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AUTOMOBILE INSURANCE AND COMPENSATION STUDY

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COMMITTEE ON COMMERCE UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

AUTOMOBILE INSURANCE AND COMPENSATION STUDY

OCTOBER 7, 1970

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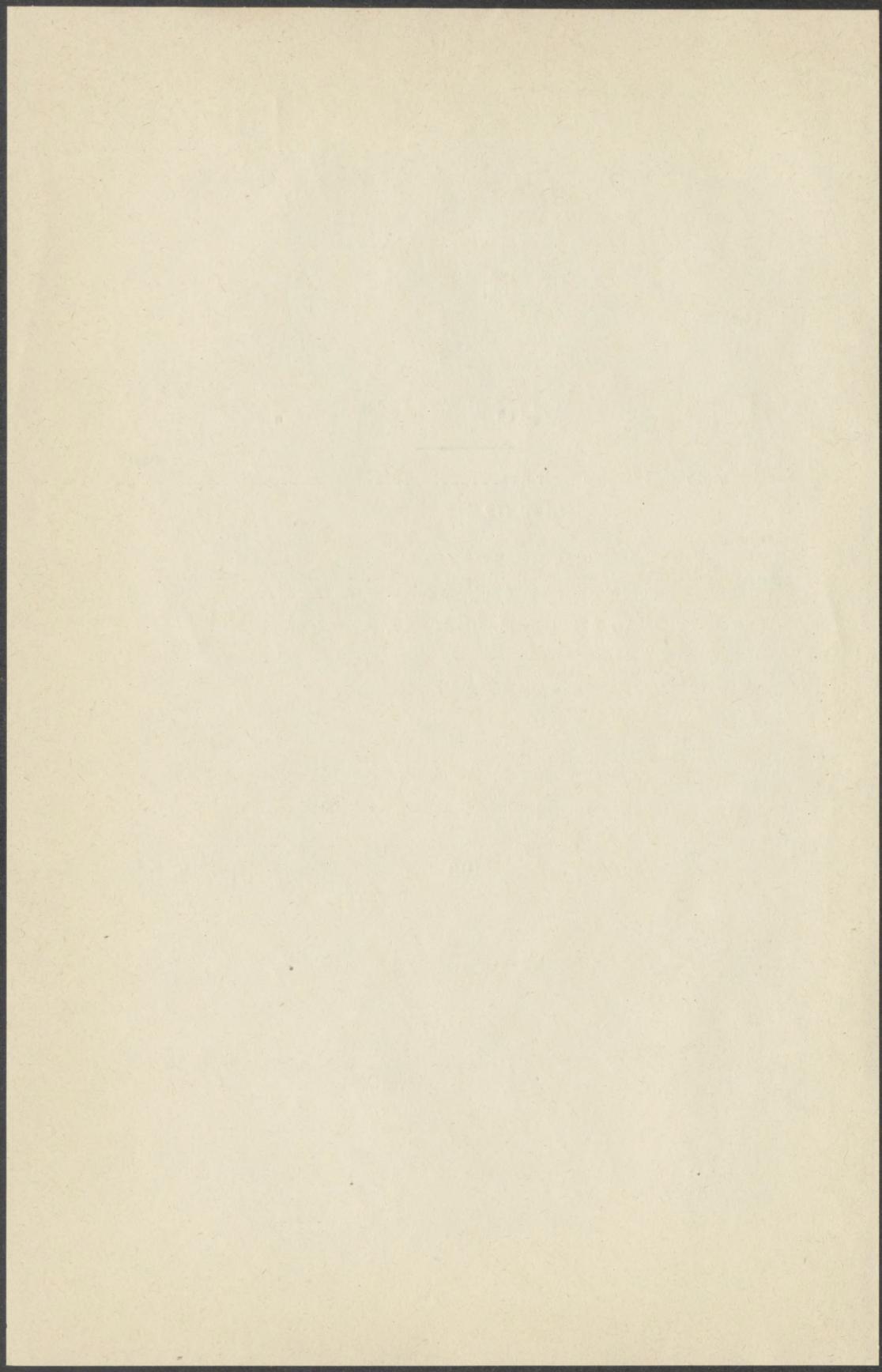
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AUTOMOBILE INSURANCE AND COMPENSATION STUDY

WEDNESDAY, OCTOBER 7, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m. in room 5110, New Senate Office Building, Hon. Warren G. Magnuson (chairman of the committee) presiding.

Present: Senators Magnuson, Pastore, Hart, and Cotton.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

The Chairman has a short opening statement. We are pleased to have the Secretary and the other staff people who were involved in this study with us today.

The committee today will receive testimony from the Secretary of Transportation on the results of the automobile compensation system which Congress directed the Department of Transportation to undertake a little over 2 years ago.

Soaring premium rates, increasing numbers of cancellation or nonrenewal notices, long delays in payment, and years of tedious litigation had prompted Congress to suggest and cooperate with the Department of Transportation on this study. Its purpose was twofold: (1) to provide Congress important factual information about the present system—how it works and for whom it works, and (2) to propose changes in the present system if it was found to be inadequate.

Unfortunately the administration is not prepared to deliver its final recommendations, even though the May 1970 completion date of the study is past due, and even though Secretary Volpe has cooperated with us since early August to present the study group's final report. However, the Secretary is prepared now to discuss the factual results of the 2-year, \$1.6 million study.

On the basis of the facts available at this time, one must conclude that the present system is not adequately serving policyholders, accident victims, or the general public.

The present auto insurance system compensates less than half of our seriously injured auto accident victims. By contrast, the policyholders with small claims are paid more than four times their out-of-pocket loss.

Almost 10 percent of the policyholders in this country are in the hard-to-place insurance market. As many as 15 percent of the drivers in this country might be operating vehicles today on the highways without insurance.

Staff member assigned to this hearing: S. Lynn Sutcliffe.

So we look forward this morning to developing more fully the factual picture of this automobile compensation system. And the committee is pleased to have the Secretary here to present his remarks and to answer such questions as the committee may have.

Before we hear from Secretary Volpe, let me state my firm belief that the facts now show fundamental national flaws in our automobile compensation system that demand some innovative national solutions, solutions which this committee will vigorously pursue in the coming months.

Let me say, also, a word about the factfinding phase of the study, which is now complete. The study to date has been conducted in my opinion in a highly professional bipartisan manner.

Its 18 fact-filled volumes represent a major achievement in cooperation between the Congress, the administration, and the insurance industry. These volumes contain an impressive array of information and statistics whose quality is appreciated by the committee and acknowledged by experts throughout the country.

I want to commend the study staff for the excellent job they did in gathering the facts. Usually others get all of the credit for a job well done. But I would like to single out of the staff for special commendation, particularly Richard Walsh, the staff director, and Dr. Lee Huff, who planned much of the study.

So we appreciate having you all here today and we will be glad to hear from you, Mr. Secretary.

STATEMENT OF HON. JOHN A. VOLPE, SECRETARY OF TRANSPORTATION; ACCOMPANIED BY RICHARD J. BARBER, DEPUTY ASSISTANT SECRETARY FOR POLICY; LEE W. HUFF, DIRECTOR OF ECONOMIC STUDIES AND PROJECTS; AND RICHARD F. WALSH, DIRECTOR OF OPERATIONS, AUTO INSURANCE STUDY

Secretary VOLPE. Thank you very much, Mr. Chairman, and members of the committee. May I first of all express our appreciation for your generous remarks, particularly those regarding the nonpartisan nature of our efforts and the commendation you have given to the men who have been most responsible for the study: Dr. Lee Huff on my extreme right; on his left, Dick Barber, the Deputy Assistant Secretary for Policy; and on my left, Mr. Walsh, the staff director.

It is a pleasure for me to be here this morning to discuss the automobile insurance and compensation study directed by Public Law 90-313.¹ The central thrust of that joint resolution is to be found in its statement that "there is needed a fundamental reevaluation of [the existing system of compensation for * * * suffering and loss of life resulting from motor vehicle accidents], including a review of the role and effectiveness of insurance and the existing law governing liability."

The bulk of the research findings of the study have already been published in a series of 18 reports beginning last spring. As you can see, they make quite a substantial volume. Some of them, we believe, allow us to see for the first time from a national perspective, how the present system of motor vehicle accident compensation is serving the American motoring public. Others are designed to view the system, especially the tort liability insurance system from particular perspec-

¹ See p. 47 for S.J. Res. 129 (Public Law 90-313).

tives; for example, that of its impact on the courts and the bar, that of the seriously or fatally injured victim, or that of the claimant who makes an insured tort claim. Others deal with specific aspects of the system such as rehabilitation, the accident repeater problem, accident causation and deterrence, the historical roots and rationale of the tort liability system, the hard-to-insure driver, et cetera. These research findings constitute the core of the study's work.

Of course, in grappling with important public policy issues, the piling up of facts, research findings, and expert opinions seldom leads automatically to easy solutions, and nowhere have I found this to be more true than in the matters we will discuss today—accidents, accident losses, and accident loss compensation. Motor vehicle accidents kill tens of thousands and injure millions of our citizens every year. Their immediate economic consequences run into the billions of dollars, as do both the benefits received by their victims and the costs of delivering those benefits.

In addition, these accidents involve great human and social costs, which are just as real, if more difficult to measure and comprehend, as their more direct economic consequences.

For society as a whole, these costs can be viewed as part of the price of the great freedom and flexibility that motor vehicle transportation gives both the individual and the economy. For the victim, however, his accident costs would often mean great economic hardship or even ruin if they had to be borne without help. For this help, the victim looks to the mechanism which society provides for compensating him for his losses—the motor vehicle accident compensation system.

The study indicates that the main problems currently afflicting this system stem basically from the legal rules governing reparations, from the operation of the insurance mechanism, and from the great and growing costs of the accidents themselves.

The spiraling costs of accidents, which auto insurance premiums partially reflect, should first be attacked directly by measures which stimulate safe driving behavior and which improve the driving environment and, thereby, work to reduce the frequency of accidents and the severity of the resulting losses. The discovery and promotion of such measures is a major continuing responsibility of our Department.

Accident loss reduction efforts, however, while vitally important, cannot be viewed as the sole, or even the principal, answer to the problems of the compensation system. The Department knows from its work in the auto safety field that even assuming that the most optimistic predictions of future accident loss reduction prove justified, we must unfortunately expect that large numbers of people will continue to be injured and killed in automobiles accident and that damage to property, especially vehicles, will not soon be significantly curbed.

FACTUAL RESULTS

The operation of our present motor vehicle accident compensation system has been described and documented by commentators and scholars over the course of nearly a half a century. The legislative history of Public Law 90-313, itself, indicates clearly that the Congress was concerned about problems in the system, although better quantification and more detailed analysis were felt desirable.

The CHAIRMAN. I don't like to interrupt, but I want to suggest that no one has experimented more with the problem of automobile insurance and the things you talk about than the State of Massachusetts.

Secretary VOLPE. I am aware of that and was right in the middle of a good deal of that.

The CHAIRMAN. And Rhode Island and Connecticut, for some reason, they were busy with it all of the time. A lot of trial and error took place there, so you have a good background.

Secretary VOLPE. Just a little bit.

Senator PASTORE. And yet they haven't solved the problem.

The CHAIRMAN. That is right. That is why we are here today.

Senator PASTORE. It is a hot potato still today in Massachusetts, isn't it, John?

Secretary VOLPE. That is right.

(Continuing his prepared statement.) What the Department's study has done is try to look at the system from a national rather than a regional perspective, produce fresh and thorough quantitative data about the system's operation, and provide basic data upon which we will consider how the system might be improved or changed to better serve the needs of the American motoring public.

LIMITED SCOPE OF THE LIABILITY INSURANCE SYSTEM

Under the auto accident liability system, only those who can prove that others were at fault while they were without fault in an accident have a legal right to recover their losses.

One of the several studies conducted by the Department has shown that only 45 percent of those killed or seriously injured in auto accidents received benefits from the tort liability insurance system. One out of every 10 of these victims received nothing from any system of reparation.

Senator PASTORE. Is that 45 percent figure whether they were right or wrong?

Secretary VOLPE. Yes, sir.

Senator PASTORE. Even though they might have been in the right, it is only 45 percent?

Mr. WALSH. No. This particular statistic includes all accident victims.

Senator PASTORE. All accident victims, whether they were right or wrong?

Mr. WALSH. Yes, whether they were right or wrong.

Senator PASTORE. Thank you.

Secretary VOLPE (continuing his prepared statement).

THE RATIONAL ALLOCATION OF COMPENSATION RESOURCES

Despite the fact that it is generally the accident victim with the large economic losses who also suffers the large intangible losses, as the tort system works in practice, he has a far poorer chance of being fully compensated for his economic loss, let alone any intangible loss, than does the less seriously injured victim. For example, it was found in the study that only about half of the total compensable losses of seriously or fatally injured victims are compensated. For those victims

whose economic losses were more than \$25,000, only about a third was usually recovered. Those with relatively small economic losses, by contrast, fared much better. If they recovered from tort and had losses less than \$500, they recovered in total an average of four and a half times their economic loss.

EFFICIENCY

The tort liability insurance system as it operates for automobile accident victims has a very high cost/benefit ratio compared to any other major reparations system.

Senator COTTON. Can I interrupt for one question? I may be anticipating something which you cover later in your statement, Mr. Secretary, but has the study differentiated in this matter of uncovered losses as between personal injury and property?

In other words, many people carry a \$50 or \$100 deductible on their automobile insurance and get back everything except that, even if the other party is not insured.

But I wondered if somewhere along the line the study makes a distinction between those who suffered property loss and those who suffered loss from physical injuries?

Secretary VOLPE. It definitely has, Senator.

Senator COTTON. Does that come later in your statement?

Secretary VOLPE. Yes, sir.

Senator COTTON. Then, I am sorry and I beg your pardon for interrupting you.

Senator PASTORE. Isn't there another point here? Within this category aren't we talking about people who did not have insurance as against people who suffered damage and collected from the defendant?

Secretary VOLPE. Yes, there are those two aspects, also.

Senator PASTORE. Is that going to be analyzed in the report? Because I can understand if you have insurance you recover—except for the \$100 deductible—you don't have any trouble recovering in that case because you have insured yourself. Whether you are right or wrong, you collect.

But is there a distinction being made as against those who are not covered in that respect, but who are injured there through someone else's negligence and their recovery is less than \$500?

Mr. WALSH. Sir, in our study of the fatally and seriously injured victims, we took account of all sorts of reparations, both the first and third party auto reparations and, in addition, all other reparations, i.e., social security, veterans' benefits, private loss insurance, life insurance, anything that might have gone into repairing the victims' losses. Those various kinds of compensation sources are differentiated in the two-volume study, "Economic Consequences of Automobile Injuries."

Senator PASTORE. I was directing my question to what Mr. Volpe just said, in the instance where the damage is not in excess of \$500, the recovery has been good. Now, are we talking about personal injuries or property damage?

Mr. WALSH. We are talking about all kinds of economic loss, both property damage and personal injury.

Senator PASTORE. Within that figure of \$500?

Mr. WALSH. Yes, sir.

Senator PASTORE. Thank you.

Secretary VOLPE (continuing his prepared testimony). For every dollar of net benefits that it provides to victims, the study shows it consumes a dollar.

THE PROPER TIMING OF COMPENSATION BENEFITS

The tort liability system tends to apportion benefits rather unevenly, in some cases paying too late and in others too soon. Three different investigations by the Department have demonstrated that despite commendable efforts to introduce advance or partial payment techniques, the system is still often quite slow in providing benefit payments for even that limited class of victim that it claims to serve; moreover, the system can operate to discourage early rehabilitative efforts and places a premium upon their deferment beyond the time when they could be most effective. An industry study of some 35,000 personal injury claim files clearly establishes that the system pays most slowly in cases where the need for timely payment is greatest; that is, cases of permanent impairment and disfigurement.

REHABILITATION OF ACCIDENT VICTIMS

Closely related to the problem of delay in the payment of benefits is that of lost opportunities to minimize very large personal injury losses by the timely use of comprehensive rehabilitation programs for seriously injured accident victims. One study project indicated a disappointingly low utilization of rehabilitation even when it was recommended to the victim.

To achieve the maximum potential benefits from the rehabilitation process, the relationship between private insurance benefits and the various rehabilitation agencies, including local, State, and National agencies, must be consciously and explicitly coordinated and rationalized with the auto accident compensation system.

PROPERTY DAMAGE

The Department's study of the compensation system has focused principally on the fate of the bodily injured victim. I believe this was proper for at least four reasons.

First, people are more important than property. Second, the most serious accident losses are associated with people, not property. Third, the present compensation system is doing much better today with property losses than it is with people losses. Fourth, the problems of personal injury losses are far more complicated than those of property losses.

Nevertheless, property damage losses are important; they are very large in dollar value and they affect far more people than injury losses. In recent years, the cost of repairing vehicles has risen sharply with a consequent rise in the cost of insuring for that repair. Experts, many of them within the insurance industry, have rightly traced part of this rise to the designs of the vehicles themselves.

