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92d Congress
2d Session

COMMITTEE PRINT

TEXT AND ANALYSIS OF COMMITTEE PRINT THREE OF THE NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT (S. 945)

PREPARED AT THE DIRECTION OF

Honorable WARREN G. MAGNUSON, Chairman

FOR THE USE OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON COMMERCE,
May 9, 1972.

To Members of the Committee on Commerce, U.S. Senate:

Transmitted herewith is an analysis and the text of Committee Print No. 3 of the National No-Fault Motor Vehicle Insurance Act, (S. 945).

WARREN G. MAGNUSON,
Chairman.

National No-Fault Automobile Insurance

committee print no. 3 of s. 945

Brief Description

1. Committee Print 3 of S. 945 requires a State to adopt a no-fault insurance plan meeting minimum federal standards and put such plan into effect by the second July 1 following the first day of the first general legislative session following enactment of the national bill.

2. If any State fails to adopt within the required time a no-fault insurance plan meeting minimum national standards, then federal no-fault requirements paralleling those contained in committee print 2 of S. 945 become effective in that State. The State, however, would still regulate the federally established plan.

Minimum Federal Standards for State Action (Title II)

1. *Coverages* (See section 203)

Benefits paid without regard to fault for:

(a) Medical expenses up to a limit of not less than $50,000.

(b) Rehabilitation expenses, monthly wage loss, loss of services, and funeral expense up to a limit of not less than $75,000 for all such loss.

Mandatory offering of the following optional coverages:

(a) Property damage coverage.

(i) Collision coverage with deductibles as the policyholder elects; and

(ii) Coverage to pay for damage to the policyholder's vehicle if the damage is the fault of a third party.

(b) Tangible loss coverage to protect against loss in excess of the basic policy of protection.

2. *Tort Exemption* (See section 204)

General Rule: Tort liability arising out of the operation, maintenance, or use of a motor vehicle is limited.

Exceptions:

(a) Tort liability is preserved in accidents between insured drivers and at-fault uninsured drivers or persons engaging in criminal conduct who are at fault.

(b) Liability for intangible damages preserved if there is:

(i) permanent, serious disfigurement;

(ii) permanent, significantly incapacitating, loss of body function; or

(iii) six months of disability resulting from the motor vehicle accident.

(c) Liability is preserved for tangible damage in excess of the $50,000 of medical expense or $75,000 worth of other economic loss (or whatever greater amounts of basic coverage are established by a State).

3. *Other Requirements* (See section 202).

(a) Auto insurance coverages primary to any other insurance benefits.

(b) A qualifying no-fault policy must be purchased before a motor vehicle can be operated on any street, road, or other place open to automobile use by the public.

(c) Automobile insurance must be available to qualified applicants. Qualified applicants are those people with valid driver's license who are able to tender a reasonable portion of the premium. A person licensed to place automobile insurance business in the state must either place a qualified applicant with an insurer he represents or place the individual in some State plan or facility. Cancellation of insurance is prohibited except for failure to pay the premium or failure to have a valid driver's license. Any other termination of insurance must by accompanied by an offer to place the policyholder in the assigned risk plan or facility, and if the offer is accepted, the insurer must place the policyholder.

(d) Benefits must be timely paid. Otherwise interest penalties attach.

(e) In disputes between insurers and their policyholders, any court costs and attorneys fees must be paid by the insurer.

(f) If a policyholder presents a fraudulent claim to the insurer, the insurer is entitled to reimbursement for costs and reasonable attorneys fees.

(g) The State must establish an assigned claims plan to pay those people injured in automobile accidents who have no recourse to automobile insurance either because an insurance company is insolvent or because the person was injured in an uninsured automobile or because the vehicle causing the damage left the scene.

(h) The States must incorporate by reference a provision which resolves the problems of interstate travel by mandating that an insurance policy change as the vehicle moves from state-to-state in order to provide the policyholder the same protection he would have been provided in his own State.

(i) No State insurance plan may permit reimbursement between insurers for benefits paid under a qualifying no-fault policy.

(j) General prescriptions: The State must provide the means to inform consumers about actual rates being charged by insurers licensed to do business in the State for representative classes of risk in each territory; assure the availability of adequate rehabilitation services within the State for persons suffering accidental harm and improve the emergency medical response system so that it more adequately serve persons suffering accidental harm.

Federal Requirements (Title III)

1. *Coverages* (See section 301).

Benefits paid without regard to fault for:

(a) all medical expenses;

(b) all rehabilitation expenses;

(c) all monthly wage loss up to $1,000 per month; in the case of death $1,000 per month up to $50,000;

(d) other appropriate and reasonable expenses up to $1,000 per month incurred for such things as services in substitution for those that the injured or deceased person would have performed for the benefit of himself or his family, funeral expenses, and attorneys fees and costs to the extent provided in section 105 of the bill;

(e) intangible damage sustained by a person not an owner of a motor vehicle or a member of the household of such owner; and

(f) damage to property other than a motor vehicle in use up to a limit of $10,000.

Mandatory offering of the following optional coverages:

(a) Property damage coverage.

(i) Collision coverage with deductibles as the policyholder elects; and

(ii) Coverage to pay for damage to the policyholders vehicle if the damage is the fault of a third party.

(b) Protection against tangible damage in excess of that covered by the qualifying no-fault policy and intangible damage, with or without regard to fault, as agreed upon between the policyholder and insurer.

2. *Tort Exemption* (See section 302)

General Rule: Tort liability arising out of the operation, maintenance, or use of motor vehicles is limited.

Exception: Liability is prescribed between an insured driver and an at-fault uninsured driver or an insured driver and a person engaging in criminal conduct who its at fault.

