State of Minnesota

AUTOMOBILE LIABILITY STUDY COMMISSION

REPORT TO THE 1973 LEGISLATURE

January, 1973

MINNESOTA AUTOMOBILE LIABILITY STUDY COMMISSION

19E State Capitol, St. Paul, Minnesota 55155

Mr. Patrick Flahaven
Secretary of the Senate
State of Minnesota

Mr. Edward Burdick
Chief Clerk of the House of Representatives
State of Minnesota

Gentlemen:

As chairman of the Minnesota Automobile Liability Study Commission, I hereby transmit to you the Commission's report to the Legislature in accordance with the provisions of **Laws 1971,** Ch. 806, Section 5.

This report is the product of fourteen months of study and analysis of the automobile accident reparation system in Minnesota. During that time the Commission held fifteen meetings and heard the testimony of more than thirty expert witnesses. In the course of this undertaking, the Commission has collected a vast body of data which is submitted to the Legislature in this report. Additional, more detailed information is available in the transcript of the Commission's hearings, and at the Legislative Reference Library.

The statute creating the Commission charged it with producing recommendations regarding the accident reparations system and drafting a bill to implement those recommendations. At the end of the Commission's study there was no absolute majority of members in favor of any one reform proposal. Consequently all of those proposals supported by any members are included in this report.

A plurality of the members favor the recommendations, referred to in the report as the "Commission Plan". It is set forth in Chapter III of the report, and the bill implementing it may be found in Appendix B of the report. Three members favored a plan which is substantially similar to the "Commission Plan", but added a deductible for general damages. This proposal may also be found in Chapter III. A total of nine of the fifteen Commission members support the "Commission Plan" as written or amended.

Six members dissented entirely from the "Commission Plan" and the amending deductible proposal. I. Three of these support the UMVARA Proposal, which is described in Section A of Chapter V, and three support a threshhold "no-fault" plan, which is described in Section B of Chapter V. The bills implementing these recommendations may be found in Appendices C and D.

The Commission has chosen this format for its report in order to allow all members of the Commission to express the full range of their views to the Legislature. Although the arguments and inferences presented in Chapter IV support the two proposals advanced by the majority of commission members much of the factual and statistical material contained therein forms the basis of dissenting members views as well. It is hoped that this data will be of use to the Legislature as it considers the varying reform bills which may be before it during this session.

The public members of the Commission have been particularly diligent, and dedicated. On behalf of the Legislature, I wish to express my appreciation for the time and energy they devoted to this important task.

Sincerely,

George S. Pillsbury

Chairman

ACKNOWLEDGEMENTS

The Commission wishes to thank the witnesses who presented testimony in the course of the Commission hearings. A record of all their names appears on the following pages. Additional thanks are extended to the actuarial experts who volunteered their services and provided costing expertise on various automobile reparation proposals that were studied by the Commission.

The Commission is particularly indebted to its research assistant, Marcy Wallace, who worked for long hours over the volumes of material, proposals and drafts. Her assistance was invaluable in this respect.

We also express our appreciation to the other members of both our staff and the legislature, especially Steve Perkins, who served as Commission Clerk; Anna Mae Gahlon, who served as Commission Secretary, and those who unselfishly labored over the various transcripts of our meetings. Without such volunteer efforts and a dedicated staff, it would have been impossible for the Commission to organize the complex and voluminous material presented to it into this report.

Finally we wish to thank those in the Office of the Revisor of Statutes for their assistance in producing the various bills implementing the proposals of the Commission. In particular, we thank Tom Daily, Special Assistant Revisor, for his patient and diligent drafting efforts on the Commission's behalf.

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CHAPTER I

INTRODUCTION

A. The Minnesota Automobile Liability Study Commission: A Summary of its Organization, Purposes and Work

Those who are interested in tracing the historical sources of the automobile accident reparations controversy should, perhaps, begin in the year 1886. Although there were only four horseless carriages in the entire United States that year, two of them somehow collided in St. Louis, injuring the occupants.[1] Ever since that time, the problems of automobile accidents and their resulting losses have multiplied almost as rapidly as have the number of motor vehicles on the highways.

Minnesota has not escaped the high accident rates and rising insurance costs that have been noted across the nation. During recent years there has been increasing community interest in the automobile accident reparations system. This concern has led to various reform proposals which have been introduced in recent sessions of the legislature.

Unfortunately, the issues raised by suggested reform of the automobile reparations system are quite complex, and in spite of the great public interest, little information has been available with respect to the functioning of the present system in Minnesota and the specific problems of our state. As recently as May, 1971, a poll of Minnesotans revealed that fifteen per cent of those polled favored a "no-fault" plan, four per cent opposed it, and eighty-one per cent were uninformed or undecided.[2]

Because the legislature believed that responsible reform required an in-depth study of the entire subject, it created the Minnesota Automobile Liability Study Commission in 1971. The Commission's charge was "to study automobile liability and proposed automobile insurance systems, and draft a bill and report to the 1973 legislature in connection therewith."[3]

In accordance with that charge the Commission met monthly during the interim period between legislative sessions to analyze and discuss Minnesota's automobile insurance problems and to develop reform recommendations.

During the year of its existence the Commission held public hearings, and received testimony from approximately thirty expert witnesses. The members also devoted time to reading and studying much written material on the subject, including statutes which have been passed or proposed in other states. Six of the Commission members attended inter-state conferences on insurance reform in Boston and Chicago sponsored by the Council of State Governments.

For convenience in analyzing and organizing the immense amount of data before it, the Commission has divided the subject matter into the following six general topics:

1. Tort law and limitations of tort liability
2. Indemnity and coverage of accident losses
3. Prompt and certain payment of insurance benefits
4. Insurance requirements
5. Subrogation, reimbursement, and coordination of benefits and coverages
6. Applicability of coverages[4]

Throughout the body of the report, the material will be discussed with reference to these classifications.

Because it agrees with U. S. Transportation Secretary, John A. Volpe, that automobile insurance reform can best be achieved at the state rather than the federal level,[5] the Commission throughout its deliberations directed its attention to the individual circumstances and problems of the state of Minnesota.

Act Creating the Commission Laws 1971, Ch. 806, Sec. 5

Subdivision 1. **AUTOMOBILE LIABILITY STUDY COMMISSION.** A commission is created to study automobile liability and proposed automobile insurance systems, and draft a bill and report to the 1973

1. Daniel Moynihan, Forward, in J. O'Connell, The Injury Industry, (New York: Commerce Clearing House, 1971) p. viii.
2. George Klouda, Hearings of Minnesota Automobile Liability Study Commission, April 7, 1972, Minutes, p. 28.
3. Laws 1971, Ch. 806, Sec. 5, Subd. 1.
4. Based on a division of the subject matter used in Report of the Drafting Subcommittee of the Council of State Governments Advisory Committee on Automobile Accident Claims, 1972 p. 4.
5. See, Statement of John A. Volpe before the U.S. Senate Commerce Committee, March 18, 1971.

legislature in connection therewith. The creation of the commission shall be effective with the passage of this act. It shall be known as the automobile liability study commission.

Subd. 2. The commission shall consist of 15 members, four members of the senate to be appointed by the commmittee on committees, four members of the house of representatives to be appointed by the speaker, and seven non-legislative members to be appointed by the governor, all of whom shall serve until January 2, 1973. Vacancies on the commission shall be filled by the appointing authority.

Subd. 3. The commission shall hold meetings at such time and place as it may designate. It shall select a chairman, vice chairman and other officers from its membership as it may deem necessary.

Subd. 4. The commission may employ professional, clerical, and technical assistants as it deems necessary in order to perform the duties herein prescribed, purchase necessary equipment and supplies, and determine their compensation. The commission may engage in meetings and discussions on an interstate basis and invite consultants and other knowledgeable persons to appear before it and offer testimony, and compensate them appropriately, in order to determine the feasibility of joint action among the states.

Subd. 5. The members of the commission shall receive no compensation but shall be reimbursed for all actual expenses necessarily incurred in connection with their duties. Rembursement for expenses incurred shall be made pursuant to rules governing state employees.

Subd. 6. The sum of $25,000, or so much thereof as may be necessary, is appropriated from the general fund for the purposes of this act. Expenses of the commission shall be approved by the chairman or another member as the rules of the commission provide and paid in the same manner that other state expenses are paid.

Subd. 7. The commission shall report its findings and recommendations to the legislature not later than November 15, 1972, and may supplement them thereafter until January 15, 1973.

Approved June 4, 1971.

Members of the Commission

Legislators:

Senator George S. Pillsbury, Orono, Chairman of the Commission
Representative Jack I. Kleinbaum, St. Cloud, Vice-Chairman
Representative Joseph P. Graw, Bloomington
Representative Howard A. Knutson, Burnsville
Representative Calvin R. Larson, Fergus Falls
Senator Roger A. Laufenberger, Lewiston
Senator Alec G. Olson, Wilmar
Senator Joseph T. O'Neill, St. Paul

Governor's Appointees:

Mr. Vladimir Shipka, Grand Rapids, Treasurer
Mrs. Janet Moulton, Minneapolis, Secretary
Mr. John Corcoran, Minneapolis
Mr. William DeParcq, Minneapolis
Mr. Elmer Kaardal, Redwood Falls
Mr. Romaine Powell, Bemidji
Robert Rotenberg, M.D., Minneapolis

Witnesses Testifying Before the Commission

Kernal Armbruster, Assistant Secretary, the St. Paul Insurance Companies
C. L. Bowar, Director of Public Affairs, Minnesota State Automobile Association
Cy Carpenter, Acting President, Minnesota Farmer's Union
Jack Davies, State Senator, Professor, William Mitchell College of Law
William Egan, Attorney at law, Minneapolis, Minnesota
Jerry Elliott, Supervisor of Circuit Riders, Insurance Division
Victor Fanikos, Area Legal Counsel, Office of the Commissioner of Insurance, Massachusetts
Roger Fisher, Vice-President, the Travelers Insurance Co.
Berton Heaton, Commissioner, Minnesota Insurance Division
Charles Hewitt, Actuary, Allstate Insurance Co. and President, Casualty Actuarial Society

Thomas Hunt, American Insurance Association
Charles Hvass, Attorney at law, Minneapolis, Minnesota
C. A. (Pete) Ingham, Assistant Counsel, State Farm Insurance
Vern Ingvalson, Minnesota Farm Bureau Federation
Robert Keeton, Professor of Law, Harvard, Visiting Professor of Law, University of Minnesota
George Klouda, President, Western National Mutual Insurance Co.
Robert Kucera, Insurance Federation of Minnesota
Robert McGowan, Past President, National Association of Independent Insurance Agents
Dale Nelson, Actuary, State Farm Insurance Co.
Gordon Nesvig, Counsel, Minnesota Motorcycle and Allied Trades Association
David Roe, President, Minnesota AFL-CIO
David Rolwing, Regional Manager, American Mutual Insurance Alliance
Steven S. Skarlat, Assistant Counsel, National Association of Independent Insurers
Craig Spangenberg, Chairman Automobile Reparations Committee, American Trial Lawyer's Association
S. Lynn Sutcliffe, Counsel, U. S. Senate Commerce Committee
Richard F. Walsh, Deputy Director of the Policy and Plans Develoment Division, U. S. Department of Transportation
C. Arthur Williams, Dean of School of Business Administration, University of Minnesota

B. A Summary of the Legal Basis of the Present System in Minnesota

Although the reader needs some knowledge of the current law to evaluate the Commission's reform proposals, a thorough exposition of the legal basis of the present system is obviously beyond the scope of this report. The following summary will concentrate on describing common law rules peculiar to Minnesota, Minnesota statutes in derogation of the common law, and the most important of the insurance regulatory statutes in Minnesota. Some of these laws will be discussed in greater detail in Chapter IV of the Commission's report.

1. Tort Law and Limitations of Tort Liability

The basis of liability in automobile accident cases is, of course, negligence. In order to have a cause of action for negligence and to prevail in a lawsuit, the plaintiff must show that the defendant had a duty to exercise reasonable care toward him, that the defendant failed to exercise such care, that he was injured, and that the defendant's failure to exercise reasonable care was the proximate cause of his injury.[6] The Minnesota rules for determining whether these elements are present follow the common law and thus are very similar to those in other states.

About half of the states have enacted "guest statutes", which provide that a gratuitous guest may hold his host driver liable only for willful, wanton, or reckless conduct.[7] Minnesota does not have such a statute.[8]

Every state has abrogated the common law rule that the death of a person is not an injury to his survivors. Minnesota has a wrongful death act which creates a cause of action for the benefit of the surviving spouse or next of kin of a tortiously killed person.[9] In the past the amount of damages recoverable was limited to $35,000 but in 1971 the legislature amended the statute to remove the limit.[10]

At common law the owner of an automobile is not liable for the negligence of a driver unless the driver was acting as the owner's agent. Most jurisdictions have somewhat modified this rule. Minnesota is one of about a dozen states to provide by statute that the driver shall be deemed the agent of the owner if he is operating the vehicle with the express or implied consent of the owner.[11]

The plaintiff's contributory negligence, however slight, was a complete defense at common law. Fourteen states have now adopted some type of comparative negligence law. The Minnesota statute provides that contributory negligence does not bar the plaintiff's action if his negligence is not so great as that of the defendant, but damages are diminished in proportion to the amount of negligence attributable to the

6. See, St. Paul Realty & Assets Co. v. Tri-State Telephone and Telegraph Co., 122 Minn. 424, 142 N.W. 807 (1913); Anderson v. Hegma, 212 Minn. 147, 2 N.W. 2d 805 (1942).
7. See, e.g., Iowa Code Anno. § 321.494 (1971) and N. Dak. Cent. Code § 39-15-01 et seq (1971).
8. Olson v. Buskey, 200 Minn. 155, 19 N.W. 2d 57 (1945); Lyngbaugh v. Payte, 247 Minn. 186, 76 N.W. 2d 660 (1956).
9. Minn. Stat. § 573.02 (1971).
10. Laws 1971, ch. 43, Sec. 1.
11. Minn. Stat. § 170.54 (1971); See, also, William Prosser and Young B. Smith, Cases & Materials on Torts, 4th Ed. (Brooklyn: The Foundation Press Inc., 1967) p. 637.

plaintiff.[12] In other words, if forty-nine per cent of the total negligence of the parties is attributable to the plaintiff, he will recover fifty-one per cent of his damages, and if fifty per cent of the total negligence is attributable to him, his action is barred.