Unfortunately, there is no way for liability insurance to distinguish between damage-resistant vehicles and fragile vehicles, or between very expensive vehicles and those of less value since it is concerned solely with some other car owner's accident likelihood. Moreover, rating systems for collision insurance have only very recently begun

to take any consideration of the vehicle's damageability. Now that we have this clearer perception of the vehicle's contribution to crash losses, we can hopefully expect some countervailing pressure by the insurance institution on car designers to help curb future crash losses.

STRAINS ON INSURANCE INSTITUTIONS

The accumulated problems of the tort liability insurance system are now having their undeniable impact on the insurance industry itself. Underwriting profits have for many companies turned to underwriting losses. It has been alleged that capital may actually be withdrawing from the market; while the threat of such withdrawal is hardly of recent vintage, its actuality, on any large scale, would be new and would present a social problem of very serious proportions.

According to the study, auto insurance today appears to be coming more and more difficult for some drivers to buy in the voluntary insurance market. Between 1966 and 1969 the number of motorists having to obtain their insurance from companies not of their own choosing through assigned risk plans grew from 2.6 to 3.2 million, or 23 percent.

The Federal Trade Commission, in part of its work for our study, estimated that 8 to 10 percent of all drivers are in the hard-to-place insurance market. This development comes at a time when their requirements for insurance, overall, are increasing if only because of rising medical and auto repair costs.

IMPACT ON OTHER PUBLIC INSTITUTIONS

Automobile accident disputes are currently placing severe strain on the Nation's judiciary, even as a multitude of other demands threaten to overburden it. According to the study, automobile accidents contribute more than 200,000 cases a year to the Nation's court load. Simply in terms of judge time alone, they absorb more than 17 percent of the country's total judicial resources and long delays—and I mean "long"—are not uncommon in jurisdictions with severely crowded court dockets, and that applies particularly to Massachusetts.

Also, the motor vehicle accident tort liability insurance system has exerted great strains on the existing system of State regulation of insurance. The primary problem of insurer insolvencies has been concentrated among speciality auto insurers serving the high-risk market. The resulting problems for consumers, regulators, and the insurance institution in general have proved so resistant to solution that they threaten to lead to greater centralization and a consequent loss of local initiative and freedom in insurance regulation, to the great detriment of all concerned.

In summary, the existing system is not serving the accident victim, the insuring public, and society as well as it should. We should seek to improve its performance.

APPROACHES TO A BETTER COMPENSATION SYSTEM

The factual findings of the Department's study of the motor vehicle accident compensation system makes it evident to me that improvements can be made in a way to redress losses sustained in auto

accidents. I am convinced that with careful assessment of alternative approaches, we—meaning the Congress, the Department, the States, the insurance industry, the bar, and all the rest who go to make up this complex set of institutions—can find a better way to do the job. In saying this I do not mean to suggest that the insurance companies, the State regulators, or the lawyers who specialize in accident litigation have not, in the past, measured up to their public responsibilities. Rather, the extensive study we have conducted dramatically demonstrates that the scale of the auto accident problem has simply become so immense that the techniques which may at one time have been adequate may be no longer sufficient in every respect to present-day realities. What we must do now, all of us who are seriously interested in this problem, is begin the search for a more effective, more efficient way of meeting this challenge.

Our study has convinced me, however, that the problem of motor vehicle accident compensation is far more complex and far less easily resolved than many appear to believe. One certainly wishes there panacea—an easy and quickly implemented solution that could be promptly implemented and put into practice. But such is not the case. There are many ideas and a large number of proposals which have been advanced over the years, but each presents sizable problems. Further, there is no significant basis of experience for assessing the relative strengths and weaknesses of new approaches. While the present system has its obvious faults, we should not hastily move to a system merely because it is new. Caution, commonsense, and consideration of sound public policy demand that we carefully assess the full range of alternatives and move gradually in the direction of reform, checking actual experience as we proceed.

With the factfinding phase of the study now substantially completed, we will pursue intensively a thorough examination of alternative approaches to the solution of this problem. We anticipate that this next phase will be completed in time so that we can submit detailed recommendations for reform early in the next Congress.

I believe we can agree on some of the main directions of change and the basic principles by which it should be guided. The overriding goal should be a compensation system that is efficient, offers greater flexibility and choice, is fair, gives maximum incentives to loss reduction, and that in the final analysis, does a better job of repairing victims' losses than the one we have today. Let me identify some of the other basic principles.

To begin with, it should cover the bulk of economic losses associated with medical expenses, income loss, funeral expenses, and property losses, among other things, at levels designed to prevent or effectively mitigate any serious economic dislocation for the individual victim or his dependents. Beyond this there are a number of other points that should be taken into account.

I am also persuaded that much greater emphasis must be placed on rehabilitation of those who are injured. They should receive compensation on a timely basis and in such a way to encourage systematic rehabilitation. As you know, much auto insurance is now administered on the so-called first-party basis, as with the medical payments and collision coverage elements of the policy typically held at present by most vehicle owners.

Some experts, including those in the insurance industry itself, have proposed greater reliance on this technique. On its merits this approach warrants a close look to determine its practicality and feasibility.

In considering these factors, and the other elements which go to make up an effective compensation system, we should continue to rely upon private enterprise to operate the auto accident compensation system. Similarly, I am strongly persuaded that in the long run reform offers its best opportunities at the State level. This may require greater Federal cooperation with the State governments, though without direct Federal intervention. Conceivably the National Conference of Uniform State Law Commissioners, with suitable Federal financial assistance, could play a role in moving toward reform.

Mr. Chairman, the problems of automobile insurance and compensation are incredibly numerous and complex. What I have tried to do here today is lay out the broad factual base reported by the study to meet the accident compensation needs of our motoring citizens. We are prepared to work with your committee, State governments, the industry, the bar, and any other interested group or institution in examining approaches to meet the important problem of auto insurance.

Thank you, Mr. Chairman. That completes my prepared statement. We are prepared to answer any questions.

The CHAIRMAN. Before we proceed let the record show those who are accompanying you here.

Mr. VOLPE. The reporter has already been furnished that information.

Mr. CHAIRMAN. Now I have a couple broad questions. In your statement you say that you anticipate you will submit some detailed recommendations to Congress the next session.

Mr. VOLPE. Yes.

The CHAIRMAN. Now are the problems that you have highlighted as a result of the study and other experiences you have had as Governor of Massachusetts—are they national in scope?

Mr. VOLPE. I would say basically there probably is hardly a State in the Union that does not have this problem to some degree or other. I don't think the intensity is the same in every State, but I think it prevails throughout the Nation.

The CHAIRMAN. Would you say that generally—you mention State cooperation and the reluctance to have Federal investigation in these matters—but the solution has to be national, doesn't it? Either a uniformity of State laws or some basic guidelines from the Federal Government; it has to be national, doesn't it?

Mr. VOLPE. Mr. Chairman, this is exactly what I mean. At least as I see the legislation that might be framed. The Federal Government would provide broad guidelines, a framework within which the States should operate and private industry would undertake to carry out its responsibilities, that is, within the Federal framework and that of the State regulatory bodies.

I am convinced we have to provide some leadership in this field as we have done in the highway safety field. But I would prefer to see the States themselves undertake to actually do the job.

The CHAIRMAN. And that would be based upon—I don't suggest any lack of cooperation from the States—but it would be based on

cooperation. And then you would have some uniformity in approaching this whole matter which the State insurance commissioners, I think, have been working on in many cases. Similar approaches to interstate traffic problems have been adopted by this committee.

If the States can get together, we can have uniformity. But there can't be 50 different versions of this throughout the United States because of the impossible complexity; isn't that correct?

Mr. VOLPE. That is correct, Mr. Chairman. That is why these 18 volumes are so important because never before have we had this body of information, this body of research, which every State will be able to utilize and which we in developing our broad outline and guidelines will be able to draw upon for the first time.

I know as Governor of Massachusetts we fought 3 years in a row to try to develop reforms in our automobile compensation system. We never were quite successful.

But the fact is that we never had this kind of information available to us.

The CHAIRMAN. The State of Massachusetts has recently, I understand, adopted the no-fault system.

Secretary VOLPE. Yes, Massachusetts has adopted a version of that.

The CHAIRMAN. And you experimented with compulsory insurance at one time?

Secretary VOLPE. We experimented with it the longest of any State in the Union. I can assure you that Massachusetts has the longest—I am trying to remember now, but I think I am correct, based on the claims in Massachusetts through our compulsory automobile insurance, the number of claims were twice as high as the national average, and almost twice as high as any other State in the Union.

Senator PASTORE. Because of the compulsory insurance?

Secretary VOLPE. Because of? Well, I would say it was alleged to be a contributing factor. It seemed, at least, that you could draw that conclusion based on the fact that Massachusetts and two other States were the only three in the Nation that had compulsory auto insurance and, therefore, maybe the 47 other States had found a better solution.

Senator PASTORE. No, I don't mean it that way at all. I was just curious to find out whether or not it was so because of compulsory insurance.

Secretary VOLPE. Well, I believe.

Senator PASTORE. In other words, where you have compulsory insurance is there an inclination to sue more readily than if there were not?

Secretary VOLPE. I would say that because there was compulsory insurance you found claims being filed from time to time that perhaps would not have been filed had you not had compulsory insurance.

The CHAIRMAN. Now, Mr. Secretary, just to pin it down for the record, as of now there is no question about the basic fact that the present scope of liability insurance is so narrow that it covers only 45 percent of those killed or seriously injured.

Secretary VOLPE. That is correct, sir.

The CHAIRMAN. And there is 55 percent who receive no benefits.

Secretary VOLPE. That is right. Fifty-five percent of the seriously or fatally injured victims in our survey reported no net tort recovery.

The CHAIRMAN. And also I think the study does show that even of the 45 percent some of them are only partially compensated.

Secretary VOLPE. That is correct.

The CHAIRMAN. So that the impact is even greater than the percentage shows. Now what happens to the 55 percent? No one knows. Senator Cotton and I today are about to mark up the HEW appropriations bill which has millions in it for disabled people. How many of those have been involved in automobile accidents we will never know. But somebody has to pay it.

So even the 45 percent is an understated figure. When you start to shave down what is actually recovered, you get less than that. Is that correct?

Secretary VOLPE. That is right, sir.

The CHAIRMAN. I was interested in just one thing—I have some other questions but I want the other members to have an opportunity to ask questions. How many policies, where a person who needs hospitalization is injured have continuous payment coverage, or how many policies just pay them for their injuries at the time the lawyers settle and that is the end of it?

Are there many that go on with a person who might be disabled for months or years? Can you get a policy like that?

Mr. WALSH. Senator, setting aside for the moment the specialized auto accident insurance policies, it is certainly possible to obtain insurance for wage reimbursement or disability insurance.

The CHAIRMAN. But it is usually a bulk settlement of some kind, isn't it?

Mr. WALSH. In the case of auto accident, liability insurance it is usually a lump sum payment.

The CHAIRMAN. Sometimes you find the costs are greater afterward, after you settle. And this interests us because of the tremendous medical costs we are incurring as taxpayers. We have a figure that about 50,000 people are killed every year.

Secretary VOLPE. 56,000.

The CHAIRMAN. 56,000 this year?

Secretary VOLPE. 56,000 last year, Mr. Chairman.

The CHAIRMAN. But we don't have complete figures on how many are seriously injured or the results of the injury may go on for years.

Secretary VOLPE. It would be difficult to pin down this group completely.

The CHAIRMAN. So we have to consider the fact that some of these injuries are continuing and when you get insurance for continuous payments, that is specialized, you say.

Mr. WALSH. That is right.

The CHAIRMAN. And the premiums are very high.

Mr. WALSH. Liability insurance premiums range from very high to quite modest amounts, depending upon what part of the country you are in and how you are viewed by the insurance institution as a liability risk.

The CHAIRMAN. I don't want to go into discrimination on policies today and geographical discrimination or area discrimination or even racial discrimination.

Senator Hart has had some long experience on that and he has a storeroom of books on that, I am sure, don't you?

Senator HART. Yes.

The CHAIRMAN. But we are looking at the broad picture here. I won't ask any more questions. I want to thank the Secretary for his very fine statement. And again thank all of you people for this report.

I hope we can come to some conclusions on the controversial no-fault provisions and all of these things.

Senator Cotton.

Senator COTTON. I will be very brief, Mr. Chairman. The McCarran-Ferguson Act, which came in issue in this committee's consideration of the Federal Insurance Guarantee Corporation bill, provides in part that Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States. (See 15 U.S.C. 1011.)

Now, in seeking to try to attain—I won't say "impose"—a national standard or some national uniformity of handling liability insurance in the several States, I suppose the greatest opposition might come from the States that see the possibility of losing their present right to tax insurance companies on premiums and other forms of taxation.

Did your study go into that?

Mr. WALSH. Yes, sir. We have addressed ourselves, Senator, to that problem in a very broad sense, in that we looked at the statutory and constitutional barriers to some kind of Federal action in the automobile insurance field. I don't think that came to a conclusion per se regarding the constitutionality or the legal aspects of the question, partly because we didn't have a specific proposal before us. We do have a research report on the constitutional problems of insurance reform and we have another one on the economic regulation of insurance.

Neither one of them come to definitive answers.

I think that the question you pose, whether or not the Federal action in this area presupposes some action on State taxation of the automobile insurance business is in a sense a false issue.

If I understand correctly, the States' tax on premiums is levied in lieu of an income tax because of the difficulty of distributing the business income of insurance companies as among the several States. This justification would remain under any kind of regulatory regime. I don't know if I have answered your question or not.

Secretary VOLPE. May I have Dick Barber add to that because he has a comment that seems helpful.

Mr. BARBER. There would appear to be considerable room for cooperation between the Federal and State Governments here that would certainly allow retention of the present procedure by which States do tax and realize substantial revenue from impositions levied on insurance premiums.

Indeed, when the Secretary earlier indicated that we thought that there were areas for cooperation in which the Federal role might be one of setting guidelines, this is precisely the kind of an area in which we would see the States retaining a substantial role, not only from a regulatory standpoint, but for purposes of setting particular details of approaches; that is, refining the more general Federal approach and also imposing taxes upon insurance premiums as they do now.

As we would see it, this would be a sort of Federal guideline, Federal-State cooperation approach that would give us, as the chairman indicated, some sort of national approach to the problem but that would leave the States very large room for continued activity and revenue generation in the field of auto insurance.

Senator CORRON. Well, I won't prolong this, but presumably and quite logically I am sure those who made the study feel it is highly desirable that there be some uniformity among the several States, as the chairman has stated, with respect to handling indemnities for injuries, property loss, and so on.

It might well come to the point of considering a system of uniform State laws, such as have been recommended in other areas by the National Conference of Commissioners on Uniform State Laws.

Now, when you reach that point, how are you going to get it adopted in all of the States? You can't do it entirely by the carrot method. There probably will be some States which will insist on retaining their own systems, their own methods, and not conforming to such national guidelines. How would you propose to bring such States into conformity with any such national guidelines?

Did those who made the study suggest how that should be done? You have to either federalize insurance or leave it fundamentally in the States with the attempt to recommend some uniformity in State treatment.

My point is, what did the study have to say about how much the Federal Government was going to move into this field? And, if the States didn't cooperate, then how much was just going to be left to trying to advise them and set up guidelines?

Secretary VOLPE. Senator, I would look upon the legislation which I would envision—which none of us can nail down today with any certainty as to detail, but which we certainly see an outline of in our mind—it seems to me this would perhaps be somewhat along the line of the bill which the Congress in its good judgment has just seen fit to pass on rail safety. In it we leave to the discretion of the State utility commissions a certain degree of authority.

On the other hand, we have for the first time developed a set of national standards that are going to be applicable in all of the States.

So it seems to me what we have here is an opportunity for the Federal Government to take some leadership, for the Federal Government to develop broad outlines of exactly what we feel ought to be covered, but then leave it to the States, themselves, to fill in the details within those broad outlines, and one State may do it a little differently than another, because States do differ. New York might want to do it differently than Arizona, or Nevada, for instance. But overall, we would have the type of broad outline or framework that could be detailed at the Federal level, that would provide the guidance to the States that we feel is essential.

Now, how you get the States to come within that umbrella is something that you and I have to work out. It may be that you would use the approach we have used in highway safety. It hasn't quite been as effective as I would like to see it.

The CHAIRMAN. But without it we would have never gotten any cooperation?

Secretary VOLPE. I wouldn't say we wouldn't have gotten any. I would say we would not have made the progress we have made.

The CHAIRMAN. We wouldn't have made any progress. Of course, we are going to be faced in this next Congress with two things that affect every American home and the formula has to be somewhat similar. One is health insurance and one is automobile insurance.

Every home in America is affected in some way by these two things. And the Federal Government must take some leadership; and we have got to work out some kind of formula where the States join in.

In the other insurance bill (S. 2236), we leave the tax authority definitely with the States. And I think in this case we would do the same thing.