3. *Other Requirements* (See Title I)

(a) All of the requirements imposed upon the States are incorporated in the Federal requirements. Additional requirements are enumerated below.

(b) Additional Requirements:

(i) Section 108 (consumer information),

(ii) Section 109 (rehabilitation services), and

(iii) Section 109 (emergency medical and transportation services).

NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

[COMMITTEE PRINT NO. 31]

MAY 8, 1972

92D CONGRESS
2D SESSION

S.

IN THE SENATE OF THE UNITED STATES

MAY , 1972

Mr. _____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require no-fault motor vehicle insurance as a condition precedent to operating a motor vehicle on streets, roads, and highways or other lands open to automobile use by the public in order to promote and regulate interstate commerce.

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 "National No-Fault Motor Vehicle Insurance Act".

TITLE I—NATIONAL REQUIREMENTS FOR AUTOMOBILE INSURANCE

DEFINITIONS

SEC. 101. As used in this Act—

(1) "Accidental harm" means bodily injury, death, sickness, or disease caused by a motor vehicle accident.

(2) "Criminal conduct" means conviction for the commission of an offense punishable by imprisonment for more than one year; use of a motor vehicle with the specific intent of causing injury or damage; or operation of a motor vehicle with knowledge that said operator or user, if over fifteen years old, is not legally entitled to operate or use such vehicle.

(3) "Damage other than economic loss" means in the case of injury or death—

(A) tangible damage in excess of economic loss; and

(B) intangible damage, as agreed upon between the owner of an insured motor vehicle and the insurer.

(5) "Economic loss" means in the case of injury or death those losses defined in either section 203 (b) or section 301 (b) of this Act.

(6) "Injury" means accidental harm not resulting in death.

(7) "Intangible damage" means inconvenience and discomfort, fright or shock, humiliation, indignity or insult, physical pain and suffering, mental anguish, loss of enjoyment of life, loss of consortium (society or companionship), and worry about the future consequences of an injury.

(8) "Insured motor vehicle" means a motor vehicle which is insured—

(A) under a qualifying no-fault policy; or

(B) by an owner who qualifies as a self-insurer with respect to such vehicle.

(9) "Insurer" means any person or governmental entity engaged in the business of issuing or delivering qualifying no-fault policies or other insurance policies referred to in section 203 or section 301 of this Act.

(10) "Loss resulting from damage to the insured's motor vehicle", means—

(A) an amount equal to the direct damage or loss to the insured motor vehicle as a result of collision or upset, fire, theft, flood, or other hazards incident to the operation, maintenance, or use of an insured motor vehicle; and

(B) such other appropriate and reasonable expenses necessarily incurred as a result of such damage to or loss of an insured motor vehicle, as agreed upon between the owner of an insured motor vehicle and the insurer.

(11) "Monthly earnings" means—

(A) in the case of a regularly employed person or a person regularly self-employed, one-twelfth of the expected annual earnings after income taxes at the time of injury or death; or

(B) in the case of a person not regularly employed or self-employed, or of an unemployed person, one-

twelfth of the anticipated annual earnings after income taxes from the time such person would reasonably have been expected to be regularly employed. In the case of an unemployed person anticipated annual earnings shall be calculated by averaging the annual compensation after income taxes of such person for the five years next preceding the year of injury or death.

Such sums are to be periodically increased in a manner corresponding to annual compensation increases that would predictably result but for the injury or death, but in no event shall such sums exceed any monthly limits established by or in accordance with this Act.

(12) "Motor vehicle" means any vehicle driven or propelled by electrical or mechanical power required to be registered in a State (or an object being pulled or pushed by such vehicle).

(13) "Motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a motor vehicle.

(14) "Motor vehicle in use" means a motor vehicle being operated on any street, road, highway, or other land open to automobile use by the public; it does not mean a motor vehicle legally parked on any street, road, highway, or other land open to automobile use by the public.

(15) "Net economic loss" means, in the case of injury

or death, economic loss reduced but not below zero by the amount of any benefit or payment received (or legally entitled to be received and actually available to the claimant) for losses resulting from such injury or death from any workmen's compensation benefits received as payment for tangible damage.

(16) "Operation, maintenance, or use" when used with respect to a motor vehicle means operation, maintenance, or use but it does not include conduct within the course of a business of parking by a bailee or his agent, repairing, servicing, or otherwise maintaining vehicles unless such conduct occurs outside the premises of such business.

(17) "Owner" means a person who holds the legal title to a motor vehicle; except that in the case of a motor vehicle which is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, such term means the debtor or lessee.

(18) "Qualified applicant" means a person—

(A) who has a valid license which permits him to operate the motor vehicle designated in the insurance application, and

(B) who tenders a reasonable portion of the premium as determined by the State insurance regulatory authority.

(19) "Qualifying no-fault policy" means an insurance

policy which meets the requirements of either section 203 or section 301 (a) and (b).

(20) "Secretary" means the Secretary of Transportation.

(21) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Canal Zone.

(22) "State insurance regulatory authority" means any department, commission, board, or other agency of the State which is charged by State law with the supervision and regulation of the business of insurance.

(23) "Self-insurer" means with respect to any motor vehicle a person who has satisfied the requirements of section 102 of this title.

(24) "Tangible damage" means loss of services, funeral expenses, loss of earnings, loss of earning capacity, temporary and permanent disability, aggravation of preexisting physical conditions or disease, and impairment of physical ability, impairment of medical ability, disfigurement, dismemberment, and loss of bodily harm.

(25) "Uninsured motor vehicle" means a motor vehicle which is not an insured motor vehicle.