Minnesota has abrogated, by court decision or statute, all four of the typical common law immunities: parent-child,[13] husband-wife,[14] charitable,[15] and municipal.[16]

Several of Minnesota's procedural rules are of particular interest in automobile accident cases. Minnesota has a six-year statute of limitations for most negligence actions, in contrast to the one- or two-year statutes of most other states.[17] In wrongful death cases the statute is three years.[18] Since the 1971 legislative session six man juries have been mandatory for all civil cases.[19] Verdicts need not be unanimous in civil cases; after six hours of deliberation, the jury may return a verdict agreed to by five-sixths of its members.[20]

2. Indemnity and Coverage of Accident Losses

The original purpose of automobile liability insurance was to protect the policyholder against financial ruin should others obtain judgments against him. The modern trend is to consider automobile insurance as a source of indemnity for injured persons.[21]

As a result of this trend a few states have adopted what are known as "direct action statutes" which allow the liability insurer to be joined as a defendant in the negligence action against the tortfeasor, a result which cannot be accomplished under the common law.[22] Minnesota does not have such a statute, but the injured plaintiff is allowed to sue the insurer in a separate action if he has a judgment against its insolvent policyholder.[23]

Minnesota is one of the few states to require liability insurers to provide a number of first party coverages for their liability policyholders. Uninsured motorist coverage with limits of at least $5,000/$10,000/$20,000 is a mandatory part of every liability policy on private passenger vehicles.[24] In addition, the insurer must offer the following first party coverages: $10,000 accidental death coverage for the named insured; wage loss indemnity for the named insured of $60 per week for fifty-two weeks; indemnity for medical expenses of insureds or passengers of $2,000 per person; and underinsured motorist coverage with limits equal to those of the liability policy.[25]

3. Prompt and Certain Payment of Insurance Benefits

Generally the promptness with which insurance payments are made is controlled by circumstances rather than by law. However, advance payments to third party liability claimants are encouraged by a statute which provides that they are not an admission of liability and that evidence of them is not admissible in court. The payments are credited against the final judgment or settlement, but if the plaintiff loses at trial or receives judgment for less than the sum advanced, he is not required to return the money to the insurer.[26]

Minnesota also follows the bad faith doctrine which protects policyholders and third-party claimants by penalizing insurers that refuse to make reasonable settlements of claims. Under the doctrine the insurer is liable for damages in excess of the policy limits of it fails to make a good faith effort to settle within those limits.[27]

12. Minn. Stat. § 604.01 (1971).
13. Selesky v. Kelman, 281 Minn. 431, 161 N.W. 2d 631 (1968).
14. Beaudette v. Frana, 285 Minn. 366, 173 N.W. 2d 416 (1969).
15. Mclarney v. St. Luke's Hospital Ass'n, 121 Minn. 10, 141 N.W. 837 (1913).
16. Minn. Stat. § 466.02, 466.04 (1971).
17. Minn. Stat. § 541.05 (1971).
18. Minn. Stat. § 573.02 (1971).
19. Minn. Stat. § 593.01 (1971).
20. Minn. Stat. § 546.17 (1971).
21. Quaderer v. Integrity Mutual Insurance Company, 263 Minn. 383, 116 N.W. 2d 605 (1962).
22. Wisconsin and Louisiana have direct action statutes. Wisc. Stat. 260.11 (1971) La. Stat. 22:655 (1950) (Supp. 1972) Florida has accomplished the same result by court decisions, Shingleton v. Bussey,_____Fla._____, 223 S. 2d 713 (1969).
23. Minn. Stat. § 60A.08 (1971).
24. Minn. Stat. § 65 B.21 (1971).
25. Minn. Stat. § 65B.24-.27 (1971).
26. Minn. Stat. § 604.01 (1971).
27. See, Larson v. Anchor Casualty Co. 249 Minn. 339, 82 N.W. 2d 376 (1957); Peterson v. American Family Mutual Insurance Co. 280 Minn. 482, 160 N.W. 2d 541 (1968).

The certainty of payments to those who are entitled to benefits is increased by statutes giving the Insurance Division of the Commerce Department wide powers to prevent and deal with insurer insolvencies.[28]

In 1971 the Minnesota Insurance Guaranty Association was established to pay claims against insolvent insurers. All automobile liability insurers are required to contribute to the fund which will pay third-party liability claims up to $300,000 per claim with a $100 deductible.[29]

4. Insurance Requirements

Although insurance is not compulsory in Minnesota, there is a Safety Responsibility Act which requires the Commissioner of Public Safety to suspend the license of any owner or driver of a vehicle invovled in an accident which resulted in bodily injury, death, or property damage in excess of $100 unless that person had liability insurance with limits of $5,000 for property damage, $10,000 for bodily injury per person, and $20,000 bodily injury per accident.[30] Suspension is not required in certain specified cases where neither owner nor driver will be liable for damages.[31] The individual's license remains suspended until thirteen months from the date of the accident have elapsed without suit having been brought against him, until he deposits sufficient security to pay any judgment, or until he receives a release or adjudication of non-liability or agrees to pay the damages in installments.[32]

The Act also requires persons whose licenses have been revoked for traffic violations to maintain liability insurance or other proof of financial responsibility for three years after regaining their licenses.[33]

In general, states with financial responsibility laws regulate insurance rates and availability to a lesser degree than do compulsory insurance states. There is little regulation of rates in Minnesota, but availability is quite strictly controlled.

Minnesota has a "file and use law" which requires only that insurers furnish the Commissioner of Insurance with all rates, rate changes, and supporting materials prior to the rate's effective date. The Commissioner's approval of rates is not required.[34] However, rates may not be excessive, inadequate or unfairly discriminatory, and insurers may not engage in unfair price competition.[35] If these basic standards are violated, the Commissioner has the power to invoke various sanctions.[36]

The insurer's right to cancel or to fail to renew an automobile liability policy is severaly limited by statute. After it has been in effect for sixty days a policy may only be cancelled for one of seventeen specified reasons which relate to non-payment of premiums, misrepresentations by the insured, and changes in the condition of the drivers or vehicle which would substantially increase the insurer's risk.[37] No insurer may fail to renew a policy solely because of the age of the insured or for reasons which are arbitrary or capricious.[38]

There are a number of procedural safeguards, including the insured's right to notice of the cancellation or non-renewal and the reasons therefore and his right to have the insurer's decision reviewed by the Insurance Commissioner.[39]

The Minnesota Automobile Insurance Plan, an assigned risk plan, was established in 1971 to guarantee that automobile insurance would be available to persons unable to procure it in the ordinary market. All insurers in the state must participate in the plan and risks are equitably distributed among them.[40]

5. Subrogation, Reimbursement and Coordination of Insurance Benefits and Coverages

This subject is almost entirely controlled by the common law rules of subrogation and by the provisions of the specific insurance policy.

In one instance reimbursement of an insurer is required by a statute; it provides that any insurer paying under the uninsured motorist provisions of a policy is entitled to reimbursement from the proceeds of any settlement with or judgment against the person legally responsible for the injury.[41]

28. Minn. Stat. § 60A.051, 60B.01-.61 (1971).
29. Minn. Stat. § 60C.01-.20 (1971).
30. Minn. Stat. § 170.25-.26 (1971).
31. Minn. Stat. § 170.25-.26 (1971).
32. Minn. Stat. § 170.27-.37 (1971).
33. Minn. Stat. § 170.36 (1971).
34. Minn. Stat. § 70A.06 (1971).
35. Minn. Stat. § 70A.04-.05 (1971).
36. Minn. Stat. § 70A.10, 70A.21 (1971).
37. Minn. Stat. § 65B.15 (1971).
38. Minn. Stat. § 65B.17 (1971).
39. Minn. Stat. § 65B.16-.18, 65B.119, 65B.20-.21 (1971).
40. Minn. Stat. § 65B.01-.12 (1971).
41. Minn. Stat. § 65B.22 (1971).

Minnesota does follow the collateral source rule, and the Supreme Court has recently applied it to medical payment provisions of automobile policies.[42]

6. Applicability of Insurance Coverages

This is another area which is largely controlled by the provisions of the insurance policy. Only a few restrictions are provided by law.

No liability policy sold in Minnesota may contain an exclusion of liability for damages for bodily injury to a person solely because that person is a member of the insured's family or household.[43] Neither may the policy exclude liability for damages to the named insured for injuries sustained while another person was driving the insured vehicle.[44]

However, omnibus clauses are not required, and policies may be written with a named driver exclusionary endorsement which voids the policy where the vehicle is driven by the excluded driver, even though he is a member of the named insured's family or household.[45]

In some states anti-discrimination statutes forbid the sale of group automobile liability policies. In Minnesota one statute expressly permits group policies with respect to insurance in general,[46] while another forbids "discrimination in rates between persons of the same class" with respect to automobile liability insurance policies.[47] There are no Supreme Court cases interpreting these two possibly conflicting provisions.

C. The Debate Over Automobile Accident Reparations: Reforms and Proposed Reforms

The notion that the common law rules governing automobile accident reparations in the United States should be replaced or supplemented with a compensation plan which would pay victims regardless of negligence, dates back over fifty years to 1919 when Rollins and Carman proposed an automobile accident scheme based on the recently enacted Workmen's Compensation laws.[48] Various other proposals, notably the Columbia Plan,[49] appeared through the years and were vigorously debated in the law reviews and journals. However, in spite of the fact that the Canadian province of Saskatchewan enacted a government financed first-party compensation plan in 1946,[50] the debate in the United States was largely confined to law professors and legal scholars.

In 1965, two law professors, Jeffrey O'Connell of the University of Illinois and Robert Keeton of Harvard, introduced and widely publicized their "Basic Protection" plan, which called for compulsory first-party bodily injury insurance with high limits and eliminated general damages except in very serious injury cases.[51] Since that time literally hundreds of plans have been introduced and the United States Department of Transportation has produced a twenty-five volume study of the present system. Automobile accident reparation reform has become a public and controversial issue.

Unfortunately the label "no-fault" is popularly applied to this entire group of proposals including those which abrogate the cause of action for negligence and those which merely supplement the present legal remedies with compulsory first-party insurance coverage. In fact, more than one article has called the Minnesota statute which requires liability insurers to offer first-party coverages to their policyholders a "no-fault" law.[52] To prevent confusion, the term should be avoided and each plan referred to by a description of its effects.

This report will, of course, make no attempt to summarize all of the proposals which have been advanced. However, the Commission, during its deliberations, directed its attention to a number of specific bills which should be discussed here.

The Commission began by studying the statutes recently enacted in several U. S. jurisdictions to reform the automobile accident reparations systems there. The basic provisions of the laws of Massachusetts, Florida, Delaware, Connecticut, Oregon, South Dakota, Illinois, the Commonwealth of Puerto Rico and Michigan are set forth in the following chart.

42. See, Beschett v. Farmer's Equitable Insurance Co., 275 Minn. 328, 146 N.W., 2d 861 (1966).
43. Minn. Stat. § 65B. 23 (1971).
44. Minn. Stat. § 65B. 23 (1971).
45. Minn. Stat. § 65B.23 (1971).
46. Minn. Stat. § 70A.04 (1971).
47. Minn. Stat. § 65B.13 (1971).
48. Willis Park Rokes, No Fault Insurance (Santa Monica, California; Insurors Press, 1971), p. 18.
49. Report by the Committee to Study Compensation for Automobile Accidents, Columbia University, 1932.
50. Rev. Stat. of Sask. (c.) 409, § 1-84 (1965).
51. R. Keeton and J. O'Connell, Basic Protection for the Traffic Victim: A Blueprint for Reforming Automobile Insurance. (Boston: Little, Brown and Co., 1965).
52. "No-Fault Auto Insurance being Rapidly Adopted by the States", 1 Public Affairs News Letter 1, (1971); R. Keeton, No-Fault Insurance: A Status Report, 51 Neb. L. Rev. 183 (1971).