But health insurance and auto insurance are two things that affect every American home. I don't care what you are, whether you are rich, poor, or in between. Auto insurance and health insurance are going to be two great Federal responsibilities in the next Congress.

Secretary VOLPE. I am sure they will be.

Senator COTTON. Well, I gather from your reply, Mr. Secretary, that speaking for yourself, your present feeling about the approach is that you would prefer, if Congress acts on this subject—and I think most everyone agrees something has to be done—it act in a manner that continued to safeguard the authority and the jurisdiction of the States, at least until it was demonstrated that you couldn't get State cooperation to the extent that you thought necessary.

Is that a fair statement?

Secretary VOLPE. That is a fair statement, within certain broad outlines that the Federal Government would establish.

Senator COTTON. And, in any such initial legislation, would you advocate laying down these guidelines to provide for cooperation between the Federal and State governments to attain this goal, but not at the outset providing sanctions whereby the States would be faced with the proposition that if you don't conform to our satisfaction, we will federalize the whole field?

Secretary VOLPE. I would agree with that, Senator. I don't expect we at the Federal level know it all. I think the State governments—maybe I am bragging a little bit now, but having been a Governor for 6 years, I have a great feeling about the Federal-State relationship, the Federal-State partnership.

I feel that generally speaking, as has been found for instance in the implied-consent law—we now have 46 States that have adopted the implied-consent law, and we didn't have to use a hammer to get it.

Yes, I stress it very frequently, as do other members of the Congress and the administration. But I think that we ought to be able, if we develop a set of guidelines, a broad outline, to develop the kind of cooperation with the States that I think will assure success.

Senator COTTON. I think that is the high point of your testimony. I am going to ask one practical question. I think perhaps I can ask this question more frankly and with better grace than can my colleagues on the other side of the aisle.

I recognize, as we all do, the complicated problems of Federal administration, which is growing bigger and bigger year by year. Thus, after you have formulated the Department of Transportation's position, there is a time lapse before the White House accepts this as the administration's position.

Is that a fair statement?

Secretary VOLPE. I would say that the clearance process has become probably more effective and less time consuming with the recent formation of the Office of Management and Budget. I am speaking of what the time factor will be in that Office, the Office to which we refer all proposed legislation before we can submit it to the Congress.

Senator COTTON. Well, I am not trying to attach any blame on the White House or anybody else. But, we do know that this year there have been times on important legislation when you were working hard to get your recommendations up here, but could not get them cleared. Then, as the senior Republican member of this committee, I have had to go to the chairman and say, "Please, give us another week, please give us more time."

What this leads to is this question: Do you feel that with the complexity of this problem, you can get your final recommendations up here fairly early in the first session of the next Congress? And, if so, have you any idea in mind of how early?

Secretary VOLPE. Senator, I will be very candid and very honest. I would say I should have, our Department should have its recommendations by January or February. Whether it takes me a month or a little less or a little more to get approval of the OMB, I can't say at this time.

As you know, I don't ever stop fighting when I think the thing we are fighting for is right, we just keep on fighting until we get something up here for your information.

Senator COTTON. All right. But, whatever the situation is, you do hope to get the Department's recommendations cleared by the OMB and up here pretty early in the first session of the next Congress; is that right?

Understand, I am the last one to reproach you personally. I know your problems. I also know how hard you try and the difficulties you have.

On the other hand, this is a pretty complicated field. If this committee is going to be able to give it proper consideration, and report to the Senate, coupled with the same situation prevailing in the House, then we will require considerable time. Certainly, any such legislation gets better consideration if it comes up before we begin to get crowded.

Secretary VOLPE. Senator, let me say that first of all we are not permitted to submit legislation to the Congress without clearance from the OMB.

As a matter of fact, on every piece of legislation that I submit, as you know, there is a final sentence that says the Office of Management and Budget—it used to say the Bureau of the Budget—Office of Management and Budget concurs or has no objection to the above recommendations.

I would hope, Senator, very definitely—this is not something we will crystalize all of a sudden on 1 day, and expect somebody to come up with an answer in a couple of weeks.

Certainly we will have liaison with the Office of Management and Budget as we go along, and hopefully it won't be something they will have to start from scratch on when we have the final recommendations.

Senator COTTON. I have no further questions, Mr. Chairman. Thank you.

The CHAIRMAN. As the Secretary knows, we have had several experiences with this and the results have always been good as far as his office is concerned.

We are very impatient about this matter. We can't wait too long on this.

Secretary VOLPE. Yes, Mr. Chairman.

The CHAIRMAN. If you get held up someplace else, we will just reintroduce our own bill and go ahead, set the hearings, and you can come up and testify for or against it, irrespective of whether you have proposed your own legislation.

Secretary VOLPE. I understand, Mr. Chairman.

Senator COTTON. Be sure to convey that message to the OMB.

The CHAIRMAN. Senator Pastore.

Senator PASTORE. Mr. Secretary, on page 10 of your statement you make what I consider to be a very sage observation, when you say:

Our study has convinced me, however, that the problem of motor vehicle accident compensation is far more complex and far less easily resolved than many appear to believe.

What are we really trying to get at here in a practical sense? What is really disturbing us? The cost of the premiums, the inability to secure this insurance, or the lack of expedition in recovery when a person is injured. What is our problem, essentially?

Secretary VOLPE. I think all three of those.

Senator PASTORE. All three. Therefore we come down to the very meat of the nut.

Isn't much of the trouble that we are experiencing today, the delay it takes for a person to enforce his rights in our courts?

Secretary VOLPE. Senator, that is, in my humble opinion, one of the most severe problems we face.

Senator PASTORE. Frankly, isn't it the most severe problem?

Secretary VOLPE. It often is in my State. Whether that is true nationwide, I don't know.

Senator PASTORE. It is true in my State. I think if we asked every Governor, or former Governor, I think he would agree.

Secretary VOLPE. Four to four and a half years in some cases.

Senator PASTORE. That is right. We have a statute of limitations within which time you can bring a suit. Once you have brought your suit, you wait ad infinitum because of the crowding of the calendar of the courts. My experience in the past has been when you get to the day of trial and the judge calls you in, there is a settlement made.

Now, the big question here is, how far has this Commission gone in trying to unravel this entanglement in our Federal and State courts? And what has been the result of your investigation?

Mr. WALSH. Senator, we were very fortunate in having the Federal Judicial Center undertake, on our behalf, an investigation of automobile accident litigation. This was one of the first major problems that Justice Clark and that new organization undertook to study, and in that they had the assistance of the Mitre Corp.

I won't try to summarize in any detail the results. They are in the report, "Automobile Accident Litigation," but, in effect, what they found was that automobile accidents do place a large economic

burden on the court system, approximately 17 percent of judge time, and that is as conservative a measure as you can find.

This study also tested several hypotheses about automobile accident litigation, including the one you mentioned, the influence of the statute of limitations on filing. And the statutes of limitations are different from one jurisdiction to another. The length of delay in getting automobile accident cases settled differed by approximately the same amount. In other words, the statute of limitations has a great influence on the length of delay.

They also tested some other hypotheses which they didn't get that conclusive results on, one being that the number of cases tends to expand with the availability of court resources. If you increase the number of judges, you may be increasing the number of cases that are litigated.

On the other hand, the relationship between auto accident cases and other types of litigation is a much-involved and hard-to-unravel issue. I don't think we have completely succeeded in doing it in the investigation we undertook. But I think we have pointed up in substantial respect how complex the subject is and we have added some further insights to the nature of court congestion.

Senator PASTORE. Don't you think anything else we do is an exercise in futility unless we can expedite the decision of these cases.

What good is it to talk about the rehabilitation of a person if he can't get any recovery at all. What difference does it make, if a person is maimed or injured on the road and he is in the right and he has to wait 5 years before he can get a hearing before the courts? Isn't that really the crux of the whole problem?

We keep talking about Federal laws, State laws, guidelines, and liaison between the States and the Federal Government. The fact still remains if a man who is injured today can file his suit within the statute of limitations and get a hearing and trial within 4 or 5 months, we would have more or less a resolvment of this tremendous problem, wouldn't we?

Secretary VOLPE. It would help to solve a great part of the problem; no question about it, Senator.

I can assure you that actually, although I stated that 17 percent of the judges' time was consumed in automobile accident cases, that varies from State to State. That is an average, and I can assure you that in Massachusetts it is a great deal more than 17 percent of their time.

Senator PASTORE. Don't you think it would be a good idea—I am just thinking out loud, I haven't given this any fundamental thought, I knew this investigation was going on, I haven't read that whole report—but don't you think some intermediary quasi-judicial body ought to be setup where the liability is admitted and there is a dispute about the amount of damages. This is true in many, many cases. A plaintiff thinks he is entitled to \$50,000, but the insurance company wants to give him \$10,000. Then I have noticed once they get to the point of going to court, when the insurance company knows it has to respond affirmatively, they go into the judge's chamber and settle the case.

And there is 5 years wasted on something that could have been done 5 years before.

I am wondering how far we have gone into getting into the practical. The practical, that is the important thing here; the practical understanding of this animal we are dealing with. And it revolves itself around the question of delay.

If every State would set up some kind of a system whereby if liability is already acknowledged and it is a question of the amount of damages, if somehow there could be an informal hearing set up by one or two judges, whatever the case might be, to bring the two parties together, to knock heads together, and get the poor fellow who has been injured some money.

Has anybody thought of it? It strikes me this is part of the thing that needs to be done. I don't know as you can appoint enough judges and build enough courthouses to give everybody a trial in 4 or 5 months, because you have criminal cases, all other cases, equity cases. It isn't a lone negligence case.

But it strikes me in this particular area, the delay is caused because of the crowding of the calendars. In many, many cases wherein the liability is admitted. It strikes me that there ought to be some kind of a judicial process—I am not saying a compulsory solution, but at least if a judge could get the two parties to come in and talk about where they stand on the amount of damages, there could be some reason struck.

We do that every day in our courts. The only trouble is the insurance company likes to wait. Naturally they have the money in the bank, they are getting an investment on their investment, they are getting dividends on their investment and they are not ready to pay unless the time comes when they are made to pay, so they wait until you get to court.

They know you won't get there for 4 or 5 years. So finally when you get to court, you impanel a jury, the judge will say, "Will the two parties come into my office," and say, "how far apart are you?" and many, many times the cases are settled. Why should a plaintiff wait 5 years to have that process invoked.

I don't know why a bar association hasn't come up with a solution to this problem. I think this depends on the bar associations and the courts to reach some kind of a decision to expedite these cases.

Fundamentally, I will tell you very frankly, if we could resolve that question half our job would be done.

Do you agree, Mr. Volpe?

Secretary VOLPE. I do agree that it is a very serious problem, Senator.

The CHAIRMAN. Wait a minute. Only one-fourth of the job would be done if you take his half. Because 55 percent don't receive any benefits at all, whether they are in court or out of court or any place.

Senator PASTORE. Because it takes so long that sometimes they forget it. They figure by the time I get around to getting a nickel, I am going to be dead.

Now the next question is on the question of premiums. Some States, have a low premium and some States have a high premium, and that of course, is all predicated upon statistics. We all know that.

How you are going to bring about uniformity there I don't know. You may strive for it, but I don't think you will ever achieve it. But I think there ought to be intervention on the part of the Federal Government as an initiative to get the job done.

I think the more Governors talk about this, the more the Federal Government is interested in this, I think the quicker we are going to get a solution. But I don't think you have to be a Ph. D. to understand this problem. And I don't think you have to be a Ph. D. to solve this problem.

This is a very practical problem that all of us have lived with. And I think the time has come when somebody should stand up and give us a realistic practical solution in view of the clogging of our court calendars.

And that is all I have to say. You don't need 15 volumes, you don't need 20 volumes; we have all lived with this problem. And the question today is that your premium costs are high, because in many, many cases the rate of accidents are high; and in many, many cases, of course, you can't get recovery only because the defendants know and the insurance companies know, you see, that they can stall you for 4 or 5 years.

You say to me, but under \$500 we have been successful. You know why. Because the insurance company would rather pay than hire the lawyer. That is why you have gotten settlements there.

Where the settlement is high, they have to get a lawyer, the longer that lawyer procrastinates and files petition after petition and delay after delay, the bigger his fee.

The CHAIRMAN. Well, that is the fault of our whole tort system.

Senator PASTORE. That is right. You rectify your tort system and you know what you can do with all of those volumes?

The CHAIRMAN. No; there are too many of them for that. [Laughter.]

Than you have the added problem involved that where there is negligence and contributory negligence, neither side recovers. If they go to court, neither one of them gets anything.

A small amount of contributory negligence can hold it up forever. But I am thinking that these judges have got to start to think about appointing referees for these things.

Senator PASTORE. That is right.

The CHAIRMAN. Instead of going through the long, tedious court procedures, or commissioners to handle these cases.

In New Hampshire they can appoint referees.

Secretary VOLPE. The new chief justice of the Massachusetts Supreme Court, G. Joseph Tauro, I was honored to place him on the bench and make him chief of the superior court, has led the way and done a great deal toward solving some of the problems which Senator Pastore has pointed out.

It is a long, tedious job. Justice Tauro, working through the National Conference of Metropolitan Judges, led the way in developing a good deal of support for reform in this area. But we have an awful long way to go, so far as reform of the judiciary is concerned, in order to bring about the situation that the Senator talks about.

Senator COTTON. This matter also would seem to give rise to issues concerning rights guaranteed under the Constitution. For example, there is the right of trial by jury under the seventh amendment. Conceivably, you may narrow the procedure down by pretrial tactics and arrive at a point where such an issue is joined.

The Senator from Rhode Island is 100 percent right. I was largely a tort trial lawyer in the years of my practice and you couldn't settle a case until a week before the trial. It is a practical fact of life.

Without changing the Constitution, it would not seem possible to deny such a right to a trial by jury. But there are other methods of pretrial hearings before the court to narrow down the issues, and also to refer the case to a referee. My State is largely a rural area and I understand we don't have the problems you have in New York City, but nevertheless, such procedures have proven to be effective.

The CHAIRMAN. The Senator from Michigan.

Senator HART. Thank you, Mr. Chairman, Mr. Secretary.

I certainly share the view expressed by the chairman and others that this report, overall, is excellent. It does not surprise me that it would be, since to your right sits Dr. Dick Barber who contributed enormously some years ago to the antitrust subcommittee study of automobile insurance.

Now back in 1967 that other committee on which I sit got into this field, and as a result I have made some suggestions as to how we could cure it. And with that recommendation of your administration, I hope along with it will come comment on three bills I have filed.

Maybe I won't be here next year, and if I am not, I hope nobody who survives will assume that my defeat was because I filed such far-reaching legislative proposals, and I hope that somebody will put them in.

I have a feeling that we may be kidding ourselves that there is any way effectively to cure the court clogging until we go to first party coverage, no-fault. I wonder whether the tort concept makes any sense any longer when you have 90 million privately owned automobiles, you throw in 16 million trucks on the road. You can talk about appointing referees, pre-trial, liability being admitted. When you are in the right, you have to prove it. Philadelphia tried, among others, a referee arbitration, and their court docket is in just as bad shape as anybody else's.

Even if you cured this aspect of it, which I tentatively suggest we can't, that doesn't do anything for the fellow that is denied insurance to begin with, or who is arbitrarily canceled after he gets it.

There is another area where I think we may be teasing ourselves into the notion that we can avoid an ultimate confrontation with the States, this notion that we can guide, persuade, outline, and so on.

As my legislative proposals indicate tentatively, I think we have to be much more direct, much more preemptive.

Senator PASTORE. Would the Senator yield for a question?

Senator HART. Yes.

Senator PASTORE. What would it do to the premiums, no fault? Would it increase them?

Senator HART. We would like to think not. And the antitrust subcommittee, I am compelled to admit, can't give you a solid answer on it.

But certainly in the evaluation of these proposals we ought to as well as we can in advance of actual experience answer it, I agree. My own feeling is that overall costs would go down.

I am sympathetic with lawyers' incomes that would go down, too. And, Mr. Chairman, if I may, let me add to the record at this point the three legislative bills I introduced along with my remarks on the floor.

The CHAIRMAN. Without objection, so ordered.
(The three legislative bills follow:)

[From the CONGRESSIONAL RECORD, Sept. 14, 1970]

By Mr. HART:

S. 4339. A bill to regulate interstate commerce by requiring certain insurance as a condition precedent to using the public streets, roads, and highways, and for other purposes; and

S. 4340. A bill to promote the greater availability of motor vehicle insurance in interstate commerce under more efficient and beneficial marketing conditions; to the Committee on Commerce.

S. 4341. A bill to amend the Internal Revenue Code of 1954, and for other purposes; to the Committee on Finance.

(The remarks of Mr. HART when he introduced the bills appear below under the appropriate heading.)

S. 4339, S. 4340, AND S. 4341—INTRODUCTION OF AUTO INSURANCE REFORM BILLS

Mr. HART. Mr. President, today, I plunge in where perhaps a wiser man would not tread. By introducing the first automobile liability insurance reform bill in Congress, I know I am volunteering as a lightning rod for the criticism that will come from those wedded to the status quo.