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

NECESSARY NO-FAULT INSURANCE

SEC. 102. (a) No person, State, political subdivision, or interstate entity may register, operate, or use a motor vehicle upon any street, road, highway, or other land open to automobile use by the public in any State at any time unless such vehicle is an insured motor vehicle, pursuant to regulations which the State insurance regulatory authority shall prescribe in consultation with other appropriate State officials.

(b) Motor vehicles owned or operated by any Federal agency, (including the executive departments, the military departments, independent establishments of the United States, corporations primarily acting as instrumentalities or agencies of the United States) shall be insured by the Federal Government as if a qualifying no-fault policy pursuant to section 301 of this Act had been issued to cover such motor vehicles. Any person may commence action against the United States under the same terms and conditions as if it were an insurer and provider of a qualifying no-fault policy for motor vehicles owned and operated by a Federal agency.

(c) Any person who knowingly violates the provisions of subsection (a) of this section may be punished by such fine as a State determines to impose.

AVAILABILITY OF INSURANCE

SEC. 103. (a) A qualified applicant shall be entitled to obtain a qualifying no-fault policy and any mandatory

optional coverages from any person or firm licensed to negotiate such policies in the State.

(b) Such qualifying no-fault policy or mandatory optional coverages shall be issued either by—

(1) an insurer licensed to do business in the State for which the person receiving the application of the qualified applicant is authorized to place insurance, or

(2) a State plan as required to be adopted in subsection (c) of this section.

(c) The State insurance regulatory authority shall adopt and implement or approve and supervise, a plan providing for the issuance of qualifying no-fault policies and mandatory optional coverages to any qualified applicant who cannot be placed with an insurer by the person receiving his application or who elects to receive either his qualifying no-fault policy or mandatory optional coverages from the plan.

(1) The plan shall provide for equitable apportionment among all insurers of the insurance coverage, or financial burdens thereof, provided to qualified applicants under the plan and the costs of operation of the plan.

(2) The plan shall provide for the availability of financing or installment payments of premiums on reasonable and customary terms and conditions.

(3) The plan shall authorize each person or firm li-

censed to sell qualifying no-fault policies and mandatory optional coverages to place such policies or coverages with the plan but without limiting the subsequent transfer of the policy from the plan to the voluntary market.

(4) The plan shall provide for the ready transfer of persons insured under the plan into the voluntary market in accordance with regulations established by the State regulatory authority.

(5) Subject to the supervision and approval of the State insurance regulatory authority, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration, and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. The rates and rate modifications specially adopted or charged for insurance coverages provided under the plan shall be first adopted and approved by the State regulatory authority, be reasonable and not unfairly discriminatory among applicants for insurance under regulations established by the State regulatory authority the plan, and not be greater than 200 per centum of the cost of comparable insurance for similarily situated persons who are able to obtain insurance in the voluntary market.

(d) Any termination of a qualifying no-fault policy or mandatory optional coverages by an insurer, including any

refusal by the insurer to renew the insurance at the expiration of its term and including any modification by the insurer of the terms and conditions of the insurance unfavorable to the insured, shall be ineffective unless—

(1) written notice of intention to modify or not renew or to otherwise terminate the insurance, together with the reasons therefor, has been mailed or delivered to the insured at least thirty days prior to the effective date of the modification or expiration or other termination of the insurance, and

(2) the insurer has offered to arrange for identical coverage with the plan and informs the insured about the price of such coverage, and

(3) the insurer does arrange for such identical coverage with the plan if instructed to do so by the insured.

(e) A qualifying no-fault policy or mandatory optional coverages may not be terminated by cancellation except for—

(1) revocation of the principal operator's license to operate a motor vehicle, or

(2) failure to pay the premium for such policy after reasonable demand therefor.

(f) (1) An insurer may exclude by name from a qualifying no-fault policy covering a motor vehicle, at the time of issuance or at any time thereafter upon written notice

thirty days in advance (A) any operator who does not have a license to operate a motor vehicle by reason of its revocation caused by his driving behavior, or (B) any other person designated by the owner of such motor vehicle.

(2) Any person excluded by name in accordance with paragraph (1) of this subsection who has received notice of such exclusion and who subsequently operates said motor vehicle shall be demed to do so with knowledge that he is not legally entitled to operate such vehicle.

PAYMENTS OF BENEFITS; CONDITIONS AND LIMITATIONS

SEC. 104. (a) (1) Payments for net economic loss shall be made periodically as loss is incurred but need not be made more often than monthly. Any loss unpaid forty days after the insurer has reasonable proof of the fact and amount of any portion of the loss shall bear interest at the rate of 1½ per centum per month commencing from the thirty-first day after the insurer has such reasonable proof. From the sixty-first day after the insurer has reasonable proof an unpaid loss shall bear interest at the rate of 2 per centum per month: *Provided*, That any claim or portion of claim as to which there is a good faith dispute whether it is owing shall bear interest at the rate of 1 per centum per month from the time that the beneficiary is advised of the denial of the claim, or a portion thereof, and advised of the availability of counsel as provided in section 105 of this Act. In the case of death,

payments for net economic loss shall be made periodically as loss is incurred or as agreed upon between the owner of the insured motor vehicle and insurer when the policy is issued. Any payments made by an insurer which are determined not to be legally owing, whether due to mistake or fraud, are debts owed to the insurer and recoverable by it as any other debt and may, pursuant to regulations of the State insurance regulatory authority, be offset against future benefits payable.

