses such as renting a car to replace the driver's while it is in the shop and child-care when the primary care provider is injured in the accident.

Non-economic damages — damages that are not easily calculated, such as pain and suffering, inconvenience, emotional distress, loss of companionship and injury to reputation.

Liability coverage — insurance to pay for damages, economic and non-economic, to other people injured in accidents caused by the policyholder. May include punitive damages awarded by a court.

Collision coverage — covers damages to the policyholder's vehicle caused by an accident.

Comprehensive coverage — covers damages to the policyholder's vehicle from non-collision events such as theft, vandalism, fire or hail.

Pure no-fault — An insurance system allowing drivers to insure themselves and their property against any damage. Each driver's coverage is dependent on how much they can afford or need to cover. No driver is allowed to sue another for causing an automobile accident, relying entirely on the insurance coverage purchased to provide full compensation for any damages.

Verbal threshold no-fault — A no-fault system in which the right to sue the driver at fault is limited to certain types of harm inflicted, usually only serious or permanent injuries.

Monetary threshold no-fault — A no-fault system in which the right to sue the driver at fault is limited to certain dollar amounts. The victim's economic damages must be greater than a specified monetary threshold in order to file a claim.

Choice no-fault — A no-fault system in which each driver chooses either to retain the right to sue in all circumstances or to give up that right for a reduction in the price of the insurance.

Connector coverage — coverage purchased in choice no-fault states by motorists who do not take the no-fault option. This coverage pays the policyholder's economic damages when injured by a driver with no-fault insurance. It is sometimes called tort maintenance coverage.

Add-on no-fault — A no-fault system allowing each driver to carry some minimum liability coverage, then add on no-fault coverage to protect their own property.

Texas. Insurance also can be purchased to cover such accident-related expenses as lost wages and payments for child care.

Texas law requires insurers to offer \$2,500 worth of personal injury protection (PIP) for all policies, payable without regard to fault. However, policyholders may reject the coverage by signing a waiver. Most other tort liability states do not require any PIP coverage. Add-on states such as Oregon, however, mandate a minimum of \$10,000 PIP for every policy.

In no-fault states medical coverage for the policyholder and passengers is always required as part of a no-fault insurance policy. Rather than force the accident victims to try to recover their medical expenses from the negligent driver's insurance company, no-fault policies pay the policyholder directly. The required minimums vary greatly from state to state. On the low end, Pennsylvania and Massachusetts require \$5,000 and \$8,000 respectively, Florida requires \$10,000 of coverage and Michigan and New York require \$20,000 and \$50,000 respectively.

Uninsured and underinsured motorists coverage. This type of insurance covers damages incurred when the policyholder is hit by a driver without auto insurance. It covers policyholders, their families and passengers in their car and a policyholder driving another person's car with permission. The insurance company may attempt to sue the other driver to recover the payments, if that driver has any assets.

Underinsured motorist coverage allows the policyholder to supplement the amount received from the third party for personal injury and property damages. It is not always an automatic addition; it often used only used when the third party's insurance does not meet the dollar amount stated in the policyholder's coverage. Prior to 1989 Texas law held that if a person had, for example, \$15,000 in uninsured/underinsured motorist coverage and the other driver had \$15,000 in coverage, no matter what the damages were, the victim could only receive \$15,000. In 1989 the Texas Supreme Court changed that interpretation in *Stracener v. USAA*, 777 S.W.2d 378 (Tex. 1989), which held that an uninsured motorist policy should be added to whatever insurance the negligent driver might have, increasing the recovery in the previous example to \$30,000. In 1995 a bill to change that interpretation, HB 1511 by Duncan, was

passed by the House but died in the Senate Economic Development Committee.

Texas law requires insurance companies to offer uninsured/underinsured motorist coverage as an option for all policies, but does not require a minimum amount of coverage. Other tort liability states, like Ohio, do not require uninsured motorist coverage. Some add-on states however, do require such coverage. Oregon and Wisconsin, for example, require 20/50/0 coverage for uninsured motorist injuries. Virginia requires 20/50/10 coverage, but also offers drivers the option of paying the state a \$400 Uninsured Motor Vehicle Fee to drive without insurance.