Nevertheless, it is clear that the status quo in the auto insurance fault field is not good enough.

Use whatever indicator you like—complaints to governmental agencies, complaints to newspapers, complaints to congressional offices—auto insurance is a major problem to millions of consumers both as policyholders and claimants.

Three years ago, the Senate Antitrust and Monopoly Subcommittee decided to determine both the validity and basis for these complaints. We launched an investigation that took us into the auto insurance fault system's innards.

Touched off by the complaints of cancellation, unavailability, high cost and claims practices, our study meandered through the technicalities of investment income, classifications, loss ratios, reserves, assigned risk plans and the fault-finding process itself.

At the end of it all, only one reasonable solution seemed possible: Reform.

The present insurance system evolved from common law and was designed to protect the assets of the few who could afford the very early cars.

Plastered on a society where there are more cars than households—where even the man with few assets to protect may find owning two cars essential—the old system does not meet the needs. Today, as a study done for DOT pointed out, the problem of auto crashes is a public health problem. "Only diseases of advancing age are more significant causes of death than auto crashes." Further, "only heart disease causes the loss of more man-years of productivity in the country each year."

To my view, the social benefit we seek from insurance today is not protection from the other fellow's losses, but compensation for our own.

The present auto liability insurance-fault system is not giving us that.

Of each dollar, consumers pay into the system for liability protection, only 40 cents goes to compensate accident victims. Of this 40 cents, only 13 cents actually ends up compensating for out-of-pocket losses. Seven cents goes for duplicate recovery and 20 cents for "pain and suffering."

This is the system that about 20 million Americans looked to for compensation from July 1965 to July of this year. It is the system that was to compensate 300,000 families in that period for death of a member.

The total economic loss—including insurance company overhead and all future income loss discounted—during that period was more than \$61 billion.

The DOT Economic Consequences of Auto Accident Inquiries study gives an idea of how much victims got back of their losses.

Of \$5.1 billion of personal and family loss suffered by one-half million serious injury and fatality victims of auto accidents in 1967, the auto insurance fault system provided only \$813 million. No-fault auto insurance coverages—medical payments and collision—provided another \$248 million.

Thus, there was only 20 percent recovery from auto insurance.

Another study conducted for DOT by the insurance industry itself showed that claimants with a permanent total disability had an average total economic loss of \$78,000, yet received an average insurance payment of \$12,556—only 16 percent of economic loss.

That uncompensated loss took its toll on the victims. The DOT study—which covered 513,000 victims—showed that 27 percent of those victims—or 136,000—with losses over \$5,000 accounted for 85 percent of the total loss.

The families of 37 percent of those 136,000 victims—or 50,300—had to change their way of life. Thirty-two percent—43,500—had to take money from savings or sale of property. Twenty percent—27,200—missed payments. And—9 percent—or 12,200—had to move to cheaper quarters.

Mr. President, if we are to make our insurance system one which truly protects auto accident victims and their dependents from economic catastrophe—if we are to avoid creating new social burdens—if we are to put fairness into the system—we must have the courage to change the system.

What we have now is not—has not been—and cannot be—good enough, or close to it.

Several days ago, as you know, I introduced legislation to cut the cost of auto insurance for protection of property.

Today, I introduce three bills aimed not only at bringing down the premium covering injury to people but at increasing compensation to accident victims. Both objectives are possible through a more fair and efficient allocation of the insurance premium dollar.

There are other benefits in the package—perhaps more psychological than economic.

The most important, to my mind, is the guarantee that any licensed driver—be he young or old, married or divorced, a minister or an oil-rig operator—would get and keep insurance.

During our hearings, insurance companies told us that such personal factors as age, sex, occupation, court and accidents records are valid criteria for identifying individual “bad” drivers or “bad” prospective court witnesses.

A recent study for DOT claims that—

“Although such factors could be used to distinguish groups of drivers with significantly different accident rates, they were not reliable in predicting whether or not particular individuals would be involved in accidents.”

Statistical tests “applied to random sample of all drivers, could eliminate all but the best drivers but could not identify only the worst.”

Unavailability is perhaps the most universal complaint of consumers about auto insurance. In fact, in a study done by the University of Michigan, 14 percent said they either had been cancelled, refused renewal, or knew someone who had.

That consumers would complain is understandable.

The insurance market is unusual. Consumers across the Nation—by various types of State laws—are virtually required to buy auto liability insurance. Yet, after guaranteeing the industry a market, we have allowed it to refuse to supply the product.

Under the Uniform Motor Vehicle Insurance Act, this no longer would be possible.

The only grounds for refusing or cancelling a policy would be loss of a driver’s license or nonpayment of premium.

To me, those are the only valid reasons.

Unfortunately, in the past, insurance has been refused for reasons far more arbitrary—and in some cases, almost ludicrous.

For example, several companies flagged various occupations as “undesirable.” Incredibly, these included law enforcement officers, doctors, lawyers, reporters, editors, and others normally considered the stabilizing elements of society. For many companies, thousands of applicants were either “too young or too old” and were refused.

Further, sections of cities have been blacked out as areas in which no residents could buy that company’s auto policies.

In short, the overthink many companies engaged in as they sought out the "good risks" gave the impression that they really wanted to write insurance only for those who were likely never to file a claim.

The result was frustration of the system—with an estimated 20 percent uninsured cars on the road whose drivers offered little hope of compensation to their victims.

Perhaps the second most frequent complaint about insurance is the cost. Well it might be. From 1960 to July 1970, the cost of auto insurance went up 65 percent—compared to 39 percent for auto repairs, 28 percent for tires and 15 percent for gasoline. See tables 6 and 7. That 65 percent insurance hike came as take-home pay for nonsupervisory and factory workers went up only 40 percent.

In dollars, that 65 percent insurance hike means consumers in our 20 most populous cities are paying premiums ranging from \$193 in Memphis to \$617 in New York City to cover the average car. In San Francisco, the rate is \$430; in Chicago, \$352; Detroit, \$285, and Washington, D.C. \$298.

Those are the base rates—which too many consumers have learned climb with surcharges for 3 years after minor accidents.

Further, those rates are climbing daily. For example, a major insurer recently raised its rates in Michigan by an average of 17.6 percent. That was the average increase. But, reportedly, a high risk driver in Detroit will find himself paying 39 percent more after the price hike.

One of the reasons for the high charges for auto insurance is the built-in expenses of handling each applicant on an individual basis. See chart 1 and table 1. Long ago, we learned that selling accident and health insurance on a group basis—with all members treated the same—cuts the selling price.

But, in about 36 States today the same type of sale of auto insurance as well as other forms of property and liability insurance is prohibited by regulations or law.

One of the bills I introduce today, the Property and Liability Group Insurance Act, would overturn this prohibition and allow group auto insurance.

The other insurance bill would amend the Internal Revenue Code by having group property and liability insurance treated the same as group accident and health insurance. This would encourage group auto insurance sales by allowing employees to get the same tax benefits from employers' contribution to auto plans as they do now with group accident and health plans.

This, I feel, is necessary since the savings of group auto are significant only when the vast majority of employees participate in the plan. Otherwise, the group might contain many drivers who would be surcharged on the open market—forcing the rate for the group too high.

One estimate is that simply converting to a group auto insurance plan—without any employer contributions—could save the average driver 15 percent each year.

Obviously, the savings would be much greater if the employer contributes—as many do with group accident and health.

The nonrefusal provisions and the encouragement of group plans, I suspect, are the aspects of this package which will most easily catch the attention of the public. This is because each person can identify with those situations.

However, the most significant change I propose today is the move away from the "fault" liability system of insurance.

Few consumers realize—until the accident happens—that the present insurance system will pay the bills caused by personal injury and death only if the driver of the car is totally free from blame for the accident. This is so in all but a handful of States which have adopted "comparative negligence" laws. Under these laws the errant driver may receive at least some compensation.

Those of us who are honest with ourselves know how many times in the shortest trips we avoid accidents more through dumb luck than driving skill. As one study pointed out, the driver must make 200 observations and 20 decisions each mile he drives. The potential is so great that it would be natural for even the most careful of drivers to make errors in judgment. In fact, the same study estimated that the average driver does make errors—one per each two miles driven.

The 1970 causation and culpability and deterrence study done for DOT explains that—

"A substantial but largely unmeasurable number of violations and crashes occur which involve generally competent drivers who are suffering temporary lapses from their normal adequate levels."

Yet these errors are the "outs" for the insurance companies under the present system—making it possible that passengers in neither car will be compensated because both drivers may have contributed to the accident.

And deciding who is to be paid—if anyone—becomes a “who shot John” finger-pointing contest which burdens our legal system, ties up our courts and keeps money out of the pockets of victims when they need it.

A study by the Federal Judicial Center points out that motor accident litigation requires 11.4 percent of judge time in Federal district courts and approximately 17 percent of judge time in State courts of general jurisdiction. Impact of motor vehicle accident litigation on the courts varies widely among States. In Iowa County, Iowa, it is 3 percent. In Wayne County, Mich., it is 40 percent.

Chief Justice Burger has warned that we have clogged our courts so much that justice in this country is more myth than reality. He suggests caution in passing new laws which would bring more cases to court.

I share his concern over the clogged courts. But it seems more rational—and fair—to reserve the courts for matters which merit adjudication by freeing them from problems that could be handled better under another system. Furthermore, we could free our doctors for more profitable uses—such as improving emergency accident treatment—rather than sitting in courthouses or otherwise being tied up in the fault-finding process.

The worst part of this clogging of the courts is the delay in payments for victims of accidents. A DOT study showed that victims with losses over \$2,500 averaged a 19-month lag before they received any payment.

In Wayne County, the site of Detroit, a claimant must wait 4 years for trial. Unfortunately, rehabilitation expenses do not wait. So the seriously injured person has two choices: go without rehabilitation when it would help or risk bankruptcy to finance it. He faces similar problems with rent, food and clothing costs.

The Uniform Motor Vehicle Insurance Act seeks to overcome these hurdles and to guarantee a “sufficient, fair, and prompt” payment system.

Under the bill, injuries are divided into short and long-term.

Out-of-pocket expenses of injuries generally would be compensated on a first party, no-fault basis—in the manner of hospitalization policies.

The driver’s own auto insurance policy would cover the net economic loss due to such injury or death—which is not covered by other sources.

Making the auto policy the “book balancer,” as it were, would eliminate the need for consumers to pay the several billion dollars years they are now spending for coverage which duplicates what they may have—say in hospitalization plans or sick leave.

The bill provides that the victim would be made economically whole for his entire medical, hospital and rehabilitation costs. Incidental expenses—such as transportation for treatment or in-the-home assistance—also would be covered.

Lost income would be reimbursed—up to \$1,000 a month for 30 months. An amount up to \$30,000 would be paid for fatalities of wage earners. The death payment seeks to put ready cash in the hands of families who have lost their wage earner. Survivors of nonwage earners and those suffering economic loss in excess of \$30,000 may still sue under the tort system.

The time limit on protection of income was set to assure that about 97 percent of all accident victims would be rehabilitated and back at work within its span. The other victims who are injured would have ample time for calm determination of ways of replacing the income lost due to permanent disability.

Those who are permanently disabled—or disfigured—and survivors of fatalities—in other words, the catastrophic injuries—under this bill would still be free to recoup economic loss over and above economic loss reimbursed by the bill by suing under the tort system. They could sue for all economic loss not reimbursed under the bill as well as for “pain and suffering.”

Under the bill, a person committing a felony, using the vehicle with the specific intent of causing injury or without the permission of the owner, would not be compensated for his injuries and would have to reimburse any insurer for damages paid due to an accident.

Drunk drivers, as well as those under the influence of drugs, would be compensated for their injuries but would have to reimburse an insurer for damages paid to others. Alcohol-related accidents caused an estimated 25,000 deaths and 800,000 crashes in the United States each year, according to the DOT 1968 alcohol and highway safety report. Auto manufacturers are working on devices that would make it impossible for a drunk driver to start a car—and the DOT plans on requiring these devices on cars by 1975. This, I think, is the most realistic way to treat the problem of the drunk driver—that is, to prevent him from being on the road.

Payments for economic loss under the “no fault” section of the bill would be made as the loss occurs—eliminating the lengthy waits for settlements.

Pedestrians would be covered by the insurance on the car which hits them.

Because this basic insurance must be sold to any licensed applicant, there would no longer be need for assigned risk plans now in existence.

However, there would be cases where the victim would have no insurance company to turn to for payment—such as with hit and run victims. Therefore, the bill creates an “assigned claims” plan. Insurance companies in each State would share in these plans based on the percentage of business they write in that State. Each would pick up the tab for a percentage of uninsured losses.

The bill also recognizes the realities of the road in making special provisions for truck-car accidents. Because of the disparity of weight between the vehicles, passengers in the autos incur that most severe harm in such accidents.

In 1968, only 16 truck drivers were killed in truck-auto accidents. But, 1,017 auto passengers lost their lives in the same accidents. Truck driver injuries were 1,222—with 12,304 auto passengers injured. Trucks colliding with passenger autos accounted for almost one-half of all moving vehicle accidents involving trucks.

Therefore, the bill provides that the Secretary of Transportation will assign each vehicle larger than a passenger car a percentage of responsibility for net economic loss sustained in a collision with cars.

While the bill, as a general rule, foresees that the auto policy would pick up the economic loss left over after other sources are drawn upon, it does offer the consumer the option of making the auto policy primarily responsible—or the choice of duplicate payment.

This provision is included to increase the consumer's options and to make it possible for him to tailor an insurance package best suited to his needs.

The benefits provided for in the Uniform Motor Vehicle Insurance Act are basic. Consumers may buy any additional coverage they want.

Mr. President, there is one other significant section of the bill which I wish to comment on specifically today. This is the provision for meaningful price information so the consumer may shop intelligently for insurance.

In requiring that insurance companies sell a no-fault policy to any licensed driver who applies to them, we are, of course, leaving it to the company to set a rate which it feels will make that policy profitable.

We also are opening up a whole new world for most consumers—one where they do not take what they can get in auto insurance, but take what they want.

In order to know which company offers the soundest deal, a consumer must know not only the prices for his classification but the claims-paying practices of the company. Therefore, the bill provides that such information be reported to DOT. The Secretary, in turn, will make it available to the public.

Mr. President, my proposal that we reform the insurance system is not meant—and I hope will not be taken—as a criticism of companies now in the business.

As we were told by several of their representatives during our hearings, the industry has been supplying the protection they thought consumers wanted. Many members of the industry are aware that the present system no longer serves the public well—and have been proposing changes. They seem to agree that updating is needed and are willing to change—if they have some guarantee that the public truly wants these changes. I think it is clear that the public does want change. “No-fault” auto insurance is hardly a household word—and the public in general has not been made aware of its potential. Yet, a University of Michigan study showed that 44 percent queried were in favor of claiming damages from their own insurer and foregoing payment for pain and suffering.

But, no one company can turn this system around by itself. Nor, in fact, could many sizable ones working together.

If consumers are to be offered protection more than promises, economy more than inefficiency, then the industry reformers need an assist from government.

These bills are offered as that assist.

They seek to smooth the road, to knock down the barricades, to set fair and uniform rules so each company can offer consumers the most for their money in the best way it knows how.

In short, we would inject a note of competition—beneficial to all auto insurers and consumers—in an industry that has drifted away from this basic free enterprise theory.

If we accomplish that, the consumers and the industry will be better off. Of that, I am positive.

Given the sweep of these objectives, and the complexity of the subject area, I want to be the very first to say that these bills, although reflecting many reworked drafts, can and will be refined as hearings and discussion on them go forward. I invite all who are involved and concerned to join me in the search for the very best answer to a problem shared by all of us.

Because the need is great, I propose that hearings be scheduled on the Uniform Motor Vehicle Insurance Act in the next few weeks.

Mr. President, I ask unanimous consent that the three bills be appropriately referred and the bills and tables and charts accompanying them be printed at this point in the Record.

The PRESIDING OFFICER (Mr. Saxbe). The bills will be received and appropriately referred; and, without objection, the bills, charts, and tables will be printed in the Record.

The bills, introduced by Mr. Hart, were received, read twice by their titles, referred as indicated, and ordered to be printed in the Record, as follows:

To the Committee on Commerce:

S. 4339

A BILL TO regulate interstate commerce by requiring certain insurance as a condition precedent to using the public streets, roads, and highways, and for other purposes

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

SHORT TITLE

SEC. 1. That this Act may be cited as the "Uniform Motor Vehicle Insurance Act".

DECLARATION OF PURPOSE

SEC. 2. The Congress finds that—

(1) The great number of motor vehicles operated within the channels of interstate commerce upon the public streets, roads and highways of the States;

(2) The substantial amount of injury and death resulting therefrom;

(3) The insufficient, unfair distribution and untimely availability of monies under the present motor vehicle liability insurance system for the adequate rehabilitation and compensation of accident victims;

(4) The absence of uniform and sufficient requirements for—

(A) Insurance among the States as a condition to using the public streets, roads, and highways;

(B) Guaranteeing the continued availability of motor vehicle insurance supplied by private enterprise; and

(C) Meaningful price information to promote rational buying decisions and thus stimulate beneficial competition; and

(5) The failure to promote the general welfare by not recognizing sufficiently the plight of motor vehicle accident victims while promoting the national policy of accelerating the construction of the Federal-Aid Highway Systems; obstruct the free flow of such commerce by increasing unnecessarily the hazards of travel within such channels and otherwise affecting such commerce.