(2) The benefits for net economic loss shall be paid as provided by this section without deduction for workmen's compensation benefits, if such benefits have not been paid to the claimant before the benefits for net economic loss are overdue or payment for net economic loss is made. The insurer is entitled to reimbursement from the person obligated to make any payments or from the claimant who actually receives the payment.

(b) No part of loss benefits paid under a qualifying no-fault policy or mandatory optional coverages shall be applied in any manner as attorneys fees for services rendered in pursuing a claim under a qualifying no-fault policy. Any contract in violation of this provision shall be illegal and unenforceable, and it shall constitute an unlawful act for any attorney to solicit, enter into, or knowingly accept benefits under any such contract.

(c) (1) If insurance benefits from a qualifying no-fault policy or mandatory optional coverages for tangible damage resulting from a motor vehicle accident have not been paid, an action for these benefits may not be commenced later than two years after the denial of a claim which is timely made. A claim shall be considered timely made if it is presented to the insurer within two years after the person making the claim either knows, or in the exercise of reasonable diligence should know, that the tangible damage was the result of the motor vehicle accident but in no event later than eight years from the date of the accidental harm.

(2) A person may not commence an action for the recovery of benefits for tangible damage resulting from a motor vehicle accident unless he has made a timely claim for such benefits.

(3) A person may not submit a claim to an insurer for the recovery of benefits for intangible damage resulting from a motor vehicle accident until the final periodic payment for net economic loss has been made or until a period of three years from the time the injury has elapsed, whichever occurs first.

(4) If contracted for insurance benefits for intangible damage resulting from a motor vehicle accident have not been paid, an action to recover these benefits may not be

commenced later than four years from the date of such motor vehicle accident.

(d) (1) An assignment or agreement to assign any right to benefits under this Act for loss accruing in the future is unenforceable except—

(A) an assignment of rights to benefits received for net economic loss in order to secure payment of alimony, maintenance, or child support; or

(B) an assignment of rights to benefits received for net economic loss to the extent that the benefits are for the cost of products, services, or accommodations provided or to be provided by the assignee.

(2) Benefits received for net economic loss because of expenses included in paragraphs (1) and (2) of section 203(b) or paragraphs (1) and (2) of section 301(a) of this Act are exempt from garnishment, attachment, execution, and other process or claims. Benefits received for net economic loss other than those enumerated above are exempt from garnishment, attachment, execution, and other process or claims to the extent that wages or earnings are exempt under applicable law exempting earnings or wages from process or claims.

CLAIMANT'S ATTORNEYS FEES

SEC. 105. A person making a claim under a qualifying no-fault policy or mandatory optional coverages may

be allowed an award of a reasonable sum for attorney's fee (based upon actual time expended) and all reasonable costs of suit in any case in which the insurer denies all or part of a claim for benefits under such policy unless the court determines that the claim was fraudulent, excessive, or frivolous.

(b) A person making claim against an insurer under policy provisions providing intangible loss benefits may enter into a contingent fee arrangement with an attorney but in no event may the fee exceed 25 per centum of any award the claimant receives. The fee may be further limited at the discretion of the court.

FRAUDULENT CLAIMS

SEC. 106. Within the discretion of the court, an insurer or self-insurer may be allowed an award of a reasonable sum as attorney's fee (based upon actual time expended) and all reasonable costs of suit for its defense against a person making claim against such insurer or self-insurer where such claim was fraudulent, excessive, or frivolous and such attorney's fee and all such reasonable costs of suit so awarded may be treated as an offset against any benefits due or to become due to such person.

ASSIGNED CLAIMS

SEC. 107. (a) (1) Each State insurance regulatory authority shall organize an assigned claims bureau or assigned

claims plan for the State. Upon organization, each such bureau or plan shall be maintained, subject to regulation by the applicable State insurance supervisory authority, by all insurers writing qualifying no-fault policies in the State.

(2) Each State insurance regulatory authority shall prescribe regulations which shall set forth the extent to which, for purposes of this section—

(A) a self-insurer shall be treated as an insurer, and

(B) benefits which a self-insurer is obligated to pay shall be treated as insurance benefits under a qualifying no-fault policy.

(b) The costs incurred in the operation of each assigned claims bureau or assigned claims plan shall be assessed against insurers in each State by the applicable State insurance regulatory authority according to regulations of such State authority that assure fair allocations among such insurers writing qualifying policies in the State, on a basis reasonably related to the volume of insurance written under qualifying no-fault policies.

(c) (1) No insurer may write any qualifying no-fault policy unless the insurer participates in the assigned claims bureau or assigned claims plan in each State in which such insurer writes such policies.

(2) An insurer who violates paragraph (1) of this

subsection shall be assessed a civil penalty of $5,000 for each policy he issues in violation of such paragraph.

(d) Except as provided in subsection (e) of this section, each person sustaining injury or death (or his legal representative) may obtain the insurance benefits described in section 203, or where applicable in section 301, of this Act through the assigned claims bureau or assigned claims plan in the State in which such person resides if—

(1) no insurance benefits under qualifying no-fault policies 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 qualifying no-fault policies applicable to the injury or death will not be paid in full because of the financial inability of one or more insurers to fulfill their obligations.

(e) A person shall be disqualified from receiving benefits through any assigned claims bureau or assigned claims plan established pursuant to this section if he were—

(1) the operator or user of a motor vehicle engaging in criminal conduct at the time of the accidental harm, or

(2) the owner or registrant of an uninsured motor vehicle at the time of its involvement in the accident out of which such person's injury arose, or

(3) the operator of an uninsured motor vehicle at the time of its involvement in the accident out of which such person's injury arose, and had reason to believe that such vehicle was an uninsured motor vehicle.