No-fault states do not require uninsured motorist coverage since policyholders are supposed to collect from their own insurers regardless of fault. However, most insurance companies operating in no-fault states, especially those with low monetary thresholds for damage suits, offer uninsured and underinsured motorist protection to supplement the personal injury protection coverage.

Additional coverage. All companies have different plans and policies that offer various benefits for additional cost. Some of these additions include:

- ◆ rental reimbursements that cover vehicle rental cost if the policyholder's car is damaged or stolen;
- ◆ coverage for towing and labor charges in case of a road breakdown;
- ◆ auto replacement coverage to insure that the vehicle will be completely repaired or replaced even if the costs exceed its depreciated value; and
- ◆ death benefits in case the policyholder dies as a result of the accident.

New York and Florida, both no-fault states, require \$2,000 and \$5,000 in death benefits respectively, included as part of the standard insurance package.

Auto liability lawsuits

Many of the roughly 425,000 auto insurance claims filed annually in Texas are settled without contest by the parties involved, others are resolved through alternative dispute resolution techniques such as mediation, and some are resolved by the courts. About one-fourth of the claims of bodily injury for amounts of less than \$25,000 are paid as the result of court awards or settlements reached after a lawsuit has been filed, a TDI claims study in 1995 concluded. The percentage of cases settled in court or in

STATE INSURANCE TYPES AND PREMIUMS

State	Type of Insurance	Total Premiums*	Rank	Liability Premiums**	Rank
Alabama	Tort Liability	\$611	34	\$279	42
Alaska	Tort Liability	\$878	9	\$452	16
Arizona	Tort Liability	\$810	14	\$507	10
Arkansas	Add-On***	\$612	33	\$299	36
California	Tort Liability	\$887	7	\$496	11
Colorado	No-Fault (Monetary)	\$823	13	\$476	14
Connecticut	Tort Liability	\$934	6	\$601	5
Delaware	Add-On	\$844	11	\$556	7
Florida	No-Fault (Verbal)	\$702	21	\$441	18
Georgia	Tort Liability	\$697	22	\$309	35
Hawaii	No-Fault (Monetary)	\$1,090	2	\$741	1
Idaho	Tort Liability	\$533	46	\$271	44
Illinois	Tort Liability	\$654	27	\$336	29
Indiana	Tort Liability	\$602	35	\$324	31
Iowa	Tort Liability	\$485	49	\$241	47
Kansas	No-Fault (Monetary)	\$562	41	\$253	45
Kentucky	Choice No-Fault (Monetary)	\$639	28	\$345	28
Louisiana	Tort Liability	\$877	10	\$536	8
Maine	Tort Liability	\$548	44	\$291	39
Maryland	Add-On	\$766	17	\$479	13
Massachusetts	No-Fault (Monetary)	\$1,025	5	\$721	2
Michigan	No-Fault (Verbal)	\$797	15	\$358	25
Minnesota	No-Fault (Monetary)	\$680	25	\$422	19
Mississippi	Tort Liability	\$659	26	\$315	33
Missouri	Tort Liability	\$629	30	\$332	30
Montana	Tort Liability	\$577	38	\$272	43
Nebraska	Tort Liability	\$526	47	\$244	46
Nevada	Tort Liability	\$882	8	\$515	9
New Hampshire	Add-On	\$693	23	\$379	24
New Jersey	Choice No-Fault (Verbal)	\$1,106	1	\$640	3
New Mexico	Tort Liability	\$767	16	\$406	20
New York	No-Fault (Verbal)	\$1,029	4	\$578	6
North Carolina	Tort Liability	\$547	45	\$311	34
North Dakota	No-Fault (Monetary)	\$467	50	\$198	50
Ohio	Tort Liability	\$567	40	\$318	32
Oklahoma	Tort Liability	\$628	32	\$299	37
Oregon	Add-On	\$634	29	\$381	23
Pennsylvania	Choice No-Fault (Verbal)	\$731	19	\$447	17
Rhode Island	Tort Liability	\$1,034	3	\$612	4
South Carolina	Add-On	\$681	24	\$402	21
South Dakota	Add-On	\$516	48	\$231	48
Tennessee	Tort Liability	\$582	37	\$288	40
Texas	Tort Liability	\$833	12	\$495	12
Utah	No-Fault (Monetary)	\$629	31	\$347	26
Vermont	Tort Liability	\$583	36	\$284	41
Virginia	Add-On	\$571	39	\$347	27
Washington	Add-On	\$727	20	\$460	15
West Virginia	Tort Liability	\$734	18	\$400	22
Wisconsin	Add-On	\$555	43	\$297	38
Wyoming	Tort Liability	\$556	42	\$223	49