Reform Plans Adopted In Other States and Puerto Rico (Figure 1)

	MASSACHUSETTS [53] (Effective Jan. 1, 1971)	FLORIDA [54] (Effective Jan. 1, 1972)	DELAWARE [55] (Effective Jan. 1, 1972)	CONNECTICUT [56] (Effective Jan. 1, 1973)
Tort Law & Limitations of Tort Liability.	Bodily injury tort liability abolished except for out-of-pocket losses in excess of first-party benefits and except for cases involving medical expenses over $500 or death, dismemberment, loss of sight or hearing, permanent serious disfigurement, or fracture; Auto Property Damage liability abolished (in separate act, Nov. 1972).	Bodily injury tort liability abolished except for out-of-pocket losses in excess of first-party benefits and except for cases involving medical over $1,000 or permanent disfigurement, death, dismemberment, loss of bodily function, fracture of weight-bearing bone or compound comminuted fracture; Automobile property damage abolished for first $550 of damages.	All tort liability for bodily injury and property damage retained except to extent of first-party benefits. No limitation on general damages. Arbitration for auto liability property damage claims at option of plaintiff.	Bodily injury tort liability for economic loss and general damages abolished except in cases where medical expenses exceed $400 or there is death, permanent injury, fracture, permanent significant disfigurement, permanent loss of bodily function, or dismemberment; no change in property damage.
Indemnity & Coverage of Accident Losses.	Basic first-party benefits for 2 years of $2000 per person including medical expenses, replacement services and 75% of wage loss. Deductibles up to $2000 per accident allowed.	Basic first-party benefits of $5000 per person including medical expenses, $1000 for funeral expenses, 85% of wage loss or loss of earning capacity and replacement services. Deductibles allowed.	Basic first-party benefits for 1 year of $10,000 per person and $20,000 per accident, including medical expenses, wage loss, replacement services and $2000 funeral expenses and collision damage to insured vehicle. Deductibles allowed.	First-party benefits of $5000 per person per accident including medical expense, replacement services, 85% of wage loss up to $200 per week and survivors' benefits.
Prompt & Certain Payment of Insurance Benefits.	Benefits to be paid as accrued 30 days after proof of loss. No penalty provided.	Benefits to be paid 30 days after accrued and claimed; 10% interest on late payments.	Benefits to be paid as soon as practical after claim; no penalty provided.	Benefits to be paid 15-30 days after accrued and claimed; 12% interest on late payments.
Insurance Requirements.	First-party coverage compulsory; also compulsory bodily injury liability (5/10) and compulsory non-auto property damage.	First-party coverage compulsory; liability coverage governed by Financial Responsibility Act.	First-party coverages compulsory; also compulsory liability coverage of $25,000.	No-fault coverage compulsory; Financial Responsibility Act for liability coverage (20/40/5)
Subrogation, Reimbursement, & Coordination Of Benefits & Coverages.	Benefits primary except for Workmen's Compensation and wage continuation plans; inter-insurer subrogation allowed, except to extent of tort exemption.	Benefits are primary except for Workmen's Compensation. First-party insurer entitled to reimbursement from tort recovery and subrogation except to extent of tort exemption.	Benefits are primary except for Workmen's Compensation. Subrogation allowed.	Benefits are primary except for Workmen's Compensation; Subrogation allowed except to extent of tort exemption.
Applicability Of Coverage.	Commercial vehicles and cycles included. Insurance follows vehicle. Persons guity of certain illegal behavior may be excluded.	Commercial vehicles and cycles excluded. Insurance follows vehicle. Persons guilty of certain illegal behavior may be excluded.	Commercial vehicles and cycles included. Follows vehicle. Persons guilty of certain illegal behavior may be excluded.	Commercial vehicles and motorcycles excluded. Insurance follows individual. Persons guilty of certain illegal behavior may be excluded.
Cost	15% mandatory reduction in B.I. rates for 1971 plus 27.6% rebate on 1971 premiums. Another 27.6% reduction mandated for 1972.	Law mandates 15% reduction in rates for required coverages.	Cost effect unknown.	10% rate reduction required by statute.

Of special interest are the Constitutional challenges to the Massachusetts and Illinois laws. The Illinois statute, as noted in the above chart, was held unconstitutional by the Supreme Court of Illinois on the grounds that it violated the provision of the Illinois Constitution prohibiting a special law where a general law can be made applicable in that it limited the damages recoverable by persons not entitled to no-fault benefits, that it violated the Illinois Constitution by providing for a review of an arbitrator's decision by trial **de novo,** that it violated the state constitution prohibition against fee officers in the judiciary by requiring the losing litigant to pay arbitrators' fees, and that it violated the state constitutional right to jury trial by its provisions for compulsory arbitration.[62]

The Massachusetts statute was upheld by the state Supreme Court in the face of various allegations that it deprived citizens of due process of law and equal protection of the laws in violation of both the state and United States Constitutions.[63] The other statutes have not as yet been challenged in the courts.

ILLINOIS[57] (Effective Jan., 1972) (April, 1972-Unconstitutional)	OREGON[58] (Effective Jan. 1, 1972)	SOUTH DAKOTA[59] (Effective Jan. 1, 1972)	PUERTO RICO[60] (Effective Jan. 1, 1970)	MICHIGAN[61] (Effective Oct. 1, 1973)
ort liability for bodily injury and operty damage retained except to extent of 1st party benefits. General damages limited to 50% of med. expenses up to $500 and 100% of medical expenses over $500 except in cases of death, dismemberment, permanent total or partial disability or permanent serious disfigurement. Compulsory arbitrary claims under $3000.	All bodily injury and property damage tort liability retained.	All bodily injury and property damage tort liability retained.	Bodily injury tort liability abolished except in cases where economic loss exceeds $2000 or general damages exceed $1000. No change in property damage tort liability.	Bodily injury tort liability abolished except in cases of intentional injury, except for exonomic loss in excess of first party benefit limitations, and except for general damages in cases where there is death, serious impairment of body function or permanent serious disfigurement. Property damage tort liability abolished except for intentional harm. Strict liability for property damage to other than motor vehicle or contents.
Basic first-party benefits for 1 year of $2000 per person for medical and funeral expenses, 85% of lost wages up to $150 per week and benefits for replacement services of $12 per day.	Basic first-party benefits include $3000 medical benefits per person for 1 year, 70% of wage loss up to $500 per month for 12 months and $12 per day loss of services for 1 year.	Basic first-party benefits of $10,000 death benefits on named insured, $60 per week wage loss for 52 weeks for named insured and $2000 medical benefits per person for any insured.	Basic first-party benefits of unlimited medical benefits, wage loss of 50% of salary up to $50 per week for 1st year & $25 per week for 2nd year, $500 funeral benefits, up to $5000 dismemberment benefits & up to $15,000 survivor's benefits.	Basic first party benefits for unlimited medical & related expense; $1,000 funeral expenses; replacement service expense of $20 per day for up to 3 years; income loss for 3 years w/15% deduction for income tax advantage & subject to limit that benefit plus earned income cannot exceed $1000 per month; and survivors loss up to $1000 per month; for 3 years. Deductibles up to $300 per accident to any or all benefits.
Benefits to be paid 30 days after accrued and claimed; insurer pays attorney fees to collect late payments, treble benefit if willful failure to pay.	Benefits payable promptly after proof of loss. No penalty for late payments.	No provisions.	Benefits payable as accrued. Fund pays attorney fees of 10% if victim demands hearing to determine benefits.	Benefits payable 30 days after reasonable proof of loss. Interest of 12% per annum will run & attorney fees awarded to claimant for unreasonable denial or delay.
First-party coverage a mandatory part of all liability policies sold; Financial Responsibility Act for liability coverage.	First-party coverage mandatory in all liability policies. Financial Responsibility Act for liability coverage.	Liability insurer must offer 1st party benefits to all policyholders who may reject it in writing; Financial Responsibility Act for liability insurance.	Coverage automatic for all & thus compulsory.	Basic first party policy, residual liability insurance, & $1,000,000 nonvehicular property damage strict liability coverage are all compulsory. Very strict penalties for non-compliance include possible 1 year imprisonment.
Benefits primary except for Workmen's Compensation or government benefits. Inter-insurer subrogation allowed.	Benefits primary except for Workmen's Compensation. No limits on subrogation.	Benefits are primary. No limitations placed on subrogation.	Benefits are not primary; reduced by other benefits subrogation allowed only if tortfeasor engaged in illegal conduct.	Benefits primary except for benefits provided or required by law. No subrogation allowed but first party insurer has a lien on tort recovery to the extent of benefits paid.
Commercial vehicles and cycles excluded. Insurance follows vehicle. Persons guilty of certain illegal behavior may be excluded.	Commercial vehicles and cycles excluded. Insurance follows vehicle. Personsguilty of certain illegal behavior excluded.	Commercial vehicles and cycles excluded. Insurance follows vehicle.	Covers all types of vehicles & all accident victims. Persons engaging in certain illegal conduct may be excluded.	Includes all vehicles with more than 2 wheels. Insurance primarily follows insureds. Converters & uninsured owners ineligible for benefits.
Cost effect unknown.	Cost effect unknown.	Cost effect unknown.	Government administered & funded by tax money. Excess liability insurance available in private market.	State Farm actuaries estimate 30% increase in premium cost.

The Commission also studied in depth several bills which have not been enacted in any jurisdiction. Some of these were proposed specifically for Minnesota and others are model bills designed for adoption by any interested state. Their provisions vary widely and are summarized in the following chart.

53. Anno. Laws of Mass. Ch. 90 § 34A-O (1971 Supp.).
54. Fla. Stat. § 627.730-.741 (1971).
55. 58 Laws of Delaware, Ch. 98, (1971).
56. Conn. Public Act No. 273 (1972).
57. S.H. Ill. Stat. Anno., Ch. 73, § 1065.150-.163 (Supp. 1971).
58. Ore. Rev. Stat. § 743.786-.835 (1971).
59. S. Dak. Comp. Laws § 58-23-6 to -8 (1967) (Supp. 1971).
60. Laws of Puerto Rico Anno. Ch.9 § 2051-2065 (Supp. 1971).
61. Mich. Comp. Laws Ch. 31 § 3101-3179 (Adv. Sheet).
62. Grace v. Howlett, 51 Ill. 2d 47.8, 283 N.E. 2d 474 (1972).
63. Pinnick v. Cleary, _____ Mass. _____, 271 N.E. 2d 592 (1971).

Other Plans Before The Commission (Figure 2)

	UMVARA[64]	(State Guidelines)	National Act[65] (Federal Provisions which Go Into Effect if States Fail To Act.)
Tort Law & Limitations of Tort Liability	B.I. tort liability abolished except for liability of those causing intentional injury or owning uninsured vehicles and except to recover econ. loss if the plaintiff has been disabled for 6 months and except for general damages in cases of perm. sign. loss of bodily function, death, perm. serious disfigurement or 6 mo's. disability. GD always subject to $5,000 deductible Property damage tort liability abolished.	B.I. tort liability abolished except for liability of those engaging in criminal conduct or owner of uninsured vehicle and except for liability for loss of earning capacity and except for general damages in cases of perm., incapacitating loss of bodily function, perm. serious disfigurement or 6 mo. disability. P.D. tort liability abolished.	All B.I. tort liability abolished except for liability of owner of uninsured vehicle and liability of driver engaging in criminal conduct. All P.D. tort liability abolished.
Indemnity & coverage of accident losses	Basic first party benefits of unlimited med. expense benefits, $200 per week wage loss benefits, actual cost of replacement services, and survivor's benefits up to $200 per week.	Basic first party benefits of $75,000 including $50,000 med. expense and $500 funeral expenses. Sublimits for wage loss, replacement services, survivor's benefits and other benefits set by the states.	Unlimited first party benefits including all med. expenses, lost wages up to $1,000 per month, $1,000 funeral expenses, $1,000 per month loss of services, $50,000 survivor's benefits, $1,000 per month wage reduction benefits, $1,000 per month other expenses.
Prompt & certain payment of insurance benefits	Benefits must be paid in 30 days. 18% interest on overdue payments.	Benefits must be paid in 40 days. Interest up to 24% on late payments.	Benefits must be paid in 40 days. Interest up to 24% on late payments.
Insurance Requirements	Basic first party coverage compulsory. Liability ins. (25/BI/10/PD) also compulsory.	Basic first party coverage compulsory but not liability insurance.	Basic first party coverage compulsory but not liability insurance.
Subrogation, Reimbursement, & Coordination of benefits & coverages	Benefits primary except for Workmen's Comp; no subrogation allowed.	Benefits primary except for Workmen's Comp; no subrogation, but losses redistributed among insurers based on size and weight of vehicle.	Benefits primary except for Workmen's Comp; no subrogation, but losses redistributed among insurers based on size and wt. of vehicles.
Applicability of coverages	Comm. vehicles and cycles included. Ins. follows individuals. Persons guilty of illegal behavior may be excluded.	Comm. vehicles and cycles included. Ins. covers any person except occupants of another vehicle or those engaged in criminal conduct.	Comm. vehicles and cycles included. Ins. covers any persons except occupant of another vehicle.
Cost	For Minn. AIA figures show 12-15% decrease, AMIA figures show 2-4% decrease & NAII figures show 13-16% increase (full coverage comparison).	For Minn. Allstate figures show 17% increase and State Farm figures show 2% increase (full coverage comparison).	