It is the purpose of this Act to provide for the general welfare by requiring a system of motor vehicle insurance which will be uniform among the States, which will guarantee the continued availability of such insurance and meaningful price information; and which will provide sufficient, fair and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of motor vehicles within the channels of interstate commerce, and otherwise affecting such commerce.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "motor vehicle" means any vehicle of a kind required to be registered under the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

(2)(A) The term "insured motor vehicle" means a motor vehicle insured under a policy of insurance which meets the requirements of section 5 of this Act.

(2)(B) The term "uninsured motor vehicle" means a motor vehicle with respect to which insurance provided under section 5 of this Act is not applicable at the time of the accident, or with respect to which the insurer nominally providing such insurance denies coverage, or is financially unable to fulfill its obligation.

(3) The term "owner" means a person who holds the legal title to a motor vehicle under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purpose of this Act.

(4) The term "person" means any individual, partnership, corporation, association, trust, syndicate, or other entity.

(5) "Operation or use of a motor vehicle" includes loading or unloading the vehicle, but does not include conduct within the course of a business of repairing, serving or otherwise maintaining vehicles unless the conduct occurs outside the business premises.

(6) The term "injury" means any bodily injury, sickness or disease (including death at any time resulting therefrom) arising out of the operation or use of a motor vehicle.

(7) The term "catastrophic harm" means a bodily injury (including death at any time resulting therefrom) which results in a permanent partial or total loss of, or loss of use of, a bodily member, or a bodily function: *Provided, however*, That such permanent partial or total loss, or loss of use, need not affect earnings or earning power. The term "catastrophic harm" includes permanent disfigurement.

(8) The term "economic loss" means in the case of any injury or death;

(A) All expenses reasonably and necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance and prosthetic services;

(B) All expenses reasonably and necessarily incurred for physical and occupational therapy and rehabilitation;

(C) The amount which would have been earned during the 30 months immediately following such injury or death but for such injury or death could not be earned: Except, That, in the case of injury, such amount shall not exceed \$1,000 a month, and, in the case of death, such amount shall not exceed \$30,000;

(D) All other expenses reasonably and necessarily incurred as a result of such injury.

(9) The term "net economic loss" means, in the case of any injury or death "economic loss" reduced (but not below zero) by the amount of:

(A) Taxes which would have been payable on the amount which would have been earned but for such injury or death; and

(B) Any benefit or payment received, or entitled to be received, for losses resulting from such injury or death under any provision of law or any insurance or other source of benefits: Except, benefit or payment received, or entitled to be received—

(i) in discharge of familial obligations of support;

(ii) by way of succession at death;

(iii) as proceeds of life insurance;

(iv) as gratuities, or

(v) as proceeds of any contract, policy of disability, health and accident, or other insurance or other source of benefits containing an explicit provision making its benefits supplemental to those in accordance with the provisions of section 5(a) of this Act, or making the benefits under section 5(a) deductible from the benefits under such contract, policy or other insurance or source.

(I) If any contract, policy of disability, health and accident, or other insurance or other source of benefits does not provide that its benefits shall be supplemental to those under section 5(a) of this Act, or that the benefits under said section 5(a) shall be deducted from its benefits, economic loss shall be reduced by the amount of any benefit or payment received, or entitled to be received, from such contract, policy or other insurance or source.

(10) The term "without regard to fault" means irrespective of fault as a cause of any injury or death, and without application of the principle of liability based on negligence.

(11) The term "Secretary" means the Secretary of Transportation.

(12) The term "State" means each of the several States of the United States the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone and American Samoa.

CONDITIONS OF OPERATION: REGISTRATION AND FEES

SEC. 4(a). After the effective date of this section, no person shall register a motor vehicle under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, nor shall any person knowingly operate or use a motor vehicle upon the public streets, roads, and highways of any State at any time unless—

(1) Such motor vehicle is insured under a policy of insurance which meets the requirements of section 5 of this Act, pursuant to such rules and regulation (including those determining the manner and term of proof of such insurance) as the Secretary shall lawfully prescribe.

(A) The requirements of this section may be satisfied by any person other than an individual by providing a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under section 5 of this Act, as determined and approved by the Secretary.

(b) No State shall require the purchase or acquisition of insurance or any other security as a condition to the operation or use of any motor vehicle upon the public streets, roads and highways of such State.

(c) The provisions of this section shall take effect one year and six months after the date of enactment of this Act.

(d) Any person who knowingly violates the provisions of subsection (a) of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed \$1,000, or imprisonment for a period of not to exceed one year, or both.

INSURANCE REQUIREMENTS

SEC. 5. In order to meet the requirements of Sec. 4(a) and (b) of this Act, an insurance policy shall provide—

(a) Net economic loss benefits for injuries and death as follows:

(1) Except as otherwise provided in paragraph (3), the insurer shall pay, without regard to fault, to any person, including the owner, operator or user of an insured motor vehicle, an amount equal to the net economic loss sustained by such person arising out of the operation or use of such motor vehicle.

(2) Except as otherwise provided in paragraph (3), the insurer shall pay, without regard to fault, to the legal representative of any person, including the owner, operator or user of an insured motor vehicle, whose death is the result of any injury arising out of the operation or use of such motor vehicle, for the benefit of the surviving spouse and any dependent (as defined in section 152 of the Internal Revenue Code of 1954) of such person, an amount equal to the net economic loss sustained by such spouse and dependent as a result of the death of such person;

(3) No payment shall be made for net economic loss sustained by—

(A) The occupants of another motor vehicle; or

(B) The operator or user of a motor vehicle while committing a felony, or operating or using with the specific intent of causing injury or damage or operating or using a motor vehicle as a converter without a good faith belief that he is legally entitled to operate or use such vehicle.

(4) The operator or user of an insured motor vehicle shall be liable, without regard to fault, to reimburse the insurer of any motor vehicle for benefits payable to, or on behalf of, any person other than the operator or user described in paragraphs (A) and (B) of section 5(a)(4) for net economic loss arising out of the operation or use of such motor vehicle while—

(A) the operator or user was intoxicated, as defined in the Highway and Motor Vehicle Safety Act of 1966, as amended;

(B) the operator's or user's ability to operate or use such motor vehicle was impaired by the use of narcotic drugs, as defined in section 4731 of the Internal Revenue Code of 1954 (68A Stat. 557), including depressant and stimulant drugs, as defined in subsection (v) of section 201 of the Federal Food, Drug, and Cosmetic Act (79 Stat. 234, as amended);

(C) the operator or user committing or attempting to commit a felony; or

(D) the operator or user was operating or using such motor vehicle—

(i) with the specific intent of causing injury or damage; or

(ii) as a converter without a good faith belief that he was legally entitled to operate or use such vehicle.

(5) Payments for net economic loss shall be made as such loss is incurred except in the case of death: Provided, that amounts of such loss unpaid 30 days after the insurer has received reasonable proof of the fact and amount of loss realized, and demand for payment thereof, shall thereafter bear interest at the rate of 20 percent per annum.

(6) A claim for net economic loss based upon injury or death to a person who is not an occupant of any motor vehicle involved in an accident may be made against the insurer of any involved vehicle: Provided, That the insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible: Provided, however, That such insurer is thereafter entitled to recover from the insurers of all other involved vehicles proportionate contribution for the benefits paid and the costs of processing the claim.

(7) Net economic loss sustained by any occupant, operator or user of a commercial motor vehicle shall be paid by the insurer of such commercial motor vehicle.

(8)(A) When one or more of the motor vehicles involved in an accident is larger than an ordinary passenger automobile, the insurer of the larger vehicle shall be responsible for a percentage of any net economic loss paid to occupants involved in the accident.

(8)(B) The Secretary shall classify, by rules and regulations in conformity with the Administrative Procedure Act, as amended, all motor vehicles larger than ordinary passenger automobiles into reasonable categories, and shall assign to each category a percentage of responsibility for net economic loss sustained by occupants of other vehicles: *Provided*, That such classifications and percentages of responsibility shall be based upon the increased severity of injury, caused by large vehicles in comparison to ordinary passenger automobiles: *Provided further*, That if a larger vehicle is liable for more than 70 percent of the net economic loss, such insurer may control the processing of any claims for such loss and be entitled to obtain contribution from insurers liable for the remainder of the benefits.

(9)(A) No owner, operator or user of an insured motor vehicle shall be liable for economic loss arising out of the operation or use of such vehicle, to any person to whom, or for the benefit of whom, insurance benefits are payable under the provisions of paragraphs (1) and (2) of subsection (a) of this section, or to whom payment is prohibited under the provisions of paragraph (3) of subsection (a) of this section.

(9)(B) The owner, operator, or user of an insured motor vehicle shall be liable for damages for catastrophic harm, arising out of the negligent operation or use of such vehicle, only to the extent that such damages exceed economic loss.

(b) Optional catastrophic harm insurance in excess of economic loss as follows—

(1) At the option of the insured, the insurer shall offer a provision for legal liability for catastrophic harm, arising out of the negligent operation or use of a motor vehicle, to a limit of, at least, \$50,000 for any one person, and \$300,000 for all persons in any one accident; and, at the option of the insured, the insurer shall offer a provision undertaking to pay to the insured all sums, not in excess of the limits of liability provided by the insured's liability insurance, which such insured is legally entitled to recover as damages for catastrophic harm arising out of operation or use of an uninsured motor vehicle.

(c) Any such policy of insurance described in this section may contain—

(1) additional coverages and benefits with respect to any injury, death, property damage, or any other loss from motor vehicle accidents;

(2) terms, conditions and exclusions; consistent with the required provisions of such policy and approved by the Secretary, who shall only approve terms, conditions, exclusions, coverages and benefits which are fair and equitable, and which limit the variety of coverages available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers.

(d) An application for a policy of insurance described in subsection (a) of this section may not be rejected by an insurer, nor shall such policy of insurance once issued, be canceled or refused renewal, by an insurer except for (1) suspension or revocation of the license of an owner or principal operator to operate a motor vehicle, or (2) failure to pay the premium for such policy after reasonable demand therefor; *Provided*, That, 20 days written notice is given to the insured with respect to paragraphs (1) and (2) of this subsection.

UNIFORM STATISTICAL PLAN AND PRICE INFORMATION

SEC. 6(a). The Secretary shall, after consultation with the insurers and State insurance supervisory authorities, promulgate a common, uniform statistical plan for the allocation and compilation of loss experience data for each coverage under section 5 of this Act, and upon promulgation, such plan shall be followed by every insurer writing policies of insurance which meet the requirements of section 5 of this Act, and by every rating or advisory organization or statistical agent named by any such insurer to gather, compile or report loss experience data.

(b) Such statistical plan shall contain data pertaining to the pure loss experience for the classes of risk within each coverage under section 5 of this Act: *Provided*, however, That such plan shall not contain data pertaining to loss adjustment expenses, underwriting expenses, general administration expenses or other expense experience for any class of risk within the coverage under section 5 of this Act; *Provided*, further, That in carrying out the provisions of this section, no insurer, rating or advisory organization, or statistical agent, or any other association of insurers, shall pool, or in any manner combine, any such expenses or expense experience, or otherwise act in concert with respect thereto.

(c) Every insurer writing policies of insurance which meet the requirements of section 5 of this Act, and every rating or advisory organization or statistical agent named by such insurer to gather or compile loss experience data, shall report such data in accordance with the provisions of the statistical plan required by this section at such times and in such manner as the Secretary shall, by rules and regulations lawfully prescribe.

(d) The Secretary may require standard uniform and standard minimal—

(1) policy provisions for the coverages under section 5 of this Act;

(2) classes of risk within each coverage under section 5 of this Act; to the extent that he deems it necessary to accomplish the purposes of the statistical plan required by this section.

(e) Every insurer writing policies of insurance which meet the requirements of section 5 of this Act, shall provide the Secretary with the actual rate or premium being charged for each class of risk within each coverage under section 5 of this Act at such times and in such manner as the Secretary shall by rules and regulations prescribe.

(f) From time to time, but not less than semi-annually, the Secretary shall analyze and freely and fully make available to the general public, with respect to every insurer writing policies of insurance which meet the requirements of section 5 of this Act, a comparison of such insurer's indicated rate based upon the loss experience data for each class of risk within each coverage with the actual rate or premium being charged by the insurer for such class or risk within such coverage.

ASSIGNED CLAIMS PLAN

Organization and maintenance

SEC. 7. (a) The Secretary shall, after consultation with the insurers and State insurance supervisory authorities, organize an assigned claims bureau and assigned claims plan in each State. Upon organization, each such bureau and plan shall be maintained, subject to regulation by the applicable State insurance supervisory authority, by the insurers authorized to write policies of insurance under section 5 of this Act in such State. In default of the continued maintenance of an assigned claims bureau and assigned claims plan in any State in a manner considered by the Secretary to be consistent with the provisions of this Act, the Secretary shall maintain such bureau and plan.

Costs of operation

(b) The costs incurred in the operation of each assigned claims bureau and assigned claims plan shall be assessed against insurers in each State by the applicable State insurance supervisory authority according to rules and regulations that assure fair allocations among such insurers writing policies of insurance under section 5 of this Act in the State, on a basis reasonably related to the volume of insurance under subsection (a) of section 5 of this Act.

Insurers required to participate

(c) Every insurer writing policies of insurance under section 5 of this Act is required to participate in the assigned claims bureau and assigned claims plan in each and every State in which such insurer is authorized to write such policies of insurance.

Persons entitled to claim through assigned claims plan; Benefits to which entitled

(d) Each person suffering loss because of injury or death arising out of the ownership, operation or use of a motor vehicle may obtain the insurance benefits under subsection (a) of Section 5 of this Act through the assigned claims bureau and assigned claims plan in the State in which such person resides if—

(1) no such insurance benefits are applicable to the injury or death; or

(2) no such insurance benefits applicable to the injury or death can be identified;

or

(3) the only identifiable insurance benefits under subsection (a) of section 5 of this Act applicable to the injury or death are, because of financial inability of one or more insurers to fulfill their obligations, inadequate to provide such benefits.

Claims assigned to one insurer or the bureau

(e) A claim or claims arising from injury or death to one person sustained in one accident and brought through the applicable assigned claims plan shall be assigned to one insurer, or to the applicable assigned claims bureau, which after such assignment shall have rights and obligations as if having issued a policy of insurance containing the benefits under subsection (a) of section 5 of this Act.

Principle of assignment

(f) The assignment of claims shall be made according to rules and regulations that assure fair allocation of the burden of assigned claims among insurers doing business in the particular state or a basic reasonably related to the volume of insurance written under subsection (a) of section 5 of this Act.

Notification of bureau by claimant for assignment of his claim

(g) A person or his legal representative claiming through an assigned claims plan shall notify the applicable bureau of his claim within the time that would have been allowed for filing an action for the insurance benefits under subsection (a) of section 5 of this Act had there been in effect identifiable coverage applicable to the claim. The bureau shall promptly assign the claim and notify the claimant of the identity and address of the insurer to which the claim is assigned, or of the bureau if the claim is assigned to it. No action by the claimant against the insurer to which his claim is assigned, or against the bureau, if the claim is assigned to it, shall be commenced later than 60 days after receipt of notice of the assignment or the last date on which the action might have been commenced had it been against the insurer of identifiable coverage applicable to the claim, whichever is later.

Cost of assigned claims plan

(h) All reasonable and necessary costs incurred in the handling and disposition of assigned claims, including amounts paid pursuant to assessments under subsection (b) of this section may be considered in making the regulating rates for the insurance under subsection (a) of section 5 of this Act: Provided, however, That if such costs are considered in the rates or premiums for such insurance, the pure loss portion of such costs shall be reported separately under the uniform statistical plan provided for by section 6 of this Act, and that portion of the actual rate or premium being charged for such insurance attributable to the entire amount of such costs incurred in the handling and disposition of assigned claims shall be reported separately under subsection (e) of section 6 of this Act.

(i) An insurer who makes an assigned claims payment shall be reimbursed, without regard to fault, by the owner of a motor vehicle which was not insured under section 5(a) of this Act at the time of the accident out of which such assigned claim arose.

INSURERS' FRAUDULENT OR ARBITRARY DENIAL OF CLAIMS AND FRAUDULENT OR
EXCESSIVE CLAIMS

SEC. 8. (a) Within the discretion of any court, a person making claim under a policy of insurance which meets the requirements of section 5 of this Act may be allowed an award of a reasonable sum for attorney's fee where the insurer's denial of all or part of the claim was fraudulent or so arbitrary as to have no reasonable foundation.