* Includes the state average premium for a policy containing liability, collision and comprehensive insurance.

** Includes only the liability component or personal injury protection component in no-fault states.

*** Add-on states have some type of required no-fault coverage such as mandatory uninsured motorist coverage.

Source: Insurance News Network, which gathers its data from each state's agency responsible for regulating the insurance industry. (<http://www.insure.com>)

settlements rose to 52 percent among bodily injury claims of \$25,000 or more. The average bodily injury claim recovery in Texas is \$8,600.

parties unless that defendant was responsible for at least 51 percent of the harm. SB 25 by Sibley limits punitive damages.

Non-economic losses

Only part of the damage awards paid are for economic losses. Non-economic losses, such as compensation for less easily measured "soft" damages such as pain and suffering and damages designed to punish certain behavior, called punitive damages, make up a significant portion of damages paid in Texas. The 1995 TDI claims study found that for claims less than \$25,000, 42 percent of the amount of claims awarded was for economic damages, 56 percent for non-economic damages and 2 percent for punitive damages. Among claims over \$25,000, 34 percent of the awards were for economic damages, 57 percent for non-economic damages, 7 percent for punitive damages and 2 percent for interest.

Rate reductions

Also enacted was a bill extending the state's flexible-band rating plan for state regulation of auto insurance premiums, HB 1988 by Duncan. An amendment to HB 1988, by Rep. Mark Stiles, required that financial benefits to the insurance industry from the 1995 tort-law legislation be passed on to consumers as premium rate rollbacks. Insurance Commissioner Elton Bomer in September 1995 ordered a reduction of about 6 percent in the benchmark rate for the bodily injury liability portion of vehicle coverage, among other rollback decisions. The rate reductions recently were extended.

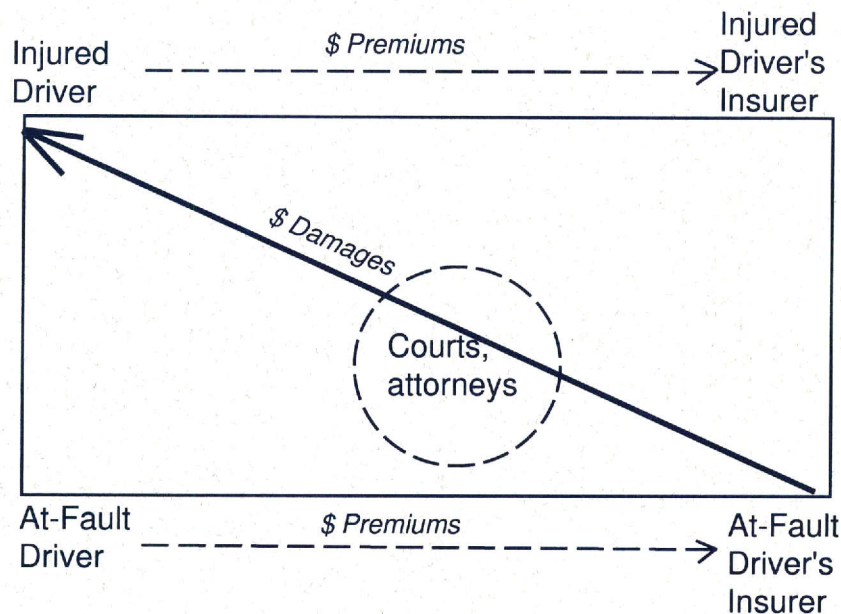
New laws governing liability

The 74th Legislature enacted several laws, part of an overhaul of tort liability law, that are likely to affect auto liability lawsuits. The most significant was SB 28 by Sibley, which modified existing joint and several liability laws. An individual can no longer be held responsible for all of the damages among multiple

No-fault in other states

Thirteen states and Puerto Rico have some form of no-fault insurance law that provides benefits to the insured and restricts the right to pursue an action in court. Massachusetts was the first to enact such legislation, in 1970. Nevada, Connecticut, Georgia and Pennsylvania enacted, and later repealed, no-fault legislation, but Pennsylvania returned to a no-fault system in 1990.