MINNESOTA BAR PLAN[66]	MAII PLAN[67]	AMIA PLAN[68]
All B.I. tort liability retained except to the extent of first party benefits paid. P.D. tort liability abolished. Direct action allowed.	B.I. tort liability abolished except for economic loss above $5,000 and except in cases where med. expenses are over $2,500 or there is death, perm. disfigurement, loss of body member or function, or fracture of a weight bearing bone. P.D. tort liability abolished.	B.I. tort liability retained but no general damages are recoverable unless med. expenses exceed $1,000 or there is death, perm. disfigurement, dismemberment or perm. loss of bodily function. Compulsory arbitration of all claims under $3,000.
Basic first party benefits of $10,000 per person for 2 years, excluding med. expense, wage loss, and replacement services, with $1,500 sublimit for funeral expenses.	Basic first party benefits of $10,000 per person including med. expenses, 85% of wage loss up to $750 per month, $15 per day loss of services and $1,500-$2,000 funeral expenses.	Basic first party benefits of med. expenses for 3 years up to $50,000. 85% of weekly wage loss up to $500 per month for 1 yr, $12 per day replacement services for 1 year, $6,000 death benefits (up to $500 per month for 1 year).
Benefits must be paid in 30 days. 8% interest on overdue payments plus attorneys' fees.	Benefits must be paid in 15-30 days. Penalty not specified.	No time limit specified.
Basic first party insurance compulsory; liability (50/100/10) also compulsory.	Basic first party coverage compulsory and liability ins. (15/30/5) also compulsory.	Both basic first party coverage and liability insurance compulsory.
Benefits primary except for Workmen's Comp. inter-insurer subrogation allowed.	Benefits secondary to all other insurance; no subrogation allowed.	Benefits primary except for Workmen's Comp; subrogation allowed.
Comm. vehicles and cycles are included. Insurance follows vehicle. Persons guilty of illegal behavior may be excluded.	Comm. vehicles included. Ins. follows individuals. Persons guilty of illegal behavior may be excluded.	Comm. vehicles included, cycles excluded. Ins. follows vehicle. Persons guilty of illegal behavior may be excluded.
Unknown.	Unknown.	Unknown.

64. Uniform Motor Vehicle Accident Reparations Act, approved and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws, August, 1972.
65. National No-Fault Motor Vehicle Insurance Act, S. 945 as reported, June 20, 1972.
66. Proposal adopted by the Minnesota State Bar Association at annual convention, Rochester, Minnesota, 1972.
67. Proposal of the Minnesota Association of Independent Insurance Agents.
68. Proposal of the American Mutual Insurance Alliance.
69. Testimony of S. Lynn Sutcliffe, Hearings of Minnesota Automobile Liability Study Commission, August 11, 1972, Minutes, p. 8.
70. Congressional Record, August 8, 1972, S13069-S13093.

The National Act is included here even though it failed to pass the last session of Congress, because Senator Phillip Hart and Senator Warren Magnuson, sponsors of the measure, intend to reintroduce it next session.[69] The bill was favorably reported by the Senate Commerce Committee in June, 1972, but when it reached the Floor of the Senate for debate in August it was referred to the Judiciary Committee for further study.[70]

The statutes and bills in these charts present a broad spectrum of reform alternatives. Some, like the South Dakota statute, make only slight changes in current laws. Others, like UMVARA, almost entirely supplant the present system. Most include substantial but not revolutionary changes.

Although other proposals abound, most of them are quite similar to at least one of the bills in this chapter. An almost unlimited number of new plans can be created simply by making new combinations of the different provisions listed in the charts. Thus, the Commission, while it did not pattern its recommendations after any of these plans, found a comparison of their provisions most useful in defining the alternatives available in each of its six areas of analysis.

CHAPTER II

GOALS

The goals set forth here may be viewed both as those of an effective automobile accident reparation system and of those of the Commission in undertaking its task of evaluation and reform of the present system. Neither the present method of compensating accident injuries nor the Commission's recommendations may be judged in a vacuum; instead, they must be tested against objectives which have been agreed upon as socially desirable.

The Commission offers the following six basic goals:

1. To assure that automobile accident reparation decisions are governed by the common law of torts if and to whatever extent it is the best decision-making mechanism and to limit tort liability if and to whatever extent it is no longer relevant to the compensation of accident victims and the allocation of crash losses.

Though the law of torts deals with a diverse range of human activity and though it may impose strict liability in some cases and impose liability only for negligent or intentional injury in others, the various torts are only superficially dissimilar. The common thread that runs from intentional infliction of mental distress through negligence, from conversion through the keeper's liability for injury caused by wild animals, and from trespass through libel was most concisely explained by Harper and James.

> From experience men have learned that certain conduct frequently exposes others to various perils. The reason that any conduct is tortious is that it is dangerous.[1]

Of course, the converse of the professors' statement is not necessarily true: not all dangerous conduct is or should be classified as tortious. There are many harm-producing and anti-social activities for which the law of torts affords no remedy.

> Seavey lists some types of wrongful conduct which have never been torts: . . . some interests cannot be adequately protected or cannot be protected against particular types of conduct because we have not developed adequate techniques. Thus one may suffer from impoliteness or ingratitude without having redress.[2]

Other activities which were once tortious have been reclassified by statute, usually because it was felt that the common law remedies did not meet the needs of a changing society. The two most familiar examples are heart balm statutes which have abolished the action for alientation of affections in several states and Workmen's Compensation statutes which have substituted a compensation plan for the common law cause of action for injuries suffered by an employee as a result of the employer's negligence in all jurisdictions.

What is at issue in the automobile accident reparation controversy is whether society should continue to classify as tortious certain types of dangerous conduct involving the use of motor vehicles. We must determine whether the law of torts has adequate techniques to protect those interests such as bodily and financial security, which are threatened by automobile accidents and whether there are pressing social and economic problems which justify abandoning the common law in this area in favor of a different type of reparation system.

2. To indemnify as many automobile accident losses as possible without raising insurance premiums to an unacceptable level and while maintaining equitable cost/benefit ratios for all insureds.

The commentators on both sides of the automobile accident reparations controversy, however much they may disagree on other issues, share a humanitarian concern for the plight of the uncompensated automobile accident victim.

No one has suggested that it is wrong to allow the losses resulting from a self-inflicted injury to be distributed through the insurance mechanism, nor has anyone argued that the injured tortfeasor's financial hardship is a proper punishment for his carelessness. Automobile accident injuries like all other injuries or illnesses have tragic consequences which no one would attempt to minimize or deny.

The issue is not whether suffering is to be endorsed but whether the Legislature can or should intervene to alleviate it, and if so, how this should be done. Before a decision can be made to afford benefits to any disadvantaged group, a source of financing must be found and this source must be one which can fairly be required to bear the costs.

1. F. Harper and F. James, Jr. The Law of Torts, (Boston: Little, Brown, and Company, 1956) p. 1.
2. W. A. Seavey, Cogitations on Torts (Omaha, University of Nebraska Press, 1954) p. 4.

Professor Harry Kalven, Jr. in speaking of automobile accident reparation plans, has phrased the dilemma well:

> The basic question about . . . any plan . . . is how the costs of the additional coverage are going to be met. It is not what is the best way to distribute an inexhaustible fund! Of course, it would be better if all accident victims could be paid, rather than only a portion of them. That is not a debatable issue. The only reason society has not done that before is because there is a problem about the appropriate allocation of costs for doing it.[3]

Thus in attempting to indemnify automobile accident losses it would be inappropriate to look only to the benefits side of a proposal. It is equally important to ask how and by whom the costs are to be borne, for it is that side of the proposal which may determine whether it is equitable and just.

3. To guarantee that payment of insurance benefits is as prompt and as certain as is commensurate with a just assessment of the rights and liabilities of the insurer and claimant.

By the very definitions of the words, promptness and certainty are desirable, just as delay, particularly delay in paying benefits to persons in need, is injurious. According to the Department of Transportation the maxim, "Justice delayed is justice denied," applies with greatest force to automobile accident cases,[4] to the automobile accident victim. The issue is not whether delay should be eradicated, but whether it can be completely eliminated and how it should be attacked.

To the extent that delay in paying benefits under the present system is a result of purely mechanical problems — insufficient legal facilities, inefficient claims processing practices, dilatory settlement practices — there is general agreement that it can be eliminated, and only minor disagreement as to how this should be done.

To the extent that delay results from the fact that a determination of the rights and liabilities of the parties under the present system may be quite complex and time-consuming, however, the disagreements run deeper. There is a question as to whether this sort of delay can be eradicated without changing the substantive law in order to simplify or limit the issues that require adjudication. There is also the related, but more difficult and more important question, of whether this can be accomplished without prejudicing the rights of the parties.

There may be certain rights which people are willing to trade for a guarantee of prompt payment. However, totally arbitrary claims payment decisions would never be justified even if made immediately.

Whatever legal changes are made to increase the speed and certainty of payment, care must be taken to assure that the amount of benefits due are carefully and accurately assessed. As the American Bar Association so aptly put it:

> Speedy injustice is a poor substitute for slow justice. The need is for high quality without avoidable delay.[5]

4. To provide insurance requirements which are sufficiently strict so that all motor vehicle owners will be financially responsible for accident losses without unduly restricting the availability of insurance and while keeping premium costs within the reach of the average purchaser.

An unenforceable right to compensation is no right at all. It is obvious that if an automobile accident reparation scheme is to be funded through private insurance, insurance coverage must be universal or nearly so. The obvious suggestion is to assure financial responsibility by imposing a legal duty to insure on all vehicle owners.

However, the issue is not really so simple. If automobile owners are to have a duty to supply insurance the question of whether they should be given a corresponding right to purchase it will arise.

If the owner has no such right some persons may be effectively prevented from using the highways at all. If he has this right, the balance of power between insurer and insured may be upset, with an adverse effect on premiums.

The insured's interest in low insurance rates and unrestricted availability may conflict with the accident victim's interests in widespread, high-limit automobile accident insurance and with the insurer's interests in freedom of contract and his right to choose his customers.

Speaking with regard to these problems the Council of State Governments has suggested that we must thoughtfully weigh the need for stricter insurance requirements against problems of enforcement, of

3. H. Kalven, Jr. "Plan's Philosophy Strikes at Heart of Tort Concept," 6 Trial 37 (1967).
4. John Volpe, U. S. Department of Transportation, Motor Vehicle Crash Losses and Their Compensation in the United States: A Report to the Congress and the President, Automobile Insurance & Compensation Study (Washington, D. C.: U. S. Government Printing Office, 1971) p. 70.
5. Report of the American Bar Association Special Committee on Automobile Accident Reparations, 1969, p.66.

social inequity, and of administration.[6] Their advice is sound, for there is no simple way of balancing the competing interests of insurer, insured and victim, nor any guarantee that widespread insurance indemnity can be achieved without certain sacrifices.

5. To provide a role for subrogation and reimbursement which is consistent with the role assigned to the law of negligence in any reform scheme and to assure that the rules of coordination of benefits are simple but equitable.

There is a close relationship between the law of torts and the principles of subrogation and reimbursement. If negligence is to be abandoned as a basis for shifting and distributing automobile accident losses, subrogation will automatically become unnecessary. On the other hand, if no changes are to be made in the present system, there would seem to be no reason to make any major changes in the current rules regarding subrogation and reimbursement. The difficulties arise when a reform scheme combines first party with third party insurance benefits and "fault" with "no-fault" criteria for recovery.

The proper role of subrogation and reimbursement in such a scheme cannot be determined until a more philosophical question is answered: To what extent should the principle of loss distribution on the basis of loss causation be preserved? The value assigned to the negligence principle must be weighed against the extra cost and inefficiency of subrogation and reimbursement.

With respect to first party insurance benefits there is a vital relationship between subrogation and coordination of benefits which cannot be ignored. Subrogation cannot exist without some recognition of the collateral source rule. Professor Colin Tait has explained:

> . . . if the tortfeasor's liability to the plaintiff is reduced by the amount of the collateral benefits, the plaintiff will have no cause of action for that amount to which the collateral source can be subrogated.[7]

Thus to a large extent, the decision of how to coordinate collateral source benefits with liability insurance benefits will depend on whether subrogation to adjust first and third party insurance benefits is desired.

How collateral source benefits and first party insurance benefits are to be coordinated is similarly complex. More is at issue than whether double recoveries are to be allowed; below the surface are important policy questions regarding the proper allocations of accident losses and insurance costs. The solution will involve a subtle analysis along the lines suggested by Professor Tait:

> Resolution of the problem can begin only after a recognition of the policies involved and the alternatives available . . . Which solution is the 'best' is not a matter of irrefutable logic but is dependent on a choice of differing social, legal and economic goals.[8]

6. To assure that the coverages provided by automobile insurance is extended to as many accident victims as possible without shifting losses from one group of motorists to another in an inequitable fashion.

Though wide indemnity of automobile accident losses is an important goal, not every insurance policy can be tapped for the benefit of every victim.

Since the applicability of liability insurance policies is clearly defined and limited by such legal doctrines as negligence and proximate cause, there are few problems in this area. However, the applicability of first party bodily injury coverages is not necessarily clear.

The degree to which such first party coverages should be extended on the basis of the need of the victim depends upon various social and economic considerations. Where several policies could logically be applied to the losses of a particular victim, rules regarding priority of insurance policies will be needed. Persons guilty of certain egregious or illegal conduct may not be deemed worthy of any payment at all, regardless of their need.

Loss shifting effects must also be taken into account; different types of vehicles may have radically different loss-causing and loss-sustaining potentials due to their size or weight or the manner in which they are used. Thus decisions which seem on the surface to apply coverage to a logical group of recipients may in fact shift the losses caused by one type of vehicle to the owners of other types of vehicles. Decisions as to whether the cost of using a particular vehicle should be borne by the owners of those vehicles or by the motorists at large, should not be made **ad hoc**, but should result from a thorough study of the economic and equitable effects of each course of action.