FRAUDULENT OR EXCESSIVE CLAIMS

(b) Within the discretion of any court, an insurer or any person who qualifies as a self-insurer under paragraph (A) of section 4(a)(1) may be allowed an award of a reasonable sum as attorney's fee for its defense against a person making claim against such insurer or self-insurer where such claim was fraudulent or so excessive as to have no reasonable foundation, and such attorney's fee so awarded may be treated as an offset against any benefits due or to become due to such person.

ADMINISTRATION

SEC. 9. In order to carry out the provisions of this Act, the Secretary shall—

(a) consult with representatives of State agencies charged with the regulation of the business of insurance, representatives of the private insurance business, and such other persons, organizations, and agencies of the Federal, State, or local governments as he deems necessary; and

(b) lawfully make, promulgate, amend, and repeal such rules and regulations as he deems necessary.

AUTHORIZATION AND APPROPRIATIONS

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including the organization of assigned claims bureaus and assigned claims plans in each State.

SEPARABILITY CLAUSE

SEC. 11. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be effected thereby.

EFFECTIVE DATE

SEC. 12. This Act shall become effective one year after the date of enactment.

S. 4340

A BILL To promote the greater availability of motor vehicle insurance in interstate commerce under more efficient and beneficial marketing conditions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Motor Vehicle Group Insurance Act."

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "insurer" means any enterprise engaged in the business of issuing or reinsuring motor vehicle insurance policies in interstate commerce or engaged in the business of issuing motor vehicle insurance that is reinsured (in whole or in part) in interstate commerce.

(2) The term "group insurance" means any plan of motor vehicle insurance offered or provided to members of a group not organized solely for the purpose of obtaining insurance, under the terms of a master policy or operating agreement between an insurer and the group sponsor, and incorporating group average rating, guaranteed issue with or without minimum eligibility requirements, group experience rating, employer contributions, or any other benefit to the members as insureds that they may be unable to obtain in the ordinary channels of insurance marketing on an individual basis. The term "group sponsor" means the employer or other representative entity of an employment based group or the administrative representative of any other type of group.

(3) The term "interstate commerce" means trade or commerce among the several states, or between the District of Columbia or any possession of the United States and any state or other possession, or within the District of Columbia.

(4) The term "state" means any state or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) The term "Attorney General" means the Attorney General of the United States.

REMOVING RESTRICTIONS ON GROUP INSURANCE

SEC. 3. (a) No state shall—

(1) prohibit, inhibit, restrict or condition, by means of fictitious group statutes or regulations, agency licensing requirements, application of prohibitions of unfair discrimination, eligibility provisions, or otherwise, the issuance and marketing of group insurance; or

(2) penalize or deny authority to an insurer because of its engagement or intention to engage in the marketing and issuance of group insurance.

(b) No state or group of insurers operating voluntarily shall, directly or indirectly, include insureds under a plan of group insurance in the base used in determining assignments to or assessments upon an insurer under an assigned risk plan if such plan of group insurance precludes any individual underwriting by the insurer and if the group is not defined to exclude members characterized as being bad risks, unless the assigned risk plan provides a reasonable system of credit to the insurer for insureds under the group insurance plan who would otherwise be eligible for coverage under the assigned risk plan.

AUTHORIZATION OF PAYMENTS TO TRUST FUNDS

SEC. 5. Section 302(c) of the Labor Management Relations Act, 1947, is amended by inserting immediately before the semicolon at the end of Clause (A) of the proviso to Clause (5) the following: "including group insurance as defined by the Motor Vehicle Group Insurance Act."

ENFORCEMENT

SEC. 6. (a) Whenever it shall appear to the Attorney General that any person is engaged or is about to engage in any Acts or practices that constitute or will constitute a violation of the provisions of this Act, he shall bring an action in the proper district court of the United States to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted.

(b) Nothing in this section shall preclude an insurer or any other person from instituting legal process to enforce their rights under this Act or from using the provisions of this Act as an otherwise valid defense in any relevant legal action brought against them.

JURISDICTION

SEC. 7. The district courts of the United States shall have exclusive jurisdiction of violations of this Act and of all suits brought to enforce it.

To the Committee on Finance:

S. 4341

A BILL TO amend the Internal Revenue Code of 1954, 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. Section 104(a) (3) of the Internal Revenue Code of 1954 (68A Stat. 30) is amended to read as follows:

"(3) amounts received through accident or health insurance, or property or liability insurance, for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, (B) are paid by the employer); and"

SEC. 2. (a) The heading of Section 105 (63A Stat. 30) is amended by adding after the word "plans" the language "and property and liability plans."

(b) Section 105(a) (69A Stat. 30) is amended to read as follows:

"(a) Amounts attributable to employer contributions.—Except as otherwise provided in this section, amounts received by an employee through accident or health insurance, or property liability insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer."

(c) Section 105(e) (68A Stat. 30) is amended to read as follows:

"(c) Accident and Health plans, and Property and Liability Plans.—

For purposes of this section and section 104—

"(1) amounts received under an accident or health plan, or property or liability plan for employees, and

"(2) amounts received from a sickness and disability fund, or property or liability plan for employees maintained under the law of a State, a Territory, or the District of Columbia, shall be treated as amounts received through accident or health insurance, property or liability insurance."

SEC. 3. (a) The heading of Section 106 (68 A Stat. 32) is amended by adding after the word "plans" the language "and property and liability plans."

(b) Section 106 (68A Stat. 32) is amended to read as follows:

"Gross income does not include contributions by the employer to accident or health plans, or property or liability plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness."

SEC. 4. Section 7701(20) (68A Stat. 911) is amended by adding after the comma which follows the words "accident and health plans" the language "or property or liability insurance or property or liability plans".

SEC. 5. The amendments made by sections 1, 2, 3, and 4 shall become effective on the date of enactment.

The charts and tables, presented by Mr. Hart, are as follows:

Chart 1.—Where each \$100 of automobile bodily injury liability insurance premiums goes

State taxes.....	\$3. 05
Overhead.....	5. 25
Selling expenses.....	19. 50
Insurance company expenses.....	27. 80
Claim adjusting expenses.....	14. 00
Claimants lawyers fees.....	15. 90
Litigation costs.....	1. 90
Net benefits to claimants.....	40. 40

Source: Senate Antitrust & Monopoly Subcommittee; Derived from Bests Aggregates & Averages (ann. eds.), Spectator, U.S. Dept. of Transportation, Automobile Personal Injury Claims, pp. 73, 80 (1970), and Automobile Accident Litigation, p. 7 (1970).

Chart 2.—Breakdown of the \$40.40 of net benefits to claimants out of each \$100 of automobile bodily injury liability insurance premiums

In excess of out-of-pocket loss (viz. general damages such as pain and suffering).....	\$19. 80
Duplicate recovery.....	7. 27
Out-of-pocket loss not otherwise compensated.....	13. 33

Source: Senate Antitrust & Monopoly Subcommittee; Derived from Statement of Robert E. Keeton, Harvard Law School, Before the Subcommittee, Hearings on Automobile Insurance, December 9, 1969, and U.S. Dept. of Transportation, Economic Consequences of Automobile Accident Injuries (1970).

TABLE 1.—WHERE \$37,000,000,000 OF AUTOMOBILE BODILY INJURY LIABILITY INSURANCE PREMIUMS WENT, 1959-68

	Amount	Percent
Premiums (earned).....	\$37,000,000,000	100. 0
Company expenses:		
Selling.....	7,300,000,000	
Overhead.....	1,900,000,000	
State taxes.....	1,100,000,000	
Total.....	10,300,000,000	27. 8
Claim adjusting expenses.....	5,100,000,000	14. 0
Claimants, lawyers fees.....	5,900,000,000	15. 9
Other litigation costs.....	700,000,000	1. 9
Net benefits to claimants.....	15,000,000,000	40. 4

Source: Senate Antitrust and Monopoly Subcommittee; Derived from Bests Aggregates and Averages (annual editions), Spectator, U.S. Department of Transportation, Automobile Personal Injury Claims, pp. 73, 80 (1970), and Automobile Accident Litigation, p. 7 (1970).

TABLE 2.—WHERE \$15,200,000,000 OF AUTOMOBILE PROPERTY DAMAGE LIABILITY INSURANCE PREMIUMS WENT, 1959-68

	Amount	Percent
Premiums (earned).....	\$15,200,000,000	100
Company expenses:		
Selling.....	3,100,000,000	
Overhead.....	\$800,000,000	
State taxes.....	400,000,000	
Total.....	4,300,000,000	28
Claims adjustment expenses.....	1,800,000,000	12
Claimants' lawyers (estimate).....	300,000,000	3
Available to claimants.....	8,800,000,000	57

Source: Senate Antitrust and Monopoly Subcommittee; derived from Bests Aggregates and Averages (annual editions) and Spectator.

TABLE 3.—WHERE \$17,600,000,000 OF AUTOMOBILE COLLISION DAMAGE INSURANCE PREMIUMS WENT, 1959-68

	Amount	Percent
Premiums (earned).....	\$17,600,000,000	100
Company expenses:		
Selling.....	3,800,000,000	-----
Overhead.....	800,000,000	-----
State taxes.....	400,000,000	-----
Total.....	5,000,000,000	28
Claim adjustment expenses.....	1,500,000,000	9
Claimants' lawyers (estimate).....	200,000,000	1
Available to policyholders.....	10,900,000,000	62

Source: Senate Antitrust and Monopoly Subcommittee; derived from Best Aggregates and Averages (annual editions) and Spectator.

TABLE 4.—WHERE \$9,400,000,000 OF AUTOMOBILE FIRE, THEFT, AND COMPREHENSIVE DAMAGE INSURANCE PREMIUMS WENT, 1959-68

	Amount	Percent
Premiums (earned).....	\$9,400,000,000	100
Company expenses:		
Selling.....	2,100,000,000	-----
Overhead.....	500,000,000	-----
State taxes.....	300,000,000	-----
Total.....	2,900,000,000	31
Claim adjustment expenses.....	700,000,000	7
Claimants' lawyers (estimate).....	100,000,000	1
Available to policyholders.....	5,700,000,000	61

Source: Senate Antitrust and Monopoly Subcommittee; derived from Bests Aggregates and Averages (annual editions) and Spectator.

TABLE 5.—AUTOMOBILE INSURANCE PREMIUMS WRITTEN AND LOSSES PAID, 1960-69

[Total amounts in billions]

	Auto bodily injury			Auto property damage			Auto physical damage			Total auto insurance		
	Premiums	Losses	Losses to premiums (percent)	Premiums	Losses	Losses to premiums (percent)	Premiums	Losses	Losses to premiums (percent)	Premiums	Losses	Losses to premiums (percent)
1960-64....	\$16.4	\$8.5	51.9	\$6.6	\$3.8	56.9	\$11.7	\$6.4	54.5	\$34.7	\$18.6	53.7
1965-69....	25.0	12.9	51.7	10.5	6.4	61.2	18.8	10.9	57.8	54.3	30.3	55.7
Total....	41.4	21.5	51.8	17.1	10.2	59.5	30.5	17.3	56.6	89.0	48.9	54.9

TABLE 6.—COMPARISON OF SELECTED CONSUMER PRICE INDEXES, 1960-65, 1970 (JULY)

	All items	All services	Medical care	Auto repairs	Gasoline	Tires	Automobile insurance
1960.....	103.1	106.6	108.1	103.9	103.3	92.6	111.5
1965.....	109.9	117.8	122.3	112.6	106.0	99.8	130.5
1970 (July).....	135.7	155.8	165.8	144.3	118.7	119.0	183.7

Note: Indexes base, 1957-59=100 percent.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

TABLE 7.—SELECTED CONSUMER PRICE INDEXES RATE OF INCREASE 1970 (JULY) OVER 1960 AND 1965

[In percent]

	All items	All services	Medical care	Auto repairs	Gasoline	Tires	Automobile insurance
1970 (July) over 1965.....	23.5	32.3	35.6	28.2	11.9	19.2	40.8
1970 (July) over 1960.....	31.6	46.2	53.4	38.9	14.9	28.5	64.8

Note: 1970 over 1960—1.00=percent increase; same for 1970 over 1965.

Source: Senate Antitrust and Monopoly Subcommittee; derived from consumer price indexes, U.S. Department of Labor, Bureau of Labor Statistics.

The CHAIRMAN. Could I just say one thing. It seems to me what we are talking about here is the inefficiency of delivery of benefits. But you are not going to improve that unless you get rid of the tort approach.

Senator HART. That is right; it may be a disagreeable sea in which to swim for a while, but unless we get into it, we are apt to be kidding ourselves we are doing something and all we are doing is piling up further studies.

Secretary VOLPE. Senator, may I suggest that when we use the term "no-fault" I think you will agree, in essence it is somewhat an oversimplification because as you know, I am sure, with the tremendous study you have made in this field, that there are several kinds of first party or no-fault insurance now.

Senator HART. I started my question by using the expression "first-party coverage" because that has a less emotional overtone to it.

Secretary VOLPE. Yes; but the fact is, how do we adopt the first-party insurance to the other areas that are not now covered and which are now covered by the tort liability system? I think you have hit the nail right on the head when you say that this basically is the problem that must be solved. It is a question of how far the Federal Government feels it must go in order to develop those answers that can contribute meaningfully to the solution of the total problem.

I might just comment on Senator Pastore's question, if I may, with regard to whether the costs will go up or down with no-fault or first-part insurance.

I can tell you you probably can get as many answers as there are people in this room. I addressed the American Trial Lawyers Association meeting recently and there were two lawyers from Massachusetts I was discussing this with. The new law in Massachusetts had just passed, and the Governor hadn't signed it yet.

One of them was willing to bet me a good Borsalino hat that in 4 years the premiums would be higher under the no-fault insurance. And the other lawyer was willing to bet me anything I wanted to bet—I told him I didn't bet anything—at that time premiums would do down.

So I don't think, as Senator Hart has said, that anybody can really say, with any degree of certainty, the premiums will go up or down. There is a hope and expectation that under the right set of circumstances the premiums might or probably would go down.

Senator HART. I hope I was tentative in my answer to Senator Pastore's question, but if you wanted to be an aggressive advocate of the first-party concept, I think you can find some experience which justifies the claim that it would be reduced substantially.

The New York experience is an example, I think, that argues that way. But after having sounded as though I knew all of the answers—which I don't—I agree with the Secretary when he says at the end that the problems of automobile insurance and compensation are incredibly numerous and complex. We all understand that.

Now you say that some people have had some trouble, according to your study, and auto insurance today appears to be becoming more and more difficult for some drivers to buy in the voluntary insurance market. An awful lot of people find that, don't they? Doesn't the study suggest that?

Secretary VOLPE. Yes, sir.

Senator HART. Not just daredevil drivers or alcoholics, but establishment pillars are experiencing this; am I right?

Secretary VOLPE. I would rather have Dick answer that. But that is correct; it all depends on the definition of "establishment pillars."

Senator HART. All right. But let me recite one whom even the insurance business would acknowledge as an establishment pillar. It comes out of the September 5, 1970, issue of the *Weekly Underwriter*. The editorial here deals with a top official of a life insurance company and his reaction after his automobile insurance was canceled. Here is a chunk of it—and I will ask the editorial in full be printed:

Our correspondent, who is in his middle 50's and has had his driver's license since he was 18, describes a respectable driving record: never a moving accident where he was at fault (twice he was struck by other vehicles); one speeding ticket, received when he was 18; a ticket for going through a red light at a traffic ambush, received 15 years later.

He goes on to describe his treatment at the hands of a giant casualty insurer which some 18 months ago refused to issue insurance either on the car assigned to him from his company's fleet of leased vehicles or on his personal car. The insurer in question—with whom this gentleman had done business for many years—gave only the vaguest reasons for refusal to renew.

I think there are two points that need laboring. First, if an insured with a good driving record, high social standing, and imposing professional qualifications has trouble with two of our largest insurers, where does the less heavily armed insured stand with those companies?

And, second, where does it leave the public image of insurers when a man in a position to make his voice heard far and loud in the industry is unnecessarily angered?

In case you have any doubts about this gentleman's attitude toward the property casualty business, here is the final paragraphs of his letter:

As far as I am concerned, the managements of most of the property-casualty companies have demonstrated their incompetence, their stupidity, and their lack of worthiness to lead great financial institutions, and the ultimate nationalization of the property-casualty industry will rest squarely upon the shoulders of the men who, for the past 50 years, have led that industry into its decline.

That is a much harsher statement that I or any of my colleagues would ever voice about a segment of this industry. But it is a statement voiced by a distinguished member of the industry himself who happens

to be in the life field. And it is carried by the Weekly Underwriter, which is the first insurance newspaper in America, according to its banner claim.

Now to get back to the point I was making. Even if we resolve somehow or another without a direct preemption by the Federal Government, the problem of delayed payments and so on and persons with claims who, as the chairman reminds us, are never compensated, you still haven't faced the problem of the man who can't get insurance or the man who, as I say, is an establishment pillar who is canceled. Here is why I think the proposal I make requires under this first-party coverage the right of insurance for anyone who is licensed, retains his license as a driver, and pays his premiums.