Tort Liability (Third-Party) System



Diagrams show payment of economic damages in a simple case.

No state has enacted a "pure" no-fault system in which all lawsuits over auto damages are prohibited. All no-fault systems allow injured parties to sue and collect for bodily injuries and non-economic damages when certain conditions, or "thresholds," are met. (Michigan is the only state that allows the injured party to sue for *property* damage upon meeting a threshold.) No-fault states fall into three categories in setting thresholds:

- ◆ Florida, Michigan, New Jersey, New York and Pennsylvania have "verbal" thresholds that describe the *types* of injuries that must be sustained in order to bring a cause of action.
- ◆ Colorado, Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, North Dakota and Utah use a monetary threshold scheme where the injured party must reach a *dollar amount* threshold of damages before a suit can be filed.
- ◆ New Jersey, Pennsylvania and Kentucky have a "choice" no-fault system that allows drivers the option to choose no-fault insurance or continue with the traditional tort liability system.

Two recent attempts in California to enact no-fault legislation, while unsuccessful, spotlighted the no-fault debate. A no-fault proposal was placed on the ballot

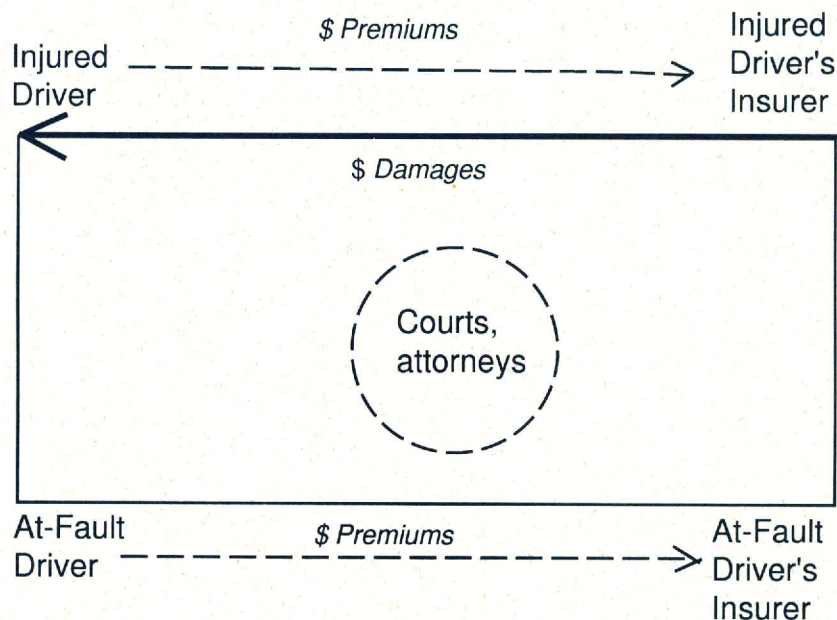
through California's initiative process. Called Proposition 200, the measure would have also required drivers to show proof of insurance when asked by a law officer. Voters defeated the proposal by a 30 percent margin in March.

On August 29, 1996, the California Assembly passed a bill, SB 1129, instituting a no-fault system. The California Senate, however, refused to concur with the Assembly's amendments, and the bill died. The legislation would have required a minimum of \$15,000 in first party medical coverage, but would have set a maximum premium of \$220 a year for "good drivers" to get the minimum coverage. That rate would have been fixed until July 1, 1998, and would thereafter have been adjusted by the insurance commissioner.