6. Report of the Drafting Subcommittee of the Council of State Governments Advisory Committee on Automobile Accident Claims, 1972, p.12.
7. C. Tait, "Connecticut's Collateral Source Rule: Stepchild of the Law of Damages," 1 Conn. L. Rev. 116 (1968).
8. Ibid., at 122.

To the extent that loss allocation decisions are implicit in the coverage decisions, conflicts of interest will arise. Their resolution demands that concern for the victim's need for compensation be balanced by a requirement of some nexus between the person who pays the insurance premium and the person who is entitled to receive the benefits.

Conclusion

The Commission's recommendations, the present system, and any other reform proposals should be tested against these six objectives. None of the alternatives will meet all six goals; indeed, it may not even be possible to do so, since to an extent the goals are conflicting ones.

Nevertheless, an optimistic approach to the automobile accident reparations problem demands that recommendations be formulated with high, and even unattainable, objectives in mind. The best reform proposal will seek to meet each individual goal as fully as possible and to balance competing goals.

The process of study and experimentation necessary to develop a workable reparation system which can implement these goals to the greatest possible degree is, to paraphrase Rheinhold Niehbur, one of finding proximate solutions to insoluble problems. There is no panacea. It is hoped that the Commission's recommendations will be found to be a constructive step in the search for the best automobile accident reparations system.

CHAPTER III

SUMMARY OF THE COMMISSION'S RECOMMENDATIONS

A. The "Commission Plan"

In undertaking this study it was a basic goal of the Commission to reform the automobile insurance system in such a way as to better serve the insureds and the automobile accident victims in Minnesota. Unfortunately, the best interests of these two groups are seldom coextensive and are frequently in conflict. Thus the insurance system does not lend itself to easy reform; a delicate balancing of various interests is called for.

The cost-equity dilemma referred to by Professor Keaton has led us to conclude that hasty adoption of a totally new system for automobile accident reparations may indeed aid either insureds or victims but do so only at the expense of the other group.

In recommending certain changes in the present system we adopt the philosophy of John Volpe, U.S. Secretary of Transportation:

> Mere speculation without observation of the actual operation of a new system is an inadequate basis for immediate and fundamental changes of a national scope in an important area. Experience with diverse plans in the states is essential, and one state has already, this January, taken a step down the road. The states are the best arena in which to solve the problem.
>
> Any new mandatory first-party no-fault coverages could be adopted incrementally, giving both the insuring public and the affected institutions time to gain the necessary understanding and make the necessary adjustments. How much and what type of compensation should be shifted in any one stage, how many stages there should be or even how long the process should take, or indeed, whether it will ultimately prove desirable to go all the way, cannot be answered doctrinarily. Trial will be the best teacher. The important thing is to get started with at least a reasonably agreed-on goal in mind. [1]

1. Tort Law and Limitations on Tort Liability

a. Tort liability for bodily injury should be restricted by making resort to a lawsuit unnecessary in minor cases.

A clear distinction must be made between the statutory abrogation of the common law right to sue for negligence and the statutory encouragement to forego pursuit of that remedy. The former, in our opinion abridges both substantive rights and the concept of individual responsibility; the latter is frequently sound public policy.

We recommend that there be no statutory bar to the right of an injured accident victim to sue the tortfeasor whose negligent acts were the proximate cause of his injury. It does not recommend that a law suit be brought in every automobile accident case.

The system of first party insurance we recommend will make it unnecessary for approximately ninety-five per cent of those injured in automobile accidents to resort to the courts for reimbursement of their economic losses.[2] Arbitration of small claims will also minimize the use of full jury trials in cases of minor injury. Allowing those who are dissatisfied with their compensation from the first party system to sue the tortfeasor for damages as hereafter set forth, and allowing every injured person to select the compensation mechanism best suited to the specific circumstances will maximize individual freedom of choice and at the same time will discourage abuse of the adversary system.

Tort law as been called inequitable, inefficient and expensive by its critics. Minnesota has a present reparations system which does have some problems but which are not as significant as those in other states; problems that currently trouble Minnesota may be dealt with without sacrificing the advantages of tort law as a loss shifting mechanism.

We recommend that the tort law system be strengthened and protected from misuse, rather than abolished because it believes that individuals should be held accountable for the harm which they cause through their anti-social driving behavior. It is, of course, unnecessary that the tortfeasor pay for the damages from his own resources in order to achieve this goal.

1. John A. Volpe, Motor Vehicle Crash Losses and Their Compensation in The United States; Automobile Insurance and Compensation Study, (Washington, D.C., U.S. Government Printing Office, 1971), p. 144.
2. Infra, p. 49.

However, society must make it clear through its laws that it believes negligent driving does cause automobile accidents. The individual must be threatened with the stigma and cost of "risk" insurance if he indulges in forbidden driving behavior and must be forced to justify and defend his driving behavior and decisions before such figures of authority as an insurance company, an arbitrator, a judge, or a jury of his peers in the event that he does become involved in an automobile accident. The legal rights accorded to the negligent driver and those accorded his innocent victim must continue to reflect the very different ways in which each of these persons affects our society.

b. The right of the innocent victim of an automobile accident to be made whole by recovery of full and complete damages should be protected.

We recommend that every tortiously injured person be allowed to recover damages for all harm suffered, over and above the first-party insurance benefits which have been paid, including damages for disability, loss of wages, loss of future earning capacity, loss of enjoyment of life, physical pain and suffering, humiliation and embarassment, mental anguish, and loss of consortium.

The fact that these losses are intangible makes them no less real to those on whom they were tortiously inflicted. Our laws recognize that the innocent victim of an assault or a slander is entitled to be made whole by the recovery of full damages; the innocent victim of an automobile accident is no less deserving of the law's protection.

Excessive general damages are occasionally recovered in automobile accident cases, as they are in all areas of the law. However, we feel that attempts to curb excessive general damages by the use of threshholds, exemptions, formulae, or schedules will have results that are arbitrary and unjust, for severity of intangible losses is not necessarily related to the amount of the medical bills or the type of injury. Each case should be evaluated according to its specific facts and individual circumstances.

Our proposals provide a more equitable method of dealing with the problem by making first party benefits readily available, thus making a lawsuit impractical if the injury is minor, and by providing for simple and inexpensive arbitration, thus reducing the coercive nuisance value of the small claim.

We believe that reduction of the cost of automobile insurance should not be achieved through the reduction of the benefits available to the innocent person injured by the negligence of another.

c. Tort liability for property damage should be restricted by making resort to a lawsuit unnecessary in the majority of cases.

We believe that there should be no statutory bar to the right of a person to sue the tortfeasor whose negligent acts caused physical damage to his automobile.

While judicial resources should normally not be expended on simple automotive property damage cases, most of these damage claims today are so small that recourse to any court other than a conciliation court is economically impractical.

The full scale lawsuit for property damage will become even rarer when there is a system of arbitration for small claims.

However, even a right that is seldom exercised should not be summarily abolished. No savings can be found in the property damage area by reducing general damages or by reducing litigation costs—for there are none.

Many of the complaints in the physical damage area result from the high cost of automobile repairs and from delay and inconvenience. The existence of tort liability does not foreclose a cure for these problems.

The use of collision and comprehensive insurance coverages is widespread, and they are beneficial supplements to the tort liability system. However, a statutory bar to lawsuits would require individuals to purchase these coverages or bear the entire cost of an accident themselves. Moreover, the insured could not, as he does today, recover the deductible portion of his collision coverage from the tortfeasor.

Since minor accidents are so frequent, the vehicle owners in the state would find it most burdensome and inequitable to absorb the first $100 of each such accident. Such a law would be particularly injurious to those of low or moderate means, the very persons who need the law's protection.

d. A system of mandatory arbitration of small claims should be adopted.

We recommend a statute empowering the Supreme Court of Minnesota and the several courts of general trial jurisdiction to promulgate the rules of court, requiring in whatever manner deemed to be constitutional, the establishment of a system of mandatory arbitration in all cases involving the automobile accident reparations system in which the amount in controversy is $5,000 dollars or less.

Although Minnesota has thus far escaped the court congestion that has plagued large metropolitan areas in other states, we believe that arbitration should be used to prevent rather than cure a backlog.

Moreover, arbitration would provide a needed alternative to the two extremes of negotiated settlement or jury trial. Small liability claims do have a nuisance value which may lead the insurance company to pay them in order to avoid the expense of a trial, even when their insured is not liable or when the injuries have been exaggerated. Arbitration, by providing a quick and inexpensive way to adjudicate these cases, would reduce unfair bargaining advantage currently held by the claimant in these situations.

Although the proponents of the so-called pure "no-fault" plans decry the inefficiency of the lawsuit as a mechanism for obtaining compensation, these plans require the injured party to sue his own insurer in a court of law should there be a dispute as to the benefits due regardless of the fact that the sum in controversy may be very small.

Harmony between an injured person who wants benefits and the insurer who must pay them cannot be achieved by legislative fiat. Arbitration can provide a simple and inexpensive forum for resolving the disagreements which will necessarily arise under the first party automobile insurance policies.

2. Indemnity and Coverage of Accident Losses

a. First party bodily injury insurance benefits sufficient to indemnify the majority of economic losses should be available to all automobile accident victims regardless of negligence.

We favor the principal of first party insurance and believe that through a two-level reparation scheme the rights of persons currently ineligible to recoup their accident losses can be expanded without restricting the rights of other individuals who now have valid tort claims.

We recommend that the legislature guarantee basic first party insurance benefits of $10,000 per person per accident to all automobile accident victims regardless of fault. Although the benefits could only be used to indemnify actual economic loss incurred by the victim, the total benefits could be applied to any compensable losses, and there would be no sub-limits on the benefits available for each category of loss. Compensable losses are:

(a) Any medical, hospital, rehabilitative or related expenses;
(b) Any wage, salary or other income lost as a result of the injury;
(c) Any expenses incurred in purchasing services to replace those which the victim could not perform as a result of the injury. (This would include, for example, the expense of hiring housekeepers or babysitters to do the work normally done by an injured housewife);
(d) Funeral expenses;
(e) The measureable economic losses of survivors and dependents of persons killed in automobile accidents; and
(f) Any other measurable economic losses which were a direct and proximate result of the bodily injury.

No time limit other than the six year statute of limitations for contract actions, would be placed on eligibility for these benefits.

We believe that the dual reparation system that will result from supplementing present common law rights with basic guaranteed first party benefits will indemnify more accident losses than any other type of system. Persons not eligible to recover under the present system will be able to recoup a substantial part of their economic losses, but they will not do so at the expense of others who have valid negligence actions.

The innocent accident victim has the right to be made whole by the recovery of money damages to compensate him for every aspect of his injury. Although those who are responsible for their own injuries should not be entitled to such generous treatment neither should they be abandoned by society.

There are many reasons why the economic losses of such individuals should be distributed through insurance. An unknown, but apparently substantial, number of victims recieve no insurance benefits whatsoever under the present system. It is well documented that severe social and economic dislocations and even actual poverty result in some of these cases.

There are practical as well as humanitarian advantages to providing them with a reasonable level of compensation. Society's interests are best served if accident victims are rehabilitated and returned to productive positions in the community; conversely, all taxpayers suffer if accident victims are forced to seek public relief.

It is estimated that the $10,000 basic benefits recommended here will indemnify eighty-five per cent of the economic losses resulting from automobile accidents.[3] When the new benefits are added to those available under the present system, it is obvious that an even greater percentage of losses will be compensated.

In our opinion first- and third-party insurance programs working together can create an integrated, just, and comprehensive automobile accident reparations system.

b. The development of additional first party insurance coverages should be encouraged.

We do not believe that insurers should be required to offer additional first party coverages to their policyholders if they do not wish to do so. However, those insurance companies which voluntarily market such coverages are to be commended and encouraged.

The development of more extensive first party policies is best left to market forces. If our recommendations are adopted, the public will have an opportunity to become acquainted with first party automobile insurance, and demand for further coverages will automatically result if the public's experiences with the basic policy are favorable.

Insurers can then develop the specific types of policies that their customers wish to purchase. We are confident that the insurance industry can meet the challenge of providing creative and useful new coverages.

3. Prompt and Certain Payment of Insurance Benefits

a. Prompt payment of basic first party benefits should be required.

We recommend that insurers be required by law to pay first party insurance benefits as the expenses accrue; each payment should be made within thirty days after the company has received satisfactory proof of the validity of the claim. So that it can determine within that time whether a claim is valid, the insurer shall be entitled to obtain the claimant's medical history, employment records, and any other records, including income tax returns, which are needed to verify statements made by the claimant. The insurer should also be allowed to require that the claimant undergo an independent medical examination.

If the claimant sues to recover first party benefits which have been denied or which have not been paid within the prescribed time and if the court finds that the delay or denial was frivolous and unjustified, the court may award reasonable interest on the benefits and reasonable attorney fees to the claimant.

Evidence presented to the Commission indicates that any delay experienced by tort claimants under the present system in Minnesota is not the result of court congestion, for Minnesota has not suffered such congestion even in the larger cities. However, a significant period of time is sometimes needed in order to make a final medical evaluation of the seriousness of the injury, a difficult task that must be performed before a lump sum settlement can be made.

Since the first party benefits recommended in this report will be limited to compensation for actual economic loss, they may be paid in installments as expenses are incurred. Thus, it is possible for benefits to be paid very promptly in most cases, and unless the fact of the loss is questionable, the insurer should be required to do so.

The advantages are obvious: injured people will be able to pay for medical and rehabilitative care in the months following the accident, a time when it is most needed and can do the most good. Persons with valid tort claims will not be forced by economic hardship to settle them for a fraction of their value.