(f) 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 the same rights and obligations as it would have had had it issued a qualifying no-fault policy applicable to such injury or death.

(g) The assignment of claims shall be made according to regulations of the State insurance regulatory authority which shall assure fair allocation of the burden of assigned claims among insurers doing business in the particular State on a basis reasonably related to the volume of insurance written under either section 203 or 301 of this Act.

(h) A person or his legal representative claiming through an assigned claims plan shall notify the applicable bureau of his claim within the period prescribed under section 104(c) for filing a claim for insurance benefits. 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 sixty days after receipt of notice of the assignment or after the expiration of the period prescribed in section 104(c) for commencing an action against an insurer, whichever is later.

(i) An insurer who makes an assigned claims payment to a claimant shall be subrogated to any right such claimant may have had against the owner or operator of any uninsured motor vehicle involved in the accident out of which the claim arose.

CONSUMER INFORMATION

SEC. 108. (a) (1) The Secretary shall, after consultation with insurers and State insurance regulatory authorities, promulgate a common, uniform statistical plan for the allocation and compilation of claims and loss experience data for each coverage under section 301 of this Act. Upon promulgation, such procedure shall be followed by every insurer writing qualifying no-fault policies and by every rating or advisory organization or statistical agent used by any such insurer to gather, compile, or report claims and loss experience data for the purpose of presenting consumer information disclosing indicated in an actual premium rates as prescribed in subsection (g) of this section.

(2) Such statistical plan shall contain data pertaining to the claims and loss experience for the classes of risk in

each rating territory within each coverage under section 301 of this Act. Such statistical plan shall not contain data pertaining to expenses for adjusting losses, underwriting expenses, general administration expenses, or any other expense experience for any class of risk in each rating territory within the coverages under section 301 of this Act. In carrying out the provisions of this section, no insurer, rating, or advisory organization, or statistical agent, or any other association of insurers, may pool, or in any manner combine, any such expenses or expense experience, or otherwise act in concert with respect thereto.

(b) Every insurer writing policies of insurance which meet the requirements of section 301 of this Act, and every rating or advisory organization or statistical agent used by such insurer to gather or compile claims and loss experience data, shall report such data in accordance with the provisions of the calculation procedure required by this section at such times and in such manner as the State insurance regulatory authority shall by regulation prescribe.

(c) The Secretary shall prescribe regulations which shall require standard uniform—

(1) policy provisions for each coverage under section 301 of this Act; and

(2) classes of risk and rating territories for each coverage under section 301 of this Act;

in order to accomplish the purposes of this section.

(d) In each State in which it is writing qualifying no-fault policies in accordance with section 301 of this Act, every insurer shall provide the Secretary with the actual rate or premium being charged for each class of risk in each territory within each coverage under section 301 of this Act at such time and in such manner as the Secretary shall by rules and regulations prescribe.

(e) The Secretary, after consultation with insurers, shall appoint a statistical agent or agents, to receive, gather, compile, report, and analyze the claims and loss experience data, and actual rates or premiums, specified in subsections (b) and (d) of this section.

(f) From time to time, but not less often than semi-annually, the Secretary shall analyze and freely and fully make available to the general public, with respect to every insurer writing qualifying no-fault policies in accordance with section 301 of this Act, a comparison with such insurers indicated rate based solely upon the claims and loss experience data for each class of risk and each rating territory within each coverage under section 301 with the actual rate for premiums being charged by the insurer for such class of risk in each territory within such coverage. The claims and loss experience data, and actual rates specified in subsections (b) and (d) of this section shall be made available to the general public at such times and in such manner as the Secretary shall by regulation prescribe.

REHABILITATION SERVICES

SEC. 109. (a) The insurer shall promptly refer each person to whom benefits are paid or expected to be paid for three months or more for economic loss under section 301 to the State agency or agencies administering or supervising the administration of the State plan for rehabilitation services approved under the Vocational Rehabilitation Act (29 U.S.C. 35). In the case of any State which does not have an approved State plan for rehabilitation services, the insurer shall promptly refer said person to public or private agencies, organizations, institutions, or individuals offering rehabilitation services.

(b) If a person who is entitled to benefits of a qualifying no-fault policy refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act, the insurer is authorized, after thirty days notice in writing to such person, to make deductions from any payment or payments to which such individual is entitled, until the total of such deductions equals 50 per centum of such individual's benefit or benefits for monthly earnings for any month in which such individual refuses without good cause to accept such rehabilitation services. Any person who is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and

cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act, shall, for the purposes of the first sentence of this subsection, be deemed to have done so with good cause.

(c) The costs incurred in providing rehabilitation services to a person who suffers injury in a motor vehicle accident shall be paid, without regard to fault, by the insurer under a qualifying no-fault policy or where appropriate, the assigned claims plan.

(d) Each insurer writing qualifying no-fault policies pursuant to section 301 in the State shall invest until January 1, 1978, 1 per centum per annum of the total amount of premiums collected each year from the sale of qualifying no-fault policies within the State. Up to 50 per centum of such investment may be in grants, loans, or equity investments in the construction or improvement of rehabilitation facilities within the State: *Provided*, That such investments are approved in advance by the State agency or agencies administering or supervising the administration of the State plan for rehabilitation services, or by the Secretary of Health, Education, and Welfare. The remainder of the re-

quired investment shall be paid to said State agency or agencies no later than April 1 of each year, as an ordinary and necessary expense of doing business in the State. Said sums shall be expended by said State agency or agencies on construction or improvement of rehabilitation facilities, programs, and equipment within the State. Said State agency or agencies shall make an annual accounting of all grants, loans, or equity investments approved or made by it pursuant to this subsection and shall make such information available to the public. In the case of any State which does not have an approved plan for rehabilitation services, such amounts shall be paid to the Secretary of Health, Education, and Welfare for expenditure or rehabilitation construction and rehabilitation facility improvement grants in that State. The State insurance regulatory authority shall withdraw the authority to write qualifying no-fault policies from any insurer that fails to make the investments under this subsection.