Texas no-fault proposals

The Texas Legislature has considered no-fault insurance proposals during the last several sessions. In 1991, HB 583 by Tallas, et al., passed the House but died in the Senate Economic Development Committee. The bill would have required motor vehicle insurance policies to cover economic losses of up to \$20,000 per person from bodily injuries suffered in motor vehicles accidents, regardless of fault.

No-Fault (First-Party) System



No-fault system reduces the possibility of involving courts in a settlement.

Covered persons could not have been held liable for economic losses within that limit or for non-economic losses other than serious injuries. Insurers would have had 30 days from the date of receiving proof of loss to pay benefits, and policies would have had to allow claimants to settle benefit disputes through arbitration.

HB 583 followed a 1990 interim study by the House Insurance Committee, which recommended that no-fault legislation be considered. Additionally, the State Board of Insurance Advisory Committee on No-Fault Insurance that year recommended that Texas replace its tort liability system with either a choice no-fault system, giving policyholders the option to choose no-fault, or a monetary threshold no-fault system as a means of stabilizing insurance costs in the state.

During the 73rd Legislature in 1993 HB 368 by Clemons, et al., proposed a no-fault insurance system that would have provided for essentially the same provisions proposed by HB 583 during the previous session. The bill died in the House Insurance Committee. The same legislation, reintroduced as HB 149 by Clemons et al., was reported favorably by the Insurance Committee during the 74th Legislature in 1995, and later died in the Calendars Committee.

The bill that died in the Calendars Committee was a committee substitute that was very similar in application and dollar amounts to New York's no-fault insurance statute. CSHB 149 would have required every motor vehicle insurance policy to include at least \$50,000 in first-party personal injury protection. That minimum coverage would have applied to each covered person in the accident, with a total cap of \$200,000 per accident. Drivers could have purchased additional insurance, but could have sued the other driver only if the accident caused a serious or permanent injury. Benefits would have included medical expenses, loss of income (not to exceed \$200 per week) and replacement services (not to exceed \$100 per week).

Insurers would have been required to offer person deductibles of \$0, \$100 and \$1,000, limited to the insured and a resident relative. Policies would have had to provide at least \$5,000 in death benefits

as additional insurance. Policyholders would have been barred from bringing a cause of action unless they had a serious injury (defined as death, dismemberment, a significant and permanent loss of an important body function, or a significant and permanent disfigurement that is usually visible when the person is clothed) or the other driver was committing a felony or driving while intoxicated in connection with the accident.

A similar bill introduced in 1995, HB 212 by McCall, was not considered by the House Insurance Committee. HB 212 would have set a threshold of serious injury or permanent disfigurement before a claim for non-economic damages could be brought. HB 212, however, would have set the minimum amount of medical benefits coverage at \$1 million, with every Texas auto insurance policy required to cover that amount of medical expenses. This rate could not have been lowered, but would have risen whenever it failed to cover the medical expenses of 99 percent of all auto accident victims in the state. HB 212 would have set limits of \$1,000 a month for wage-loss benefits and \$20 a day for replacement services. Benefits payable to survivors and funeral benefits would have been included.

THE DEBATE

The debate over no-fault vs. tort-liability insurance systems revolves around such issues as how the systems affect premium prices, fairness, the potential for fraudulent or inflated claims, what happens when one driver fails to purchase insurance, access to courts and the possibility of a compromise scheme uniting features of no-fault and tort-liability systems. The views of supporters and opponents are summarized on pages 9-11.

Premium prices

No-fault insurance proponents argue that the no-fault system can stabilize and reduce the cost of insuring a vehicle. They say when the expense of litigation and other transactional costs and the amount paid for non-economic damages are reduced, premiums should go down accordingly. Studies, however, yield inconclusive evidence that the institution of a no-fault system lowers insurance premiums. Some states' average premiums have decreased as a result of no-fault insurance while others' have risen.

The Institute for Civil Justice, part of the RAND Corporation, a consulting firm, released a study in December 1991 estimating that a no-fault law with a verbal threshold limiting the types of damages covered and a \$15,000 limit on the amount of personal injury benefits could reduce the cost of injury coverage by about 22 percent, lowering the total cost of insurance coverage about 11 percent below that of tort liability systems.