The court's power to award interest and attorneys' fees to the claimant is designed to assure compliance with the thirty day deadline and to give the claimant a bargaining position which is equally as strong as that of the company.

To balance the equities between insurer and claimant still further, additional discovery powers are granted to the insurance companies. It would be most undesirable if the time limit for payment would coerce companies to pay questionable, excessive, or fraudulent claims. These procedures should allow a rapid and efficient verification of the injured party's claims.

b. An assigned claims plan should be established to guaranty certainty of first party payments to all those entitled to them.

We recommend that all insurers licensed to do business in the state of Minnesota be required to contribute to and participate in an assigned claims plan to provide first party benefits to automobile accident victims whose losses are not covered by a regular first party insurance policy.

Although claims against the plan would be few, to allow even a small gap in insurance coverage to exist would be contrary to the philosophy of the first party proposal, as described above.

3. Infra, p. 49.

Primarily such a plan would be used by habitual pedestrians who do not have coverage of their own and who are struck by an uninsured or out-of-state motorist. Of course, Minnesota automobile owners who failed to provide insurance covering their own vehicles as required by law would not be entitled to make claims against the fund, but their children or guest passengers could be eligible.

We believe that the additional costs associated with an assigned claims plan would be minimal and that the plan is necessary in order to assure first party benefits to all.

4. Insurance Requirements

a. The basic first party automobile insurance policy should be compulsory.

We recommend that all motor vehicle owners be required, in order to register a vehicle in the state of Minnesota, to provide the basic $10,000 first party insurance policy described above. Owners would be allowed to post a surety bond with the Commissioner of Public Safety in lieu of such insurance. The insured would be allowed to elect deductibles to the first party benefits; however, the deductible would be available only with respect to benefits payable to insured and members of his family under the policy and not to benefits which would be payable to guest passengers or pedestrians.

The goal of wider indemnity of accident losses cannot be met unless steps are taken to assure that a first party policy covers every vehicle licensed in the state. To close the coverage gaps in the present system, compulsory first party insurance is a necessity. In our opinion, it is only equitable to compel anyone who owns such a dangerous piece of machinery as an automobile to provide this basic security for himself, his family members, and his friends.

However, some persons do have such complete collateral source coverages, either through health and accident insurance or some other type of group or private plan, that the first party policy would merely duplicate existing benefits. Other persons would prefer to rely on their own resources to pay smaller automobile accident losses. The deductible feature is added to the policy to provide maximum flexibility for those persons.

b. First party coverage should not be compulsory for the owners of certain special types of vehicles.

We recommend that the owners of these vehicles be excused from the first party insurance requirements set forth above:

(a) Vehicles not licensed to operate on the public roads;

(b) Vehicles owned by the United States, by a state, or a political subdivision thereof;

(c) Mass transit vehicles, such as taxis, public buses, and school buses.

Vehicles not licensed to operate on the public roads are excluded because the accident losses they cause may not properly be considered a cost of motoring.

Government owned vehicles are excluded because of the problems of immunity and comity involved and because there would be no advantage to shifting these accident costs to the taxpayers. It would be better for pedestrians or passengers injured by these vehicles to rely on their own first party policies as described in Section F, below. Government employees injured while using a government vehicle would not need first party benefits for they would be entitled to protection from Workmen's Compensation.[4]

Mass transit vehicles are excluded because the cost of requiring them to provide $10,000 of insurance for each passenger in each accident regardless of fault would be excessive. Of course, this would not prevent those passengers or pedestrians injured by the vehicle from recovering from their own first party policies as described in Section F below. Again, drivers or other employees would be eligible for Workmen's Compensation.

c. Automobile liability coverage with limits sufficient to guarantee financial responsibility in serious accident cases should be made compulsory.

We recommend that all motor vehicle owners be required, in order to register a vehicle in the state to prove financial responsibility by providing liability insurance with limits of: $25,000 bodily injury per person, $50,000 bodily injury per accident, and $10,000 property damage.

Even universal basic first party insurance will not provide adequate financial security for accident victims. Reform of liability insurance requirements is a necessary supplement. The Safety Responsibility Act is not sufficient, for it does not require proof of financial responsibility until after an accident has occurred, and its insurance coverage limits are too low to provide full damages for claimants with serious injuries.

It has been well documented that those persons with severe injuries are the least likely to receive adequate reimbursement under the present system even when they prevail on a valid negligence claim.

4. Minn. Stat. § 176.011, Subd. 10 (1971).

If automobile owners can fairly be required to purchase first party insurance to protect themselves and their families then it follows that they must also be required to purchase liability insurance to protect any innocent third parties they may negligently injure.

d. Uninsured motorist coverage should remain a mandatory feature of all liability insurance policies in Minnesota.

We recommend that the present law requiring uninsured motorist coverage to be incorporated in all automobile liability insurance policies be retained.

Although the provisions for compulsory first party insurance and compulsory liability insurance will close many of the insurance gaps which exist today, there will still be a need in some cases for uninsured motorist coverage. It can be expected that some persons will fail to comply with the compulsory liability insurance requirements and when this occurs the victim of the uninsured driver's negligence should not be limited in recovery to the lower benefits of his first party policy. Rather, he should be entitled to a source of full recovery such as uninsured motorist coverage.

e. Administrative sanctions should be provided to assure compliance with the insurance requirements.

We recommend that the Commissioner of Public Safety be empowered to revoke for a period up to one year, in his discretion and after full hearing, the drivers' license and/or vehicle registration plates of any owner who fails to provide the required first party or liability insurance.

The purpose of these sanctions is not merely to punish persons who fail to buy insurance, but more importantly, to condition the privilege of driving on a showing of financial responsibility. We believe that they are sufficiently strict to remove nearly all uninsured vehicles from the highway.

f. The restrictions now placed on the insurer's right to cancel or non-renew liability insurance policies should be extended to first party policies.

Minnesota law severely limits the insurer's cancellation and non-renewal rights, both procedurally and substantively. To assure that the required first party insurance is available to all, we recommend that these same restrictions be applied to these policies.

After a first party policy has been in effect for sixty days, permissible reasons for cancellation shall be limited to the following:

(1.) Nonpayment of premium; or
(2.) The policy was obtained through a material misrepresentation; or
(3.) Any insured made a false or fraudulent claim or knowingly aided or abetted another in the presentation of such a claim; or
(4.) The named insured knowingly failed to disclose fully his motor vehicle accidents and moving traffic violations for the preceding 36 months if called for in his written application; or
(5.) The named insured knowingly failed to disclose in his written application any requested information necessary for the acceptance or proper rating of the risk; or
(6.) The named insured knowingly failed to give any required written notice of loss or notice of lawsuit commenced against him, or, when requested, refused to cooperate in the investigation of a claim or defense of a lawsuit; or
(7.) The named insured or any other operator who either resides in the same household or customarily operates an automobile insured under such policy:
  (a) has, within the 36 months prior to the notice of cancellation, had his driver's license under suspension or revocation; or
  (b) is or becomes subject to epilepsy or heart attacks, and such individual does not produce a written opinion from a physician testifying to his medical ability to operate a motor vehicle safely, such opinion to be based upon a reasonable medical probability; or
  (c) has an accident record, conviction record (criminal or traffic), physical condition or mental condition, any one or all of which are such that his operation of an automobile might endanger the public safety; or
  (d) has been convicted, or forfeited bail, during the 24 months immediately preceding the notice of cancellation for criminal negligence in the use or operation of an automobile, or assault arising out of the operation of a motor vehicle, or operating a motor vehicle while in an intoxicated condition or while under the influence of drugs; or leaving the scene of an accident without stopping to report; or making false statements in an application for a

driver's license, or theft or unlawful taking of a motor vehicle; or

(e) has been convicted of, or forfeited bail for, one or more violations within the 18 months immediately preceding the notice of cancellation, of any law, ordinance, or regulation which justify a revocation of a driver's license.

(8.) The insured automobile is:

(a) so mechanically defective that its operation might endanger public safety; or

(b) used in carrying passengers for hire or compensation, provided however that the use of an automobile for a car pool shall not be considered use of an antomobile for hire or compensation; or

(c) used in the business of transportation of flammables or explosives; or

(d) an authorized emergency vehicle; or

(e) subject to an inspection law and has not been inspected or, if inspected, has failed to qualify within the period specified under such inspection law; or

(f) substantially changed in type or condition during the policy period, increasing the risk substantially, such as conversion to a commercial type vehicle, a dragster, sports car or so as to give clear evidence of a use other than the original use.[5]

Non-renewal solely because of the age of the insured or for arbitrary and capricious reasons is also forbidden.[6]

The procedural rules as to notice of cancellation, or non-renewal,[7] notice of the reasons for cancellation or non-renewal,[8] notice of right to complain,[9] and investigation and review by the Insurance Commissioner,[10] which are now applicable to automobile liability policies, shall also be extended to the new first party insurance.

We believe that these rules strike a fair balance between the interests of first party insurers and insureds and that an adequate supply of insurance can be assured in this way without permanently binding an insurer to all of its current policyholders.

5. Subrogation, Reimbursement and Coordination of Benefits and Coverages

a. The first party insurer to the extent of benefits paid should be subrogated to the injured victim's common law rights against tortfeasor.

Although no statutory restriction should be placed on an injured victim's right to sue in negligence he, of course, should not be allowed to retain both his first party benefits and his tort recovery.

We recommend that the first party insurer retain the right of subrogation to the extent of benefits paid and that insurers be encouraged to settle their subrogation claim through inter-company arbitration procedures. The insurer should also have the option to demand reimbursement from the proceeds of the injured person's lawsuit against the tortfeasor if no inter-company adjustment of the claim has taken place prior to the lawsuit.

However, we recommend that in all cases arising out of automobile accidents where two or more liability insurers are involved the first party insurer be forbidden to pursue its subrogation claim by bringing a separate action in a court of law either in its own name or in the name of its insured.

Subrogation will result in the eventual distribution of losses on the basis of negligence thus retaining the benefits which derive from applying tort law to driving behavior. The method of subrogation described above differs from that under the present system and will provide for a more efficient method of adjudicating the subrogation claim. The use of inter-company arbitration procedures is widespread today, but not required, and the insurer can force the injured person to become an unwilling participant in a lawsuit. In accordance with our view that judicial resources should be conserved and trials avoided where they are not necessary to preserve individual rights the procedures recommended here will remove subrogation claims from the courts.

b. Whether first party benefits are to be reduced by collateral source benefits received by the insured should depend on who provided the consideration for those collateral benefits.

To the extent that collateral benefits are traceable to any consideration actually provided by the insured, they should not be taked from him by force of law. We recommend that first party benefits be made

5. Minn. Stat. § 65B.15 (1971).
6. Minn. Stat. § 65B.17 (1971).
7. Minn. Stat. § 65B.16-.18 (1971).
8. Minn. Stat. § 65B.16 (1971).
9. Minn. Stat. § 65B.19 (1971).
10. Minn. Stat. § 65B.21 (1971).

primary with respect to private insurance benefits, group insurance benefits and wage continuation plans, whether they were purchased by the insured or a member of his family, or whether they were provided as fringe benefits of his employment. In all of these cases, the insured has provided some consideration for the benefits received; either money to pay the premiums or labor which induced another to pay them.

However, we recommend that deductions be made from first party benefits to the extent that the injured person collects Workmen's Compensation, Medicare, Social Security, Veteran's and similar benefits. In these examples the injured person has not actually provided consideration for the coverage. The consideration for Workmen's Compensation is supplied entirely by the employer and the other programs mentioned are tax supported.

To the extent that double coverage of accident losses increases the cost of automobile insurance premiums, it is undesirable. However, when it is possible the costs of automobile accidents should be paid by automobile insurance so that cost may be internalized to groups of motorists. Moreover, it would be inequitable to deprive an individual of benefits which were in effect his "savings".

We do believe that persons with adequate collateral source benefits will elect deductibles to their first party coverage so as to lower their insurance rates and avoid double coverage, and that new health and accident insurance policy options will be created so that the insured can contract for such insurance with an exclusion for automobile related injuries. The use of such alternatives is to be strongly encouraged.

6. Applicability of Coverages

a. With respect to private passenger vehicles basic first party insurance benefits should follow the named insured and his family.

We recommend that the new basic first party policy be written so that the following persons are entitled to benefits:

(a) The owner of the insured vehicle, whether injured while driving the insured vehicle, riding as a passenger in the insured vehicle, driving another vehicle, riding as a passenger in another vehicle or while a pedestrian;

(b) The members of the immediate family and household of the named insured whether injured while driving the insured vehicle, riding as a passenger in the insured vehicle, driving another vehicle, riding as a passenger of another vehicle or while a pedestrian;

(c) Permissive operators of the insured vehicle if not covered by their own policies;

(d) Passengers in the insured vehicle if not covered by their own policies;

(e) Pedestrians injured by the insured vehicle if not covered by their own policies.

The benefits of the first party policy should be primarily available to the insured and his family because they have selected the policy, paid for it, and have decided what its terms shall be. When the benefits follow them in this manner they are better able to take advantage of the options, such as excess coverage or deductibles, which will be available in the first party insurance market. This scheme also allows more accurate insurance rating since the benefits will flow primarily to the insurance company's customers whose relevant risk characteristics may be determined in advance of any accident.

b. With respect to commercial vehicles, basic first party insurance benefits should follow the vehicles.