Senator PASTORE. Would your plan be on the national level?

Senator HART. Yes, sir.

Senator PASTORE. It would be national insurance?

Senator HART. Well, the caption, the title of the bill, explains the basis on which we go this far: "A bill to regulate interstate commerce by requiring certain insurance as a condition precedent to using the public streets, roads, and highways, and for other purposes."

It would compel the writing of insurance for anyone licensed and cancellation, say, for failure to maintain your driver's license or pay your premium.

Now, Senator Pastore, I put an escape hatch in my statement when I introduced this legislation, acknowledging, as the Secretary has, that the field is complex, the problem is far from simple, that I suggest these things tentatively, but as a basis for doing more than just discussing a study, let's get some legislation in here.

I share Senator Magnuson's and Senator Cotton's hope that the administration next year will have their legislative proposals in early.

There is a Wall Street Journal story of October 6 that bears on the second of the principal problems, as I see it, the cancellation thing—"Many motorists find auto policies canceled for no apparent reason." And the subheading: "Firms, in a financial bind, arbitrarily cutting back; little recourse for victim. Some companies bow out."

I ask that be printed in the record also.

Senator PASTORE (presiding). Without objection, these articles will be inserted in the record.

(The articles follow:)

* [From the Weekly Underwriter, Saturday, Aug. 1, 1970]

A HORROR STORY . . .

This is a true story. Names are withheld to protect the guilty.

Recently, an insured whose automobile coverage had been written for some time through a broker, received notice of cancellation from the insurance company. Just like that. No warning, no explanation, nothing. Simply a flat notice that he was no longer covered.

Since he'd had no accidents and paid his premiums faithfully, he was somewhat puzzled; to say nothing of worried, flustered and annoyed.

On inquiring at length, and at considerable inconvenience, he learned that his broker had passed on to that great underwriter in the sky, and that the insurer had decided to close out the broker's book of business, rather than re-placing it.

The company had not seen fit to tell the cancellees anything: why they were no longer insured, where they could get coverage, whether the insurer was glad or sorry. Not even that their broker had died.

I have no idea how large a book of business was involved. Even if it was only five policies, the company's behavior spawned ill-will ten times that number of policyholders.

In South Carolina, the National Association of Independent Insurers lately went on record as opposing a proposed insurance department amendment to the cancellation law, which would require much fuller disclosure of the reasons for policy cancellation.

It may well be, as NAII contends, that the proposed amendment would impose "severe impediments and restrictions on the abilities of companies to respond promptly to adverse circumstances." On the face of it, it does seem that requiring specific facts, in addition to reasons for terminations, would hamper and hamstring insurers.

But they have themselves to blame. If it weren't for horror stories like the one recited, there would be considerably less pressure for restrictive legislation. As it is—since the incident is far from atypical—pressure is likely to grow and to spread to other states.

It does the "public image" of our industry little good to publicize its general interest in highway safety and the common weal, when its specific dealings with insureds show such small regard for human welfare.

We can't expect people to accept us as the Good Witch of the North, when our behavior is more appropriate to Dracula.

J. K.

[From the Weekly Underwriter, Saturday, Aug. 15, 1970]

CASES IN POINT

The decline of underwriting profitability in the auto insurance industry has had a number of strange results—one of which is that some underwriters are beginning to panic. Understandably, companies are becoming more selective, and they should be. But too often, they turn down perfectly good risks for reasons that border on the ridiculous.

Two cases in point:

A woman in the midwest applied for auto insurance, but was informed by the insurer that she didn't meet company standards. She asked for specific reasons for the rejection. After encountering considerable resistance, she discovered that she had been turned down because the house she lived in was badly in need of a paint job and the underwriter reviewing her application felt that, since she didn't take good care of her house, she might be equally careless with her car. In fact, she was only renting the house and was not responsible for its upkeep. So for all practical purposes she was rejected because of her landlord's irresponsibility.

The second case concerns a man whose application for insurance was rejected by a company that boasted, "We accept all good risks." His record: over 25, licensed driver for about eight years, no accidents in all the years he had been driving, and his house didn't need a painting.

In the face of that record, one would expect that the company would have accepted him immediately, but no. The underwriter noticed on the application that the man's wife had a learner's permit and that she had been taking lessons from a private driving school. Since there was the chance that the man might give her lessons in his car, he was turned down.

After obtaining insurance from another firm, he received a notice from the first insurer saying that they were cancelling his policy (what policy?), and that they were notifying the motor vehicle bureau that he was no longer insured by them.

Admittedly, auto underwriters are experiencing difficult times what with the reparations system in so much trouble and with the problems caused by inflation and increasing traffic accidents. But underwriters must realize that they have a responsibility to be fair to the public in addition to the responsibilities they have to their companies.

If things continue the way they have been, there may come a day when requirements for obtaining auto insurance will reach such wild proportions that a man can be rejected because his group has twenty-five per cent fewer cavities. P. Z.

[From the Weekly Underwriter, Saturday, Sept. 5, 1970]

ANOTHER HORROR STORY . . .

It's easy to shrug off a lot of the flak insurance companies get as the wild shots fired by disgruntled, uninformed or greedy insureds.

Not so easy to shrug off, is the letter we got from the top official of a medium-sized life insurer. His broadside was triggered by an editorial we ran under the title, "A Horror Story" (Weekly Underwriter, August 1), which described the cavalier cancellation practices of one property-casualty company.

Our correspondent, who is in his middle 50's and has had his driver's license since he was 18, describes a respectable driving record: never a moving accident where he was at fault (twice he was struck by other vehicles); one speeding ticket, received when he was 18; a ticket for going through a red light at a traffic "ambush," received 15 years later.

He goes on to describe his treatment at the hands of a giant casualty insurer which, some 18 months ago, refused to issue insurance either on the car assigned to him from his company's fleet of leased vehicles or on his personal car. The insurer in question—with whom this gentleman had done business for many years—gave only the vaguest reasons for refusal to renew.

An isolated incident? Not according to our correspondent. He details his experience with another of the giants, which insures his fine arts collection under a personal property floater. An art object, insured for more than \$10,000, was damaged. Because of the special nature of the object, it was necessary to employ an expert on the staff of a large museum to make the repairs.

The insured reports: "It took five months and 29 letters from me before the company approved the repairs. It took seven more weeks and four more letters before the man's bill was finally paid." And this, mind you, involved a repair bill of only \$400.

I think there are two points that need laboring. First, if an insured with a good driving record, high social standing and imposing professional qualifications has trouble with two or our largest insurers, where does the less heavily armed insured stand with those companies?

Second, where does it leave the public image of insurers when a man in a position to make his voice heard far and loud is unnecessarily angered? And in case you have any doubts about this gentleman's attitude toward the property-casualty business, here is the final paragraph of his letter:

"As far as I am concerned, the managements of most of the property-casualty companies have demonstrated their incompetence, their stupidity and their lack of worthiness to lead great financial institutions, and the ultimate nationalization of the property-casualty industry will rest squarely upon the shoulders of the men who, for the past 50 years, have led that industry into its decline."

J. K.

[From the Weekly Underwriter, Saturday, Sept. 19, 1970]

SON OF DRACULA . . .

The editorials we ran ("A Horror Story," Aug. 1, and "Another Horror Story," Sept. 5), chronicling the cancellation abuses of insurers, seem to have touched some deep discontent within the bosom of the insurance business. If the following comments came from an insured, they would be more easily disposed of; when a man who is obviously intelligent and articulate, and has probably spent much of his life in a business, is bitter about that business, one must suspect some fundamental rottenness in the state of Denmark.

It's probably unfair to keep pressing on a spot that is sore, if not downright infected; but perhaps, since the vigor and sincerity of individual complaints has apparently had little effect so far, the ache of repetition will.

We reprint this letter, as the paperbacks say, "complete and unexpurgated":

Re: "Another Horror Story . . ." The unfortunate part of your editorial is that it wasn't printed in big, bold type so that some of the myopic insurance personnel would be able to read it more readily. Whether they would understand it, of course, would still be the \$64 question.

Definitely, the situation referred to in your editorial is not an isolated incident. Underwriters seem to be "book read." They appear to go completely out of their way to find reasons for not writing business and for cancelling coverages which they have had in effect profitably for many years. For instance, try to find an

insurance company that has literature explaining the operation of the 80 percent co-insurance clause or literature readily understandable by the layman showing how much insurable values have increased.

The common courtesy element in dealing with the producer appears to be practically nonexistent. Quite frankly, I am almost convinced that complete nationalization of the property and casualty industry would be for the common good. The American insuring public, particularly the small insured and even some of the larger ones, quite frankly, appears to be the low man on the totem pole from the standpoint of being able to secure proper coverage and have their policies issued and losses paid.

Does any industry have more enemies among the general public than the property and casualty industry? As far as having friends in high places—i.e., the various insurance departments—the lack of the same is also an indication of the overall incompetence among property and casualty insurance executives. Not to be overlooked is their inability to present up-to-date, refined figures indicating needed rate adjustments on a plus or minus basis. On the other hand, these same companies can very meticulously find reasons for cancellation of agencies because the loss ratio to them appears to be out of line, and yet the same agencies' loss figures on an overall basis are far better than the state or nationwide experience of the insurance company involved.

You could write a "horror story" each week. Just go out and visit a few agencies and/or brokers and ask them to relate to you some of their experiences.

You may wonder why this letter will not be signed, the reason being that if it were signed, it would result in cancellation of our agency contracts.

J.K.

[From the Wall Street Journal, Oct. 6, 1970]

INSURANCE CRISIS—MANY MOTORISTS FIND AUTO POLICIES CANCELED FOR NO APPARENT REASON—FIRMS, IN A FINANCIAL BIND, ARBITRARILY CUTTING BACK; LITTLE RECOURSE FOR VICTIM—SOME COMPANIES BOW OUT

(By Priscilla S. Meyer)

Frank Buryta is a mild-mannered, 37-year-old auto repairman. He owns a safe, well-maintained 1965 Ford station wagon, rarely drives more than 40 miles an hour in his sleepy hometown of North Tonawanda, N.Y., and hasn't had an accident in some 15 years years of driving.

Last month his insurance was canceled.

The only "wrong" that Mr. Buryta committed was his decision to continue living in the state of New York. His insurer, Grain Dealers Mutual Insurance Co. of Indianapolis, has decided that it can't afford to insure people who live in New York, New Jersey, Connecticut and Rhode Island, and so it simply has stopped selling and renewing auto policies in those four states.

The action is extreme, but not unique. In fact, arbitrary refusals to renew auto insurance policies are becoming commonplace. Thousands of drivers who have been paying their premiums on time and avoiding accidents are suddenly finding themselves without insurance. Some companies are getting out of the business altogether—College-University Insurance Co. of Indianapolis is dropping all 6,000 of its auto policies—and others are dropping everyone in certain categories, such as all people over 65 or all people in New York.

"A CRITICAL SITUATION"

Big and small companies alike are acting. Nationwide Mutual Group, the nation's fifth largest auto insurer, last week decided to stop all sales of new policies on personal cars, though it will continue to renew its old policies. Liberty Mutual Insurance Co., another large insurer, has fired 25% of its auto-policy sales force and has clamped tight restrictions on sales of new policies everywhere. Three Texas auto insurance firms, which used to write auto insurance with \$12 million in premiums each year, have gone into receivership.

"The situation could scarcely be more critical—barring a complete collapse of the private insurance industry," says Robert Coburn, president of the Independent Mutual Insurance Agents Association of New Jersey, a 2,000-member agent group. In an emergency action to protect motorists, New Jersey has temporarily forbidden the cancelation of any auto policy.

The insurance companies say they're as sorry about the cancelations as the policyholders are, but the firms insist they have no choice. They are losing so much money on auto insurance that they simply can't afford to insure some groups of people, the companies assert. They contend that states won't let them raise their rates nearly fast enough to cover the huge increases in payouts on claims. They say that rates generally have risen about 50% over the past decade but that total payouts have increased far more.

Many insurers say that their auto operations have been losing money for some time but that until recently the losses were offset by money earned from investment of premiums. But the declining stock market has cut into these profits of late, some insurance companies say, forcing them to take a harder look at the auto business.

Over the past 10 years, the industry has paid out \$2 billion more in claims than it has taken in in premiums, according to a spokesman for the Insurance Information Institute. Losses have been increasing each year, he says.

SOME SOLUTIONS

Many solutions have been proposed, but few are acceptable to both insurers and motorists. Union leaders in New Jersey, where hundreds of policies were canceled before the state imposed its freeze, have urged the state to take over the auto insurance business. Several states are considering adopting "no-fault" insurance plans similar to the one scheduled to take effect in Massachusetts on Jan. 1; under that plan each driver's insurance company must immediately cover accident claims of up to \$2,000 regardless of who is at fault. The Massachusetts plan is coupled with a 15% cut in rates. Sen. Philip Hart (D., Mich.) last month introduced legislation to set up such a plan on a national level.

When policies are canceled, the motorist often doesn't know where to turn. Some, like Mr. Buryta, the auto repairman, can find another company willing to insure them. Some, like Joe Corcoran, a retired 67-year-old businessman from Beverly, N.J., go to the state for help. Mr. Corcoran, whose policy was canceled for no apparent reason, asked the state insurance department to investigate, and it discovered the policy was canceled simply because Mr. Corcoran was over 65. The state then pressured the company to reinsure the motorist.

"CAN'T HELP EVERYONE"

"But we can't go to bat for everyone," sighs Walter Davis, one of the harried New Jersey insurance officials who handles such matters. Mr. Davis adds that's one reason the state banned all cancelations as of June 26.

Many policyholders have no choice but to sign up for so-called assigned risk policies. These are plans set up by all auto insurers in a state to take care of people who can't buy policies directly from a company. Policies are assigned by dealing them out in proportion to each company's share of the voluntary market.

They typically cost more—up to 200% above a normal policy depending on driving record—because the group includes all the accident-prone and otherwise undesirable drivers in the state. But besides cost, the policies have other disadvantages. In all but a few states, the plans offer only limited liability coverage (up to \$20,000) on the other driver and his auto. And in all but four states the insured can't purchase any collision, fire or theft coverage for his own car—at any price.

In Texas, a state generally considered to have a low auto-accident rate, the swing to assigned risk policies has been staggering in recent months. Herman O. Bergeman, manager of the Texas Insurance Plan, which handles assigned risks, says applications are now running at the rate of nearly 17,000 a month, double the pace of last year.

One recent applicant was Herman Stetler, a foreign exchange student from Germany who's at the University of Texas. He knows English well enough to have passed the Texas driving exam with flying colors. And he has never had an accident. But he was denied coverage by all companies to which he applied. "I guess they were afraid he couldn't read the stop signs or something," says Bill Gammon, an agent familiar with the case.

But the move to assigned risk policies by motorists who have no other choice merely intensifies the crisis, insurers say. Since the assigned risk pool is generally made up of drivers who are bad risks, there tend to be more claims and higher losses by the companies. Surcharges cover only part of the increase, insurers say. And in states like New York, where assigned risks now make up about 10% of all auto insurance written, the burden on smaller companies is considerable.

"We just couldn't afford to write business in New York any longer," says James O. Steinbarger, vice president of Grain Dealers. "Assigned risk was killing us."

Regarded as particularly serious is the situation in Massachusetts, where Aetna Life & Casualty Co., Kemper Insurance Group, Allstate Insurance Co. and several other major insurers are considering getting out of the auto business if an across-the-board 15% rate cut goes into effect Jan. 1.

The companies don't object to the rate cut for the no-fault collision coverage on the driver's own vehicle. But they're incensed that it's also supposed to apply to other coverage—fire, theft and medical. Insurers contend such policies will cost far more than premiums will bring in.

A massive pullout by these firms, which write over \$200 million in premiums each year, or about 43% of the state-wide volume, would dump an incredible load on the remaining companies—which say they can't afford to write any new insurance in Massachusetts now anyway.

"The snowball effect would be inescapable," says a State Farm Mutual Co. official. "It could lead to little else than a total collapse of private auto insurance facilities in the state." Whether the planned rate cut goes into effect hangs on the outcome of a recent lawsuit filed by over 100 companies contesting the proposals.

Senator HART. It is impossible to measure the sweep of public concern about any problem, whether it is Vietnam or shoes coming into this country, or anything else. But 3 years ago I started a study of automobile insurance in the Antitrust Committee. Over those 3 years I have received about 2,500 letters dealing with auto insurance.

The bulk of that mail complained about cancellation or failure to renew. In the few weeks since the introduction of this specific legislation that I have discussed, the great bulk of the mail complaints about the failure to compensate under existing insurance systems, the failure to compensate is now the dominant theme of this mail.

I would hope, Mr. Secretary, that we are in agreement, and I am sure we are, based on your statement, that the automobile accident compensation problem is an interstate problem in the sense that virtually everybody has a car.

Secretary VOLPE. No question about it.

Senator HART. And in one form or another you are almost compelled to have insurance. And too often, though they are guaranteed their market—guaranteed in the sense that you can't drive without it—they won't underwrite.