EMERGENCY MEDICAL AND TRANSPORTATION SERVICES

SEC. 110. (a) (1) Each insurer writing qualifying no-fault policies pursuant to section 301 within a State shall assist the State agency administering or supervising the State highway safety program approved under section 402 of title 23, United States Code, in the development and maintenance

of the most effective possible emergency medical response system.

(2) Said State agency shall provide for a system which includes: (1) training, licensing, and other appropriate requirements for operators, attendants, drivers, and dispatchers of ambulances and other rescue vehicles, including helicopters; (2) requirements for types and numbers of emergency vehicles including supplies, equipment, and personnel to be carried; (3) requirements for the operation and coordination of emergency care systems; (4) first-aid training programs and refresher courses for emergency service personnel and members of the general public; (5) criteria for the use of two-way communications; (6) procedures for summoning and dispatching aid; and (7) a comprehensive plan, periodically reviewed, for emergency medical services including facilities and equipment, definition of areas of responsibility, agreements for mutual support, and communications systems.

(b) The costs incurred in providing emergency medical response services to a person who suffers injury in a motor vehicle accident shall be paid, without regard to fault, by the insurer under a qualifying no-fault policy or, where applicable, under an assigned claims plan.

(c) Each insurer writing qualifying no-fault policies pursuant to section 301 of this Act in the State shall invest

until January 1, 1978, 1 per centum per annum of the total amount of premiums collected each year from the sale of qualifying no-fault policies within the State. Up to 50 per centum of such investments may be in grants, loans, or equity investments in emergency medical and transportation facilities, programs, and equipment within the State: *Provided*, That such investments are approved in advance by the State agency administering or supervising the State highway safety program. The remainder of the required investments shall be paid to said State agency no later than April 1 of each year, as an ordinary and necessary expense of doing business in the State. Said sums shall be expended by said State agency on emergency medical and transportation facilities, programs, and equipment within the State. Said State agency shall make an annual accounting of all grants, loans, or equity investments approved or made by it pursuant to this subsection and shall make such information available to the public. The State insurance regulatory authority shall withdraw the authority to write qualifying no-fault policies from any insurer that fails to make the investments required under this subsection.

(d) The Secretary of Health, Education, and Welfare, in consultation with the Secretary of Transportation, shall cooperate with States for the purpose of aiding them to solve their emergency medical response system problems, and shall

give authorized representatives of the States the benefit of the experience of the Public Health Service in response, transportation, communications, training, licensing, construction, and improvement of facilities, equipment, care, treatment, supervision, inspection, and standards, and shall make available to health officials, scientists, and appropriate institutions and organizations, technical advice and assistance in the development of emergency medical response systems of maximum possible effectiveness.

MOTOR VEHICLES IN INTERSTATE TRAVEL

SEC. 111. (a) A qualifying no-fault policy issued in one State in accordance with either title II or III shall be deemed to contain—

(1) any additional qualifying no-fault policy coverages required in any other State in which a motor vehicle covered by that policy is operating;

(2) liability insurance to protect against any liability exposure to which the operator of a motor vehicle would not be exposed in the State of registration of that motor vehicle but to which the operator is exposed in the State in which a motor vehicle covered by that policy is operating;

(3) inverse liability insurance to protect against any loss that is not covered by the qualifying no-fault

policy or optional coverages for which there would have been a right to recover in the State of registration but for which there is no right to recover because of an exemption in the State in which the motor vehicle covered by that policy is operating.

CONTRACTUAL PROHIBITIONS

SEC. 112. An insurer or self-insurer may not directly or indirectly contract for, or be granted by a State, any right of reimbursement from any other insurer or self-insurer for benefits paid under a qualifying no-fault policy except as provided in section 104 of this title.

JURISDICTION

SEC. 113 (a) No district court of the United States may entertain an action for breach of any contractual or other obligation assumed by an insurer or self-insurer under a qualifying no-fault policy or mandatory optional coverages in accordance with section 203 or 301 of this Act unless a person bringing such action meets the jurisdictional requirements of section 1332 of title 28 of the United States Code.

(b) Any person may bring suit for breach of any contractual obligation assumed by an insurer under a policy of insurance containing such mandatory or optional provisions in any State court of competent jurisdiction.

TITLE II—NATIONAL STANDARDS FOR STATE NO-FAULT INSURANCE

STATE ACTION

SEC. 201. (a) By the second July 1 following the first day of its first general legislative session following enactment of this Act a State may establish and put into effect a plan for no-fault motor vehicle insurance consistent with title II of this Act.

(b) If any State does not establish and put into effect a plan of no-fault motor vehicle insurance consistent with title II by the second July 1 following the first day of its general legislative session following enactment of this Act, then the provisions of titles I and III of this Act shall apply to persons registering, operating, or using motor vehicles in that State.

COORDINATION OF NATIONAL REQUIREMENTS

SEC. 202. (a) A State establishing a no-fault plan for motor vehicle insurance shall incorporate by reference in such plan the following provisions of title I of this Act and provide for implementation of said provisions within one year following the first day of its first general legislative session following enactment of this Act—

(1) section 101 (definitions);

(2) section 102 (necessary no-fault insurance);

(3) section 103 (availability of insurance);

(4) section 104 (payments of benefits; conditions and limitation);

(5) section 105 (claimant's attorneys fee);

(6) section 106 (fraudulent claims);

(7) section 107 (assigned claims);

(8) section 111 (motor vehicles in interstate travel);

(9) section 112 (contractual prohibitions); and

(10) section 113 (jurisdiction).