We recommend that the normal order of policy priority be reversed in the case of commercial vehicles. The primary source of first party benefits for employees of the business, passengers in the vehicle, and pedestrians injured by it should be the first party policy covering the commercial vehicle rather than the policy which each of these persons has for his own automobile.

This variation is suggested so that private citizens will not be required to bear the heavier loss costs of commercial vehicle accidents. Injuries to employees, passengers and pedestrians will necessarily occur and should be treated as a cost of doing business for the commercial enterprise.

c. With respect to motorcycles, basic first party benefits should follow the vehicle so that high deductibles may be provided.

We recommend that the first party policy covering the motorcycle, rather that the person's own automobile first party policy, be the source of coverage for motorcycle riders and their passengers. The primary source of coverage for pedestrians hit by cycles would remain their own policies, with the motorcycle's coverage as a secondary source.

We also recommend that the insurer be required to offer all motorcycle owners a deductible of at least $1,000 per person per accident to benefits to be paid to the rider or passenger.

Since motorcycle crashes are in general more frequent and more serious than those involving other types of motor vehicles a separate motorcycle policy should be required and riders and passengers not be allowed to recover under an automobile policy's first party coverages for these injuries. In this way the cost of using motorcycles can be placed on their owners.

However, evidence presented to the Commission indicates that full first party coverage for motorcycles would be so expensive that many owners could not afford to purchase it at all. Thus the $1,000 deductible must be offered by the insurer to ease the financial burden and to assure that all owners will be able to provide some security for accident victims.

d. Certain persons should be ineligible to recover first party benefits because it would be contrary to public policy to pay them. We recommend the following exclusions:

(a) Persons driving or riding in any vehicle which is involved in an accident with the insured vehicle should be ineligible to recover benefits from the policy covering the insured vehicle;

(b) Persons intentionally causing or attempting to cause injury to themselves, to another or to property should be ineligible to recover from any first party policy;

(c) Persons who converted a vehicle or who were otherwise using it unlawfully at the time of the accident should be ineligible to recover from any first party policy;

(d) Pedestrians who were under the influence of alcohol or illegal drugs at the time of the accident should be ineligible to recover benefits from the policy covering the vehicle that hit them; however, they should remain eligible to recover from their own first party policies.

The first exclusion is made because it is desirable as to place an ultimate limit on the number of first party policies to which the injured person can look for payment. Occupants of the second vehicle will not need to seek indemnity from the insured vehicle. The second vehicle, in accordance with the compulsory insurance provisions, should be covered by a first party policy. In addition, any passengers or permissive operators would be very likely to have their own policies.

The second exclusion is made because we believe that it is contrary to public policy to extend first party benefits to persons whose conduct is not merely negligent, but intentionally directed at causing injury. The third exclusion is related; thieves and other persons acting illegally should not be allowed to benefit in any way from their actions.

Intoxicated pedestrians are ineligible for benefits from the vehicle which hit them because it would be inequitable to require the automobile owner to insure against accident losses that are attributable to excessive drinking by pedestrians rather than to the use of automobiles. The pedestrian should insure against such losses with his own first party policy. Of course, this rule would not prevent an intoxicated pedestrian from recovering in a tort action from any motorist who negligently injured him.

Signed:

John L. Corcoran *Romaine Powell*
William De Parcq *Robert Rotenberg, M.D.*
Roger Laufenberger *Vladimir Shipka*

B. The "O'Neil Proposal"

1. Basic Statement

The undersigned, while they are in basic agreement with and support the recommendations outlined above, have dissented from those recommendations insofar as they feel that an additional, essential element, namely a $2,000 general damages deductible, as outlined in Senator Joseph O'Neill's additional views, must be included to strengthen the "Commission proposal" by reducing its cost and by eliminating the so-called "nuisance claim".

Signed:

Jack I. Kleinbaum
Mrs. Janet Moulton
Joseph T. O'Neill

2. Additional Views of Senator Joseph O'Neill

After many months of hearing testimony, and of studying and analyzing the automobile accident reparations system in Minnesota, some differences of opinion remain among Commission members as to the type of reform which would best serve Minnesotans. Most of the controversy among Commission members concerns the question of whether the right to sue for negligence should be limited in automobile accident cases. That very issue has been the focus of the great bulk of the debate on the automobile accident reparation question and has blocked consensus in nearly every deliberative body which has attempted to formulate reform legislation.

When the National Conference of Commissioners debated the UMVARA proposal at their meeting last summer, four three-hour sessions were allocated to a discussion of the bill; the Conference spent all of the first two, most of the third, and a bit of the fourth debating the tort limitation provision of the 7,000 word draft. Thus the division among Commission members on the question is not surprising; it is, as appellate judges are fond of saying, an issue on which reasonable minds may differ.

The Commission's disagreement here should not be allowed to obscure their concrete achievements. Perhaps even more important than the conclusions which the Commission has reached, is the data underlying them. The Commission has produced a huge body of statistical material and testimony which should provide an excellent factual base for Legislative consideration of the matter. Information relating to the automobile accident reparation system in Minnesota simply was not available in quantity or in useable form prior to the Commission's undertaking. In collecting this material all of the members of the Commission have shown a tremendous zeal to see that all sides were presented and to approach the question in an open-minded and objective manner. The information contained in the transcript of the Commission's hearings and in the final report will serve the Legislature well even if they decide to reject all or a part of the Commission's recommendations.

There are certain provisions of the Commission's recommendations which are less controversial, but just as important as those retaining the right to sue; they deserve some comment. The highway safety recommendations promulgated by Dr. Rotenberg's subcommittee were unanimously adopted by the Commission members. I believe that the proposals contained in the subcommittee report are excellent and if implemented by the Legislature would do much to stem the alarming growth of automobile accidents and the consequent personal injuries and property damage. This type of attack on the cost of accidents and the cost of automobile insurance should be one that everyone can support, for reducing the need for reparations improves the lot of both victim and motorist and reduces insurance costs without redistributing insurance benefits.

The extended coverage provisions of the "Commission plan" are also excellent. Although some have wrongfully and prematurely dismissed the report I am hopeful they and the media will take the time to read through the report to understand and discuss the recommendations.

The recommendations, I think, can be succinctly stated as follows:

1. Mandatory **compulsory** first party coverage up to $10,000 covering:
   (a) Medical, hospital or rehabilitation expenses
   (b) Wage loss
   (c) Purchase of services during rehabilitation
   (d) Funeral expenses
   (e) Economic loss of survivors or dependents
   (f) Any other measurable economic losses
   (g) The report encourages the purchase of larger first party benefits
2. Compulsory except for:
   (a) Vehicles not using the public roads
   (b) Government vehicles
   (c) Mass transit vehicles
3. Compulsory liability coverage ($25,000/$50,000/$10,000)
4. Mandatory uninsured motorist coverage
   ($25,000/$50,000/$10,000)
5. Administrative sanctions:
   Commissioner of Public Safety may revoke driver's license or registration plates up to one year for failure to have first party or liability coverage.
6. Restrictions on right to cancel and non-renew should be extended to first party coverage.

7. Mandatory arbitration of small accident reparation claims:
   (a) Under $5,000
   (b) By Rules of Supreme Court
8. Prompt payment by the insurer within thirty days of satisfactory proof of validity of the claim

   or

   if unjustified or frivolous delay—interest and attorney's fees are awarded, with the insurer getting a waiver of medical, employment or tax records.
9. Insurer is subrogated for benefits paid against the tortfeasor but **only** through:
   (a) Arbitration
   (b) Reimbursement through insured's tort action
10. First party benefits will be primary and may be reduced by the following collateral benefits:
   (a) Workmen's Compensation
   (b) Medicare
   (c) Social Security
   (d) Veteran's and other collateral benefits for which the consideration was provided by taxpayer or employer
11. First party benefits on private vehicles follow the insured as:
   (a) Driver of insured or other vehicle
   (b) Member of driver household
   (c) Passenger
   (d) Pedestrian

   First party benefits with respect to commercial vehicles other than those excluded follow the vehicle.

   First party benefits follow the motorcycle with high deductible.
12. First party benefits should not be recoverable:
   (a) By one who intentionally causes harm;
   (b) By one who converts a motor vehicle;
   (c) By one using the vehicle to commit a felony or one eluding apprehension by the police;
   (d) An intoxicated pedestrian can recover from own policy but not from vehicle that hit him.
13. An assigned claim plan for those few with no coverage, e.g. a pedestrian struck by an uninsured or out of state motorist.
14. Property damage claims are left in tort system.

If enacted into law these provisions would be most helpful. Surely one of the major problems that have spurred reform efforts is the need of all accident victims for some compensation. There is no reason why any accident victim should be required to bear all of his own losses in a society where sophisticated insurance mechanisms are available and can be adapted to distribute virtually all losses. We should not lose sight of the fact that alleviating the hardships suffered by automobile accident victims and their families and providing better medical and rehabilitative care for victims are some of the important objectives of any reform. It is doubtful that so much time and money and energy would have been expended on accident reparations reform had the only problems with the present system been high insurance premiums and certain inequities in the distribution of general damages. The "Commission plan" puts a great deal of money into the hands of victims who are denied compensation under the present system, and should be highly commended for this. The extended coverage provisions constitute a major and constructive change.

The program outline above needs only one small addition in my mind to make it truly an outstanding program to present to the 1973 Session. This recommendation would be as follows:

1. Restrict tort recovery for personal injuries arising out of automobile accidents in Minnesota unless the plaintiff has provable general damages including pain and suffering which exceed $2,000. The jury in such personal injury cases would be required to answer a special interrogatory as to the amount of their verdict attributable to general damages, and the first $2,000 would be deducted by the trial court from the general damages portion of the verdict. When arbitrators are functioning as the finders of fact, they would determine the amount of general damages and make the deduction in a similar manner.
2. The above tort limitation would not apply if one of the following consequences resulted from the plaintiff's injury:
   (a) Death;

(b) Significant permanent disfigurement;
(c) Dismemberment;
(d) Permanent disability whether total or partial;
(e) Medically certified inability to work or engage in normal activities for more than 60 days.

I believe that this amendment would greatly strengthen the "Commission plan". While I am not convinced that the partial restriction of tort recovery is a complete answer to the inequities that exist in the system and to rising insurance costs, I believe that the Legislature should adopt a law that will limit recoveries to some degree, with the intended result of reducing automobile insurance costs for Minnesotans. Public opinion is solidly behind such a plan and the citizens of Minnesota should be willing to try the efficiency and purported cost savings of a "no-fault" system.

It is difficult to determine in the abstract whether a limitation of recovery would improve the delivery of services, provide equitable treatment of victims, and significantly reduce insurance costs. We have frequently heard that the states are the laboratory of reform, and by adoption of this plan Minnesota would show its willingness to experiment in a matter of recognized public concern. If the legislature enacted the limitation in the manner I suggest above, the restrictions on recovery could easily be reversed in the event that they proved unsatisfactory. We could thus compare both systems in practice, evaluate them with greater certainty and achieve a final consensus on the best system for the State of Minnesota.

3. Minnesota Cost Projections for "O'Neil Proposal"

Costing Of "O'Neil Proposal" Prepared by Charles Hewitt
(Figure 3)

Present Premium	Coverage (or Component)		Projected Premium
$ 62.30	Bodily Injury	25 / 50 / 10 Limits	$ 62.00
	Special Damages -	- $ 36.90	
	General Damages - $ 2000 Ded.	- $ 22.70	
	Out-of-state -	- $ 2.40	
$ 37.10	Property Damage	No Tort Limit	$ 36.70
$ 12.00	Uninsured Motorist		$ 5.00
$ 11.00	Medical Payments		$ 0.00
$ 53.20	Collision	No Tort Limit	$ 53.20
$ 20.30	Comprehensive		$ 20.30
$ 0.00	Personal Injury		$ 26.80
$ 111.40	Minimum Coverage - BI PD UM		$ 130.50 (17.1% increase)
$ 122.40	Medium Coverage - BI PD UM Med Pay		$ 130.50 (6.6% increase)
$ 195.90	Full Coverage - BI PD UM Med Pay Coll. Comp.		$ 204.00 (4.1% increase)

CHAPTER IV

ANALYSIS OF DATA REGARDING THE PRESENT REPARATION SYSTEM IN MINNESOTA AND THE "COMMISSION PLAN"

The purpose of this chapter is two-fold: first, it presents the data gathered in the Commission's study of the Minnesota automobile accident reparation system; second, it presents the interpretation of that data which led the plurality of the Commission to support the so-called "Commission Plan." Those interpretations and the explanations of how the "Commission Plan" can alleviate some of the problems of the present system are concurred in by the signers of the "O'Neill Plan" except for the sections of this chapter which suggest that no limitation on tort recovery is necessary to reform and which thus conflict with the view held by those supporting the "O'Neill Plan."

A. Tort Law and Limitations of Tort Liability

The basic goal in this area as set forth in Chapter II was:

> To assure that automobile accident preparation decisions are governed by the common law of torts if, and to whatever extent, it is the best decision-making mechanism and to limit tort liability if, and to whatever extent, it is no longer relevant to the compensation of crash losses.

Whether the tort law is to be retained, abolished, or partially supplanted depends to a large extent on which system can best:

1. Provide equitable standards for the allocation of automobile accident losses;
2. Provide equitable standards for the distribution of compensation funds;
3. Provide an efficient process for making reparation decisions.