Your study suggests, and I am sure we are in agreement, that the present system does a poor job of compensating victims. Would you agree that while this first-party coverage does have its problems, that it may offer a potential as a solution.

Secretary VOLPE. I certainly can agree with that statement, sir.

Senator HART. I have, as you can guess, a slew of questions I would like to ask, but in fairness to everybody, I better not. I am delighted we have come this far.

I remember then Representative Cahill of New Jersey coming before this committee at the time this study proposal was before us. He came in prepared to argue against our going forward with the study in the Commerce Committee, insisting it would be a delaying device which would enable the whole subject to evaporate.

And he was after me to oppose the study: "Just go forward with the Antitrust Committee study, don't get diverted," he argued.

When Senator Magnuson and I explained we had no intention of permitting this study to intrude on the other activity, he accepted that. He has gone on to bigger and tougher problems in New Jersey,

but I hope when and if he has a chance to get a summary of this study, he will agree that it did make sense to have this kind of information and data available.

Secretary VOLPE. I would say as a former Governor I wish I had had available to me this body of information which is now available when I was pushing for reform of insurance in Massachusetts.

I am sure Governor Cahill and every Governor will be happy.

And I hope our gang—I have already told them—very few Governors or Senators have an opportunity to read 18 volumes—what I would like to see is a summary prepared—we do have one now, but one in a little more detail—a summary of the total recommendations, so that Governors and others can review them. They should be very helpful in attacking the problem in the years ahead.

Certainly, in one way or another, the States are going to be involved. The degree to which they are involved will depend on the kind of legislation the Congress passes, of course.

Senator HART. Amen. You remind us, though, of the problem we confront if we begin our approach on the assumption that this is basically a State problem.

You are immediately talking about 50 Governors and 50 legislatures with several thousand legislators, not all of whom are wholly divorced from the insurance business in one form or another, attempting to inhale all of that data and then coming up with basically 50 uniform approaches.

Secretary VOLPE. It would be impossible, Senator.

Senator HART. It would be historic if it occurred.

We will get an awful lot of mail in the meantime if it takes too long.

Senator PASTORE. Would you like to add anything, Mr. Secretary?

Secretary VOLPE. I would like to set the record straight, if I may, with regard to a little colloquy I had with Senator Cotton particularly.

Let me just say the Office of Management and Budget, which was referred to as having delayed some proposals, is actually the result of an effort on the part of the President to try to streamline an operation of the old Bureau of the Budget. It is our hope, and I believe it will come about, as a result of the outstanding capacity of George Shultz and some of the colleagues he has brought together there—I believe that various programs of our Department and other agencies will receive a scrutiny there that I think is desirable.

I would just hope there wouldn't be inordinate delay, and I don't expect there will be under the new setup.

Senator PASTORE. That is a matter of controversy between you and Senator Cotton for various reasons. Mr. Hart and myself are very much unimpressed, for obvious reasons.

We will let you Republicans fight that. We will have our day someday.

Senator HART. Mr. Chairman, I thought there might be other of our colleagues who had questions, so I didn't want to take the additional few minutes, but with your leave, let me.

To underscore the desirability, to use a mild word, of carefully analyzing a first party coverage approach, let me read excerpts from three of these several thousand letters that I have been getting.

Here is a letter from a 62-year-old woman in Maryland. She was hit by a car walking across the road on her way home. She points out that group health insurance paid her entire hospital bill plus

almost 70 percent of her doctor bill "without question and without the intercession of an attorney." When she tried to recover her remaining expenses from our automobile insurance compensation system, she was told by the driver's insurance company she couldn't recover because she was 5 percent negligent, as opposed to its driver's 95 percent. It seems pretty hard to rationalize that under one system she is paid promptly, with no additional cost, whereas under the other she must hire a lawyer, go to court, with all of the delay that Senator Pastore talked about. If she is successful, the attorney's fee probably will be the traditional one-third of the recovery.

The second letter is from a construction worker, 57 years old, Nashville, Tenn.

Secretary VOLPE. He must be good. He's in the construction industry.

Senator HART. He was not indestructible, however.

Secretary VOLPE. He might not have had his hard hat on, Senator.

Senator HART. He was hit by an uninsured motorist. He was thrown through the windshield of his car and out of work 7 weeks. He thought he was protected since he had both liability insurance and an uninsured motorist endorsement. He is now in the position of having to prove he was free from negligence before he can recover from his own insurance company under his uninsured coverage.

His case will have been in the courts 2 years as of the end of this year.

The last typical letter, really, is from the parents of a 19-year-old girl. The girl was killed on February 4, 1968. The other driver was convicted of vehicular homicide, fined \$500, had his driver's license taken away.

Here is an individual whom the State determined was at fault; he was convicted, fined, he had his license removed. Yet the parents of this dead girl have been unable to recover. There were no witnesses to the accident. They have to go to court, they have gone to court, attempted to prove their daughter was free from negligence and the case is still on appeal.

This is the kind of thing which unless promptly resolved will produce the surge of public opinion that that insurance executive cautioned will produce a national licensed insurance program, which none of us wants.

Senator PASTORE. In the last case you gave, does the no-fault insurance apply, inasmuch as one of the parties was uninsured?

Senator HART. Yes, the construction worker would have had his insurance, and he would be the beneficiary, he is the first party.

Senator PASTORE. But if the defendant who had no insurance was injured, through the fault of the first party, then would your no-fault insurance apply.

Senator HART. Excuse me, what was your question?

Senator PASTORE. In that case, let's assume the party who did not have insurance is the only party that was injured, as against the party who did have the insurance, that would have to be a tort case?

Senator HART. Well, if the individual injured had no insurance, an action would lie, I suppose, against the person who injured him for recovery on the traditional grounds.

Senator PASTORE. He would have to go through all this thing of going to court, that is what I am getting at.

Mr. WALSH. I think under Senator Hart's bill the uninsured pedestrian, for example, would be covered on a no-fault third-party basis by the insurance company.

Senator PASTORE. Then why buy insurance, if you can get recovery without buying insurance, why do you have to buy it?

I mean I am trying to get this straight in my own mind.

Mr. WALSH. Under Senator Hart's bill, it would be mandated that all car owners carry first-party insurance, both for themselves—

Senator PASTORE. Oh, I see.

Mr. WALSH. For himself, for members of his household—

Senator PASTORE. That explains it. You have the combination of the two. Everybody would have to carry insurance.

Mr. WALSH. Everybody except a noncar owner or a member of a noncar owning family. But the car which struck such a person or in which he was riding would be insured and that insurance coverage would cover the noncar owning person.

Senator PASTORE. But there would have to be insurance involved on both sides, that is what I am getting at, in order to have the no-fault principle.

Secretary VOLPE. That is correct.

Senator HART. I want to add this for clarification. I am reminded by the staff that in the isolated case, as we would have to except, that there would be somebody out on the road who did not have insurance, was not covered, and he hit you—the example they had in mind is a pedestrian hit by a hit-and-run driver—there would be an assigned claims pool.

Senator PASTORE. He is insured?

Mr. WALSH. It wouldn't make any difference.

Senator HART. It wouldn't make any different unless you ran him down. This is the disappear in the night and hurt case.

Then there is a provision for an assigned claims pool.

Senator PASTORE. But if a person came out of another State where compulsory insurance was not required and operated his car in Rhode Island and he was involved in an accident with a Rhode Islander who is covered, in that particular case could the person—let's assume he came out of Rhode Island and he was the injured party—what would be his rights under no-fault insurance?

Senator HART. That is the reason I suggest that we are going to have to go to a national plan in order that that neighboring State does not turn that fellow loose on you in Rhode Island.

Mr. BARBER. There are other ways that could be dealt with. I believe in the proposed New York plan, this particular issue was anticipated, and they thought that it could be dealt with by having insurance companies insure motorists out of other jurisdictions by simply tacking a rider onto their policies giving them "first party" insurance protection when driving in New York State.

For example, if you lived in the District of Columbia and occasionally drove in New York, you would be covered pursuant to the proposed New York no-fault first-party plan. So there are ways it might be worked out short of a Federal approach.

But certainly the point is important.

Senator PASTORE. Don't misunderstand me. You are talking about the party who is insured. I am talking about a party who is not, and who travels to another State and is injured.

In that particular case, wouldn't he have to prove his case under the tort procedure?

Mr. BARBER. Yes, he certainly would if the law permitted it. He might, of course, if the person who injured him was carrying a universally applicable, no-fault plan, be able to claim against it, if for example, he were a pedestrian.

Secretary VOLPE. I might add, in Massachusetts—who answered the question about a person who might be on the road without insurance, even though the law called for it, and that happens sometimes—in Massachusetts, you can't get your registration plates until you show the certificate of insurance.

Of course, some people might duck both.

Senator PASTORE. In Rhode Island, if a judgment is secured against you and you don't pay it, you lose your license. And that is not a satisfactory solution either. It is quite a problem, we all admit that.

And you are going to come up here with recommendations.

Secretary VOLPE. Yes, sir.

Senator PASTORE. It is the fervent hope of Senator Pastore and Senator Hart that we will be here to listen to you when you do.

Secretary VOLPE. Should I, as a good Republican, say no comment?

Senator HART. We didn't expect one.

Senator PASTORE. Thank you very much, Mr. Secretary.

(Whereupon, at 11:55 a.m., the hearing was adjourned.)

(The following were referred to on p. 2.)

LEGISLATIVE HISTORY OF P.L. 90-313

SENATE JOINT RESOLUTION 129

To authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses, and for other purposes.

Messrs. Magnuson, Bartlett, Brewster, Cannon, Cotton, Dodd, Hart, Hartke, Lausche, Long of Louisiana, Monroney, Moss, Pastore, and Scott

(H.J. Res. 958, by Mr. Moss, companion bill.)

Staff members: Frederick Lordan and Michael Pertschuk

Feb. 14, 1968—Referred to Subcommittee on Consumer.

Mar. 12, 13, 14, 1968—Hearings held. (Serial 90-60.)

Mar. 28, 1968—Considered in executive session by full committee and ordered reported favorably with amendments.

Apr. 8, 1968—Reported by Mr. Magnuson. (S. Rept. 1086).

Apr. 10, 1968—Passed Senate.

Note: Dec. 14, 1967—H.J. Res. 958 was introduced by Mr. Moss and referred to House Committee on Interstate and Foreign Commerce.

Mar. 19, 1968—Referred to Subcommittee on Commerce and Finance.

Mar. 19, 20, 1968—Hearings held. (House Serial 90-30.)

Mar. 21, 1968—Considered in executive session by subcommittee and ordered reported favorably to full committee with an amendment.

Apr. 2, 1968—Considered in executive session by full committee and ordered reported favorably with an amendment.

Apr. 4, 1968—Reported by Mr. Staggers. (H. Rept. 1282.)

May 7, 1968—Passed House.

May 7, 1968—House vacated the proceedings on passage of H.J. Res. 958 and passed in lieu thereof S.J. Res. 129, amended. (Text of S.J. Res. 129 stricken, and text of H.J. Res. 958 substituted therefor.)

May 8, 1968—Senate concurred in House amendment.

May 22, 1968—Signed by President. (Public Law 90-313.)

Text of P.L. 90-313



Public Law 90-313
90th Congress, S. J. Res. 129
May 22, 1968

Joint Resolution

82 STAT. 126

To authorize the Secretary of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses, and for other purposes.

Whereas Congress finds that suffering and loss of life resulting from motor vehicle accidents and the consequent social and economic dislocations are critical national problems; and

Whereas there is growing evidence that the existing system of compensation for such loss and suffering is inequitable, inadequate, and insufficient and is unresponsive to existing social, economic, and technological conditions; and

Whereas there is needed a fundamental reevaluation of such system, including a review of the role and effectiveness of insurance and the existing law governing liability; and

Whereas meaningful analysis requires the collection and evaluation of data not presently available such as the actual economic impact of motor vehicle injuries, the relief available both from public and private sources, and the role and effectiveness of rehabilitation: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Transportation (hereinafter referred to as the "Secretary"), in cooperation with those other Federal agencies which possess relevant competencies, as provided in section 4, is authorized and directed to conduct a comprehensive study and investigation of all relevant aspects of the existing motor vehicle accident compensation system. Such study and investigation shall include consideration of the following—

- (1) the inadequacies of such existing compensation system in theory and practice;
- (2) the public policy objectives to be realized by such a system, including an analysis of the costs and benefits, both monetary and otherwise;
- (3) the most effective means for realizing such objectives;
- (4) the oftentimes arbitrary and capricious cancellation or refusal to renew automobile insurance policies or the refusal to issue such policies without stated cause;
- (5) the constant and costly increases in premiums for automobile insurance;
- (6) the disparity between the amounts paid as premiums and the amounts paid out for claims;
- (7) the frequent insolvencies of companies engaged in providing automobile insurance;
- (8) long delays in processing and paying claims arising out of motor vehicle accidents; and
- (9) the efficiency and adequacy of present State insurance regulatory institutions.

(b) The Secretary shall submit to the President and to the Congress interim reports from time to time and a final report not later than twenty-four months after the date of enactment of this joint resolution. Such final report shall contain a detailed statement of the findings, conclusions, and recommendations of the Secretary, and may propose such legislation or other action as the Secretary considers necessary to carry out his recommendations.

Motor vehicles
accident com-
pensation system.
Study.

Reports to
President and
Congress.

ADMINISTRATIVE POWERS

SEC. 2. In order to carry out his functions under this joint resolution, the Secretary is authorized to—

Personnel.

5 USC 5101-
5115; 5331-
5338.
80 Stat. 416.

(1) appoint and fix the compensation of such employees as he deems necessary without regard to the provisions of title 5, United States Code, governing appointment in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, but at rates for individuals not to exceed \$100 per diem;

Contracts.

(3) enter into contracts with corporations, business firms, institutions, and individuals for the conduct of research and surveys and the preparation of reports; and

Advisory committees.

(4) appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive services, such advisory committees, representative of the divergent interests involved, as he deems appropriate for the purpose of consultation with and advice to the Secretary.

Members of advisory committees appointed under paragraph (4) of this section, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be compensated at rates to be fixed by the Secretary but not exceeding \$100 per day, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Members of such advisory committees shall, for the purposes of chapter 11, title 18, United States Code, be deemed to be special Government employees.

76 Stat. 1119.
18 USC 201-224.

COOPERATION OF FEDERAL AGENCIES

Information.

SEC. 3. (a) The Secretary is authorized to request from any department, agency, or independent instrumentality of the Government any information he deems necessary to carry out his functions under this joint resolution; and each such department, agency, or independent instrumentality is authorized and directed to cooperate with the Secretary and to furnish such information to the Department of Transportation upon request made by the Secretary.

Detail of personnel.

(b) The head of any Federal department, agency, or independent instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or independent instrumentality to assist in carrying out the duties of the Secretary under this joint resolution.

INTERAGENCY ADVISORY COMMITTEE

SEC. 4. The President shall appoint an Interagency Advisory Committee on Compensation for Motor Vehicle Accident Losses consisting of the Secretary who shall be Chairman and one representative each of the Departments of Commerce, Justice, Labor, Health, Education, and Welfare, and Housing and Urban Development, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission, and such other Federal agencies as are designated by the President. Such members shall, to the extent possible,

be persons knowledgeable in the field of compensation for motor vehicle accident losses. The Advisory Committee shall advise the Secretary on the preparation for and the conduct of the study authorized by this joint resolution.

HEARINGS AND PRODUCTION OF DOCUMENTARY EVIDENCE

Sec. 5. (a) For the purpose of carrying out the provisions of this joint resolution the Secretary, or on the authorization of the Secretary any officer or employee of the Department of Transportation, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable. Subpoena power, etc.

(b) In order to carry out the provisions of this joint resolution, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any corporation, business firm, institution, or individual having materials or information relevant to the study authorized by this joint resolution. Access to evidence.

(c) The Secretary is authorized to require, by general or special orders, any corporation, business firm, or individual or any class of such corporation, firms, or individuals to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to the study authorized by this joint resolution. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe. Filing of reports.

(d) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena or order of the Secretary or such officer or employee issued under subsection (a) or subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Compliance order.

(e) Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Witnesses, compensation.

(f) Any information which is reported to or otherwise obtained by the Secretary or such officer or employee under this section and which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall not be disclosed except to other officers or employees of the Federal Government for their use in carrying out this joint resolution. Nothing in the preceding sentence shall authorize the withholding of information by the Secretary (or any officer or employee under his control) from the duly authorized committees of the Congress. Confidential information. 62 Stat. 791.

TERMINATION

SEC. 6. The authority of the Secretary under this joint resolution shall terminate ninety days after the submission of his final report under subsection (b) of the first section.

APPROPRIATIONS AUTHORIZED

SEC. 7. There are hereby authorized to be appropriated, without fiscal year limitation, such sums, not to exceed \$2,000,000, as may be necessary to carry out the provisions of this joint resolution.

Approved May 22, 1968.