The report and a 1993 follow-up warned, however, that any savings would depend on the specifics of the no-fault plan and the dynamics of the insurance industry in each state. Additionally, the trade-offs between lower costs and the ability to compensate individuals might not be justified. The report did conclude that no-fault systems reduce transactional costs (court and claim costs) and generally speed up compensation. Those people who received substantial economic losses were better covered by a no-fault system, while those with primarily non-economic losses (the majority of accident victims) did not receive as much compensation as they would in a traditional tort liability system.

In 1989 the Alliance of American Insurers estimated that in three no-fault states with verbal thresholds, injury coverage costs were lower than they would have been under the tort systems they replaced. Michigan had a savings estimated at 32 percent, New York at 30 percent and Florida at 16 percent.

Supporters of no-fault insurance say that in Texas, a substantial number of claims are settled by personal injury attorneys who often inflate the cost of the settlement and can sometimes exaggerate damages in order to gain a bigger recovery for their clients, and thus, a greater contingency fee for themselves. Under a no-fault system drivers merely file claims with their own insurance companies for economic damages, which are easily provable. Insurance companies can then concentrate on compensating people's actual

losses rather than raising rates to protect themselves from the barrage of lawsuits from greedy plaintiff's attorneys, no-fault supporters say. While some no-fault states have premiums that are among the highest in the nation, those rates are lower than what they would have been had no-fault insurance not been instituted, say no-fault advocates.

Other supporters say that even if no-fault insurance did not bring rates down immediately, it would stabilize rates because insurance companies would be better able to more accurately predict their expected revenues and payments.

Opponents of no-fault insurance point out that four of the five states reporting the highest average auto insurance premiums nationwide are no-fault states (New Jersey, Hawaii, New York and Massachusetts). No state that has instituted no-fault insurance has experienced a drop in auto insurance premiums that was not erased later. No state has enacted new no-fault legislation in 17 years, and three states have repealed their no-fault laws.

Fairness

Supporters of no-fault insurance claim that it allows more victims to get better compensation, and get it quicker. It is unfair to force injured parties to hire lawyers and file suit just to collect what the insurance company should pay them, they argue. The Texas system forces accident victims to seek money from a party they don't do business with — the other driver's insurance company. That company has no reason to try to treat the victim fairly except when forced to by law, they argue.

Supporters say no-fault allows victims to get settlements from their own insurance companies, which will want to treat them fairly to keep their business. And no-fault statutes, including all those proposed in Texas, require insurance companies to compensate victims within 30 days for undisputed claims, they add.

Opponents of no-fault insurance say it forces good drivers to pay for the acts of bad drivers. All drivers are forced to pay for the risk of being hit by a bad driver instead of being able to sue that bad driver and force the person at fault to pay for the victim's damages. A victim who is compensated must still pay the deductible for every accident, even when completely blameless. A tort liability system lets a victim pay nothing in cases when the other driver is completely at fault.

Insurance companies may cancel the policy of a good, but unlucky driver, no-fault opponents argue. If someone gets into three accidents that are not their fault, a tort-liability system lets them recover on all three of those accidents from *other* insurers. But under a no-fault system, the unlucky driver's insurer might consider that driver too expensive a risk even though that driver was not at fault in any of the accidents. While most no-fault statutes include protection from such actions when the policyholder is not at fault, without court proceedings or other clear proof, it would be difficult to determine that a policyholder was not at least partly at fault, opponents say.

Fraudulent or inflated claims

Automatically awarding economic losses without having to use the court system would reduce inflated claims for non-economic losses, no-fault supporters say. Such damages, often referred to as "soft damages" because they are difficult to calculate, represent a substantial portion of compensation in a tort case. In Texas, non-economic damages constitute over 56 percent of all claims paid, according to a study by the Department of Insurance. The amount sought is often far greater than what is actually needed to fairly compensate the victim, critics argue, because the insured has to take into account the cost of lawyer's fees and court costs.