(b) A State establishing a no-fault plan shall also provide the means to—

(1) inform consumers about actual rates being charged by insurers licensed to do business in the State and indicated rates based solely upon claims and loss experience data for representative classes of risks in each territory for the qualifying no-fault policy coverages and mandatory optional coverages in order to permit consumers to compare prices and underwriting practices;

(2) assure the availability of adequate rehabilitation services within the State for persons suffering accidental harm and promote the utilization of such services; and

(3) improve the emergency medical response sys-

tem so that it more adequately serves persons suffering accidental harm.

MINIMUM CONTENT OF A QUALIFYING NO-FAULT POLICY

SEC. 203. Any State no-fault motor vehicle insurance plan shall require the following minimum provisions in a qualifying no-fault policy issued in accordance with section 102 of this Act.

(a) In order to be a qualifying no-fault policy, an insurance policy covering a motor vehicle shall provide benefits for injury or death arising out of the operation, maintenance, or use of that motor vehicle as follows:

(1) Except as otherwise provided in paragraphs 2 and 3—

(A) in the case of injury to any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to such person an amount equal to the net economic loss sustained by such person as the result of such injury; or

(B) in the case of the death of any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to the legal representative of such person, an amount equal to the net economic loss sustained as a result of the death of such person.

(2) No payment may be made for net economic loss sustained by—

(A) the occupants of a motor vehicle other than the insured motor vehicle; or

(B) the operator or user of a motor vehicle engaging in criminal conduct at the time of the accidental harm.

(3) A claim for net economic loss based upon injury to or death of a person who is not occupant of a motor vehicle involved in an accident may only be made against the insurer of any one involved motor vehicle in use. Any insurer against whom the claim is asserted shall notify the insurers of any other involved motor vehicles in use of the claim and shall process and pay the claim as if wholly responsible. Such insurers shall thereafter be entitled to recover from the insurers of any other involved motor vehicles contribution in equal shares for the benefits paid and the costs of processing the claim.

(b) "Economic loss" as used in this title means in the case of injury or death—

(1) appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, ambulance, prosthetic services, and any

federally recognized religious remedial care and treatment up to a limit of at least $50,000;

(2) appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation services;

(3) an amount equal to—

(A) all monthly earnings for the period during which the injury results in the inability to engage in available and appropriate gainful activity subject to appropriate limits as to time and amounts; or

(B) all expected probable monthly earnings from the time death results if death results, subject to appropriate limits as to time and amount;

(4) appropriate and reasonable expenses necessarily incurred as a result of such injury or death, including, but not limited to, expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed for the benefit of himself or his family subject to appropriate limits as to time and amount;

(5) funeral expenses up to a limit of not less than $500;

Provided, however, That limits on total amount of economic

loss benefits paid, excluding those enumerated in paragraph (1) of this subsection, shall not be less than $75,000.

(c) In addition to the coverages described in subsection (a), the insurer issuing a qualifying no-fault policy shall make available to the insured the following optional coverages. At the option of the insured, the insurer shall provide:

(A) insurance to compensate, without regard to fault, loss resulting from damage to the insured motor vehicle with deductibles as the insured elects,

(B) insurance to compensate for loss resulting from damage to the insured motor vehicle, if a third party would have been liable to compensate for such loss but for the tort exemption in section 204,

(C) insurance to compensate, without regard to fault, for damage resulting from injury or death arising out of the operation, maintenance, or use of any motor vehicle other than economic loss whereby the insurer in the case of accidental harm to the owner, or relative of such owner residing in the same household, or a minor in the custody of such owner or such relative, agrees to pay to such person compensation for tangible damage in excess of economic loss sustained by such person or persons as a result of such accidental harm.

(d) Notwithstanding any omitted or inconsistent language, any policy of insurance which an insurer represents

as a qualifying no-fault policy or which purports to be a qualifying no-fault policy shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this Act.

TORT EXEMPTION

SEC. 204. Any State no-fault motor vehicle insurance plan must restrict tort liability to at least the following extent—

(a) tort liability arising out of the operation, maintenance, or use of a motor vehicle is abolished except as to:

(1) the owner of a motor vehicle involved in an accident in this State who has not provided insurance covering the vehicle at the time of the accident;

(2) a person engaging in criminal conduct;

(3) damages for physical damage to property other than motor vehicles in use;

(4) intangible damages if the injured person sustains permanent, significantly incapacitating, loss of body function, permanent serious disfigurement, or an injury resulting in more than six months of disability;

(5) tangible damages not covered by a qualifying no-fault policy and not accruing as loss of

monthly earnings during the period that a qualifying no-fault policy is providing benefits for loss of monthly earnings in accordance with paragraph (3) of subsection (b) of this section.

TITLE III—FEDERAL NO-FAULT INSURANCE

INSURANCE REQUIREMENTS

SEC. 301. (a) In order to be a qualifying no-fault policy, an insurance policy covering a motor vehicle shall provide benefits for injury or death arising out of the operation, maintenance, or use of that motor vehicle as follows:

(1) Except as otherwise provided in paragraphs (2) and (3)—

(A) in the case of injury to any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to such person an amount equal to the net economic loss sustained by such person as a result of such injury; or

(B) in the case of death of any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to the legal representative of such person, an amount equal to the net economic loss sustained as a result of the death of such person.