An accident victim with \$8,000 in medical bills and \$1,000 in lost wages would have to pay at least 33 percent of the recovery to lawyers, under a traditional contingency arrangement, critics argue. On this \$9,000 claim, the victim would only receive \$6,000, not counting court costs and other expenses that might not be covered in the contingency agreement and would normally come out of the victim's share. If, however, the victim claimed an additional \$4,000 to cover pain and suffering, or other "soft" damages, the total recovery would be \$13,000, and the accident victim would receive \$9,000 to cover actual losses. Supporters of no-fault insurance say that a person compensated for the \$9,000 up front would be fairly compensated, and \$4,000 would be saved.

Opponents of no-fault respond that the benefits of reducing fraudulent claims would not outweigh the potential for harm. They say those with valid claims could be unfairly denied non-economic damages because verbal or monetary thresholds prevent them

from seeking redress. While some people may fraudulently claim pain and suffering damages, anyone who has ever been in even a moderately serious accident agrees that physical recovery is a very painful process, it is argued. Why should an accident victim in Texas be prevented from receiving damages for that pain and suffering when victims in 36 other states, including every state neighboring Texas, are allowed to do so? Other opponents claim that such reduction would not result in lower premiums, but just allow the insurance companies to keep as profit the money that they would have spent settling non-economic damage claims.

Uninsured drivers

Proponents of no-fault auto insurance argue that the problem of uninsured drivers is significantly lessened by switching to a no-fault system. A tort liability system forces victims of uninsured drivers to recover from their own insurance companies, under uninsured motorist coverage, if they have any. Without such coverage they must either sue the driver, hoping his or her assets are sufficient to cover damages, or remain uncompensated. Under a no-fault system accident victims would recover their damages from their own insurance company. They would need uninsured motorist coverage only to cover damages exceeding the verbal or monetary threshold provided by law. Additionally, supporters say, under a no-fault system premiums could be reduced so that more people could afford to have at least basic insurance.

Opponents of no-fault plans say the cost of uninsured motorist coverage is added to the base price of no-fault coverage. All drivers still have to purchase uninsured motorist insurance to compensate them for injuries beyond the specified threshold. In effect, they pay part of their basic premium for uninsured motorist insurance for damages under the threshold and then additional insurance in case their injuries exceed that threshold. Other opponents suggest that the number of drivers without insurance might actually increase under a no-fault system. Drivers whose vehicles cost less to replace than to insure and who either have health insurance or depend on emergency medical services for the indigent might be less likely to purchase insurance if the chance of getting sued were significantly reduced, no-fault critics say.

Reducing litigation

Supporters of no-fault insurance say it reduces litigation, frees the courts for more meritorious claims and curbs the attitude that being involved in an auto accident is akin to playing the lottery, with big payoffs to those who are lucky. Overuse of the courts and large, undeserved compensation increase the overall cost of insurance, they say.

Opponents say the no-fault system takes away a person's basic right to sue and does nothing to guarantee lower premium rates. Some oppose no-fault insurance on moral grounds, believing that drivers should take responsibility for their actions and pay only for damages caused by their own negligence. Eliminating tort liability would make it more difficult for innocent victims to sue and recover damages from wrongdoers and remove the economic disincentive for irresponsible behavior.

Other opponents have raised the possibility that preventing someone from bringing a claim in court might violate the Open Courts provision of the Texas Constitution, Art. 1, sec. 13, which guarantees every Texan the right to use the court system to address wrongs done to them. Courts have ruled that reasonable limitations on the use of the courts, like bond provisions for medical malpractice lawsuits, are acceptable. No-fault insurance, however, could completely bar certain claims following an accident.

Choice no-fault systems

Supporters of no-fault insurance often see choice no-fault systems as a first step or compromise between the tort liability system and pure no-fault systems. Under a choice no-fault system, each person would have the opportunity to obtain no-fault auto insurance or stay with the traditional system. Those with no-fault insurance would receive damages from their insurers and would be limited in their ability to sue or be sued. Those who chose to remain with the tort system could still sue and be sued for accidents, but would likely purchase "connector coverage" to compensate them if they happen to have an accident with someone who has no-fault coverage. Connector coverage is very similar to uninsured motorist coverage.

Opponents of no-fault insurance claim that choice no-fault is simply a backdoor way of adopting a no-fault insurance system. Those who did not take the

no-fault coverage would have higher premiums because they would have to purchase connector coverage. Once almost everyone selected the cheaper no-fault insurance, Texas would become, in effect, a no-fault state. Additionally, drivers who retained a right to sue and were hit by drivers with no-fault insurance would lose the right to sue by chance, depending on the type of insurance selected by the person who caused the accident.

Add-on coverage

Some insurance analysts say the problems with auto insurance would be best addressed by a system that "adds on" no-fault benefits to the tort liability system. With this type of system, insurers would pay for their policyholders' damages, regardless of fault, but victims would still be able to sue for damages. Essentially, an add-on system can be described as no-fault insurance without any threshold limits to pursue actions in court.

Proponents of an add-on system say if policyholders were paid by their own insurance companies, regardless of fault, drivers would purchase the amount of insurance coverage they want to protect themselves and their property in case of an accident. All drivers would have basic liability insurance to avoid being sued by other drivers trying to recover damages. Drivers would then have the option of purchasing personal injury protection in amounts that fit their needs and their budgets. Those families with good health insurance could purchase less insurance while others could purchase more PIP coverage to supplement health insurance.

They say drivers who own more expensive cars would purchase more add-on insurance to cover costly repairs than owners of cars worth much less, instead of both being required to purchase a state mandated minimum. The insurance system would not undergo the type of fundamental shift required to switch to no-fault insurance because all drivers would retain the right to sue for damages, they argue.

Opponents of add-on insurance claim that it would simply force the people with the most to lose in a suit (the poor and the middle class) to purchase the most insurance both to protect themselves when their property is damaged and to pay others for the damages they cause. Those who can afford to pay higher insurance premiums are the same people who could afford to pay for damages if they did not have insurance.

Federal no-fault initiatives

Federal legislation to institute a choice no-fault system in all states except those that affirmatively opt out has been proposed in Congress.

Before he resigned from the U.S. Senate, Republican Presidential Candidate Bob Dole cosponsored S. 1860, to establish an alternative to the states' traditional tort-liability insurance plans.

A similar plan was proposed by President George Bush in 1991. Dole stated the primary reason for instituting a choice no-fault system would be to allow those who cannot afford higher premiums the opportunity to purchase no-frills insurance at reduced rates.

The plan would allow the states to set the minimum amount of insurance that must be purchased. The minimum amounts would have to be the same for both no-fault and tort liability coverage. The plan would include connector coverage, called tort maintenance coverage, as part of the insurance coverage for those drivers choosing to stay with tort liability coverage.

States could opt out of the plan by adopting legislation or through a finding, within 60 days of the bill's enactment, by the state official with jurisdiction over auto insurance rates, after an appropriate hearing and supported by evidence, that the statewide motor vehicle premiums in effect immediately before passage of the act would not be reduced by at least 30 percent for persons choosing the no-fault option.

During the 1970s several bills that would have established federal minimum no-fault insurance standards for state laws died in Congress. Proponents of the federal legislation claimed that a uniform law would prevent the problem of changing coverage when traveling between states and eliminate confusing questions regarding choice of law. Opponents said the states should retain their rights to regulate automobile insurance like all other types of insurance, as provided by the McCarran-Ferguson Act of 1954.

By John J. Goodson



House Research Organization
Texas House of Representatives
Capitol Extension
Room E2.180



P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0752
FAX (512) 463-1962

Steering Committee: Henry Cuellar, Chairman • Carolyn Park, Vice Chairman

Tom Craddick		Roberto Gutierrez	Al Price
Renato Cuellar	Robert Duncan	Peggy Hamric	Leticia Van de Putte
Dianne White Delisi	Harold Dutton	John Hirschi	Steve Wolens
		Robert Junell	
		Mike Krusee	

Staff: Tom Whatley, Director; Mary Alice Davis, Editor; Rita Barr, Office Manager;
Patricia Tierney Alofsin, Kellie Dworaczyk, John J. Goodson, Ann Walther and Kristie Zamrazil, Researchers