(2) No payment may be made for net economic loss sustained by—

(A) the occupants of a motor vehicle other than the insured motor vehicle; or

(B) the operator or user of a motor vehicle engaging in criminal conduct at the time of the accidental harm.

(3) A claim for net economic loss based upon injury to or death of a person who is not an occupant of any motor vehicle involved in an accident may only be made against the insurer of any one involved motor vehicle in use. Any insurer against whom the claim is asserted shall notify the insurers of any other involved vehicles of the claim and shall process and pay the claim as if wholly responsible. Such insurer shall thereafter be entitled to recover from the insurers of any other involved motor vehicles contribution in equal shares or the benefits paid and the costs of processing the claim.

(b) "Economic loss" means in the case of injury or death—

(1) all appropriate and reasonable expenses necessarily incurred (even if prepaid) for medical, hospital, surgical, professional nursing, dental, ambulance, prosthetic services, and any federally recognized religious remedial care and treatment;

(2) all appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation services;

(3) an amount equal to—

(a) all monthly earnings or $1,000 per month, whichever is less, for the period during which the injury results in inability to engage in available and appropriate gainful activity;

(b) all expected probable monthly earnings or $1,000 per month, whichever is less, if death results, not to exceed a total of $50,000. However, if there is a minor child of the decedent under the age of twenty-two when the $50,000 limit is reached, then such monthly payments shall continue until such child reaches age twenty-two;

(4) a monthly amount equal to the amount (if any) by which (A) a person's monthly earnings or $1,000, whichever is less, exceeds (B) any lesser monthly earnings of such person when, after sufficient recovery from injury, he resumes gainful activity;

(5) all appropriate and reasonable expenses up to $1,000 per month necessarily incurred as a result of such injury or death, including, but not limited to, (A) expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed for the benefit of himself or his family, (B) funeral expenses up to $1,000.

(c) In order to be a qualifying no-fault policy, an in-

surance policy covering a motor vehicle shall provide the following benefits in addition to those enumerated in subsection (a) of this section—

(1) In the case of injury or death to a person who is not an owner of a motor vehicle or a relative of such owner residing in the same household or a minor in the custody of such owner or such relative, the insurer shall pay, without regard to fault, compensation to such person for intangible damage sustained by such person as a result of such injury as measured in accordance with regulations established by the State insurance regulatory authority.

(2) In the case of damage to any property other than a motor vehicle in use arising out of a motor vehicle accident, insurers of any motor vehicles involved in the motor vehicle accident shall pay in equal shares to the owner of such property an amount equal to the loss occasioned by the damage not to exceed a total of $10,000.

(d) (1) In addition to the coverages described in subsections (a) and (c), the insurer issuing a qualifying a no-fault policy shall make available to the insured the following optional coverages. At the option of the insured, the insurer shall provide—

(A) insurance to compensate, without regard to

fault, loss resulting from damage to the insured motor vehicle with deductibles as the insured elects;

(B) insurance to compensate for loss resulting from damage to the insured motor vehicle, if the third party would have been liable to compensate for such loss but for the tort exemption in section 302;

(C) insurance to compensate, without regard to fault, for damage other than economic loss resulting from injury or death arising out of the operation, maintenance, or use of any motor vehicle other than economic loss whereby the insurer in the case of accidental harm to the owner, are relative of such owner residing in the same household, or a minor in the custody of such owner or such relative, agrees to pay to such person compensation for either or both (i) tangible damage in excess of economic loss or (ii) intangible damage sustained by such person or persons as a result of such accidental harm.

(2) Any policy of insurance described in this section may contain additional coverages and benefits, to be paid with or without regard to fault, with respect to any injury, death, or any other loss from motor vehicle accidents, or loss from operation of a motor vehicle, terms, conditions, exclusions, deductible clauses, and waiting periods consistent with this Act and approved by the State insurance regulatory auth-

ority, which shall only approve terms, conditions, exclusions, deductible clauses, and waiting periods for benefits (i) which are fair and equitable, (ii) which limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers, and (iii) do not impose maximum benefit limits different than those provided for in this Act.

(e) Notwithstanding any omitted or inconsistent language, any policy of insurance which an insurer represents as a qualifying no-fault policy or which purports to be a qualifying no-fault policy shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this Act.

TORT EXEMPTION

SEC. 302. No person who is—

(a) the owner, operator, or user of an insured motor vehicle, or

(b) the operator or user of an uninsured motor vehicle who operates or uses such vehicle without any reason to believe that such vehicle is an uninsured motor vehicle,

shall be liable for damages of any nature arising out of the ownership, operation, maintenance, or use of a motor vehicle unless that person is engaging in criminal conduct at the time of the motor vehicle accident which causes such

damage (in which case he shall be liable to the extent provided by State law). An insurer who pays net economic or other benefits to a claimant injured by a person engaging in criminal conduct shall be entitled to reimbursement from any monetary recovery under State law and received (or legally entitled to be received by, and actually available to, such claimant). Nothing in this section or Act shall be construed to immunize any person from liability to pay a fine in a civil or criminal proceeding under State law based upon an act or ommission arising out of the ownership, maintenance, operation, or use of a motor vehicle, provided such fine may not be paid or reimbursed by an insurer.

NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

[COMMITTEE PRINT NO. 3]

MAY 8, 1972

92D CONGRESS
2D SESSION

S.

A BILL

To require no-fault motor vehicle insurance as a condition precedent to operating a motor vehicle on streets, roads, and highways or other lands open to automobile use by the public in order to promote and regulate interstate commerce.

By Mr. _____

MAY , 1972

Read twice and referred to the Committee on _____