1. Loss Allocation

Automobile accident law is frequently discussed as though its only purpose were compensation of injured persons. As Professor Fleming James points out, such a narrow view may be most misleading:

> But, it (compensation) cannot stand alone as a basis for shifting a loss which has already occurred. The good that compensation does the original victim is exactly offset by the harm done to the one who has to pay. From society's point of view nothing is gained by this; indeed the cost of the shifting process . . . is added to the original loss. Something beyond compensation must be found to justify a rule that shifts the loss from victim to actor.[1]

That this "something" is more than a charitable concern for one who has been impoverished by an accident, may be demonstrated by the universal rule that a wealthy accident victim may sue a poor and uninsured tortfeasor, and that in some jurisdictions personal representatives may pursue a lawsuit although the plaintiff and the defendant have both died of causes unrelated to the accident.[2]

One of the purposes of tort law is to determine who should bear the inevitable losses of automobile accidents. Indeed, this must be a concern of any statutory substitute for the tort law in the automobile accident field, for losses may be treated in a finite number of ways and to refuse to intervene in order to shift or distribute them is in itself an allocation.

Today the law allocates automobile accident losses on the basis of negligence. The rules of negligence determine whether the injured plaintiff's loss should be shifted to the defendant and the rules of comparative negligence determine the extent to which it should be shifted. After the loss has originally been shifted it will probably be distributed by a liability insurance company which will apportion the shares of the loss among its insureds on the basis of their own accident causing propensities.

An accident loss is shifted only when the defendant's conduct involved an unreasonable and foreseeable risk of harm to others. The famous algebraic "calculus of risk" of Judge Learned Hand makes the relationship between risk and liability clearer. He let P equal the probability that an injury would result, L equal the severity of the injury, and B equal the burden of taking adequate precautions to prevent the injury and

1. Fleming Jones, "Analysis of the Origin and Development of the Negligence Action", in United States Department of Transportation, The Origin & Development of the Negligence Action, Automobile Insurance & Compensation Study (Washington, D.C.: U.S. Government Printing Office, 1970), p. 45.
2. See, Minn. Stat. § 573.01-.02, (1971) Minnesota's survival and wrongful death statutes.

concluded: "Liability depends on whether B≤PL."[3] Liability follows unreasonably dangerous conduct, as Professors Blum and Kalven explain:

> At a deeper level all that the negligence formula ever required was that the actor be held liable only when the community judged that the risk he took was not a reasonable one.[4]

That there is some relationship between accidents and driver behavior has never been seriously questioned. Although the Department of Transportation volumes which deal with the question emphasize the importance of environmental factors in accident causation and control, they do not argue that substandard driving behavior does not cause accidents, but rather insist that the concept of negligence is not scientifically "useful."[5]

However, as Blum and Kalven point out, the concepts useful in studying traffic engineering and highway safety, may be very different from the concepts which are useful to those who must make loss allocation decisions:

> Speaking statistically, we can of course say that road engineering or broken homes are significant causes of accidents or crimes. But this does not help dispose of the individual case, and the law is charging the actor for a flaw in conduct that the mass of mankind — including those who come from broken homes or drive on poorly engineered highways — could have avoided. While never philosophical about causation, the law has clearly recognized that any actor is but one of an infinity of causes of a particular event. It has dealt with the actor because he was a reachable cause and because his contribution to the event was relevant and decisive.[6]

At this level of proximate causation, albeit not ultimate causation, the National Safety Council has estimated that ninety per cent of all accidents stem from some sort of "improper driving."[7] The Minnesota Department of Public Safety in its report on 1971 motor vehicle accidents in the state estimated that only fifteen per cent of all crashes probably resulted from "circumstances beyond the driver's control."[8]

Under the present system, then, loss allocation follows loss caustion as defined by the law of negligence. The loss shifting function of the common law is implemented by the loss distribution function of liability insurance. The relationship between the two systems is thus described by Dr. Calvin Brainard:

> Rate equity is essential to the logic of the tort system because it forces negligent, high-risk motorists, **as a class,** to pay for the damages assessed against those of their number who cause loss to innocent victims. And the greater the negligence of this class as a whole, the closer does rate equity bring tort in practice to tort in theory.
>
> For example, in a high-risk class where f = 100/100 — that is, where a thousand motorists would cause a thousand accidents in the course of a year — the tortfeasors as a group, even though insured, would personally be paying for the damages assessed against them.[9]

"Pure premium" (prior to loading) is equal to average loss cost which is a function of the frequency and severity of accident claims, or algebraically, (p = f x s). This average loss cost (known as A.C.) varies greatly among different classes of drivers, with a few drivers showing significantly higher A.C.'s than the majority. Brainard and Carbine discuss this abnormal distribution of losses:

> It varies from an A.C. of $22 (Class 80) to an A.C. of $71 (Class 87). The model A.C. is $26 and if the market were normally distributed around the mode, nearly 100 per cent of the market would lie within three standard deviations of the mode (also the mean) or approximately within a range of $21 to $31 . . . Actually the countrywide market distribution exhibits a very pronounced but 'thin' skewness over the A.C. range . . . Only 88 per cent of the market falls within the 'normal' A.C. range of $21-$31, while 12 per cent lies outside — and some of it far outside — the normal range, up to an average cost of $71.[10]

3. U.S. v. Carroll Towing Co., 159 F.2d 169 (2nd Cir. 1947), reh. den. 160 F.2d 482, at 173.
4. Walter J. Blum and Harry Kalven Jr., "Public Law Perspectives On a Private Law Problem—Automobile Compensation Plans", 31 U. Chi. L. Rev. 648-650 (1964).
5. See, David Klein and Julian A. Waller, Causation, Culpability and Deterrence in Highway Crashes, U.S. Department of Transportation Automobile Insurance and Compensation Study (Washington D.C.: U.S. Government Printing Office, 1970) p. 12.
6. W. Blum and H. Kalven, "Public Law Perspectives", p. 648.
7. National Safety Council, Accident Facts (1969), p. 48.
8. Minnesota Department of Public Safety, Facts on Motor Vehicle Crashes in Minnesota During 1971, p. 15, Data based on conclusions of investigating officers.
9. Calvin H. Brainard, "Is Equity of Insurance Being Sacrificed", 6 Trial 39, (1967).
10. C. Brainard and S.Carbine, Report of the Division of Industry Analysis, Bureau of Economics, Federal Trade Commission, to the Department of Transportation, Price Variability in the Automobile Insurance Market, Automobile Insurance and Compensation Study (Washington D.C.: U.S. Government Printing Office, 1970), pp. 91-92.

Since insurance premiums are a function of this average loss cost, they are equally skewed, with a few persons causing high losses, and thus bearing the largest share of the costs, as these figures for Minnesota and the nation demonstrate:

Percentage Distribution of Annual BIPD Premium Amounts
Private Passenger Car Market by States, 1968[11]
% with annual BIPD premium of

(Figure 4)

State	$0-24.99	$25-49.99	$50-74.99	$75-99.99	$100-124.99	$125-149.99	$150-174.99	$175-199.99	$200-or more	Total
Minn.	5.2	40.0	29.5	13.9	5.4	2.2	1.4	.8	1.6	4,047
Countrywide	5.9	35.1	30.7	12.6	5.9	3.1	1.9	1.1	3.0	134,891

Source: Computed from date supplied by leading nationwide insurer — Y.

The principle of placing loss costs on the persons and/or conduct that caused the losses is known as internalization of cost or making an activity "pay its own way." The present system, places the larger share of accident costs on those who have been or are likely to be negligent. An alternative is to place the cost of automobile accidents on motorists generally without regard to the principles of negligence. Although it is obvious that the existence of motoring as well as the existence of negligence causes automobile accidents, negligence is the narrower category of causative activity.

Even those who argue for revolutionary reform of the present system seem to agree that it would be desirable to place the greater share of costs of accidents on negligent drivers. Keeton and O'Connell describe the optimal loss allocation as:

> . . . an allocation guided by the two principles that motoring should pay its way and that negligent motorists should pay their way . . . Motorists generally will pay a share of the burden, and negligent motorists will pay a somewhat larger share.[12]

Calabresi agrees:

> It is better to apportion the accident costs among subcategories of drivers on the basis of accident proneness of the category rather than to charge the accident costs equally to all drivers.[13]

Such commentators do not argue then, that allocation of losses based on the basis of risk is theoretically unjust but that it is ineffective in practice, due to difficulties in applying the legal definition of negligence to real conduct. They allege that the so-called reasonable man test in particular is inequitable because it is objective and not related to moral culpability.

The rationale for the occasional divergence of liability and individual moral culpability was best explained by Oliver Wendell Holmes many years ago:

> If, . . . a man is born hasty and awkward, is always having accidents and hurting himself or his neighbors, no doubt his congenital defects will be allowed for in the courts of Heaven, but his slips are no less troublesome to his neighbors than if they sprang from guilty neglect. His neighbors accordingly require him, at his peril, to come up to their standard, and the courts which they establish decline to take his personal equation into account.[14]

To place the costs of negligent driving on negligent drivers collectively, even when some individuals are unable to conform their behavior to the standards set by the law, is just simply because such behavior will inevitably result in injuries to innocent persons and in higher accident losses.

The principle may be further illustrated by Brainard and Carbine's analogy to life insurance. No one questions the proposition that the ninety-nine year old applicant for life insurance should pay a substantially higher premium than the twenty-one year old applicant. The premium differential results, of course, from the fact that the ninety-nine year old is far more likely to cause a loss, i.e., to die. It should be noted that life insurance, like liability insurance, insures against a loss suffered by someone other than the buyer; in the case of life insurance, the buyer, who is dead, suffers no financial loss, rather the loss is to his dependents for

11. Ibid., pp. 205-206.
12. R. Keeton and J. O'Connell, "Basic Protection — A Proposal for Improving Automobile Claims Systems", 78 Harv. L. Rev. pp. 355-356 (1964).
13. Guido Calabresi, "The Decision for Accidents: An Approach to Non-Fault Allocation of Costs", 78 Harv. L. Rev. 733 (1965).
14. Oliver Wendell Holmes, The Common Law, 1881, p. 108.

whose protection he purchased insurance. Charging elderly persons an extremely high price for life insurance seems just and equitable even though the ninety-nine year old man may not be morally blamed for his condition of old age, and there is no possibility that the high rates may deter his death.[15]

The second reason for placing the majority of accident costs on negligent drivers lies in the educative advantage which accrues when the full nature and costs of negligent driving are made known. When costs are properly allocated to the activity that causes them, individuals are better able to make informed choices as to whether to engage in the activity. Naturally they tend to choose activities which are less expensive for them and thus those which are less costly to society as well. This principle is recognized by many commentators and has usually been labelled "general deterrence," to distinguish it from the more familiar concept of deterring specific acts by some type of sanction.[16]

Certain driving activities which may ultimately lead to automobile accidents and which are used as rating factors by the insurance companies are the product of conscious choices and may be susceptible to this general deterrence as Professor Roger Cramton points out:

> Upward or downward variation of insurance rates predicated on driver behavior may release family pressures that otherwise might not be operative: if substantially higher insurance costs result, a teenager's fender denting may lead to forms of parental supervision regulating the amount and manner of his driving.[17]

Other similar effects may result from an increase in insurance rates due to a bad driving record: a family may refrain from purchasing a second or third automobile; a driver may decide to use public transportation or a car pool to commute to work; owners may be less willing to lend a vehicle to a friend; commercial vehicle owners may screen their employees' driving habits more carefully.[18]

Naturally, this effect does not extend to all accident-causing conduct, however, making the costs of negligent driving known and making the determination and definition of negligence a matter of importance may result in a valuable educational effect. Psychologist Dr. James Mancuso explains this process:

> While it is possible to view court action against a traffic violator as 'punishment', it can also be perceived as a justice process, whereby a social group determines the reasons why the accused norm-violator should be informed of his personal culpability. . . . (One) can view society, acting through its legal institutions, as a teacher of the premise that moral judgments must consider the well-being of others. We cannot ignore the fact that a tort procedure represents a unique legal device, wherein individuals face each other as they seek to determine culpability. Reflecting a more mature stage of moral development, the person involved in this process becomes aware of the premise that mutual facilitation of interaction is the source of the soundest social rules. . . . Why not believe that it is such instruction, rather than punishment or fear thereof, which induces millions of people to respect the well-being of others while using the highways.[19]

Traffic engineer Lawrence Lawton cites several studies which have tested this hypothesis and which have produced statistically significant reductions in subsequent traffic accidents among test subjects who were singled out and subjected to severe disapproval of their past poor driving behavior. He concludes:

> . . . demonstrations conducted by independent investigators all lead to the same conclusion — when negligent drivers are singled out, the more determined the effort to bring about a realization in the individual of his wrongful behavior, the greater the reduction in auto accidents.[20]

The distribution of accident losses among drivers on the basis of their past driving records and their likelihood of causing future losses seems equitable and just. The loss allocation decisions of the present system create no compelling reason to eliminate negligence from automobile reparation decisions.

However, the problems most frequently urged as reasons for abrogating the cause of action for negligence involve not loss allocation, but rather the manner in which the present system compensates accident victims and the frictional costs of the system. These areas are worthy of detailed consideration.

15. See, C. Brainard and S. Carbine, Price Variability, p. 105-106, and C. Brainard, "Is Equity of Insurance Being Sacrificed?", p. 38-39.
16. See, W. Blum and H. Kalven, "The Empty Cabinet of Dr. Calabresi: Auto Accidents and General Deterrence", 34 U. Chi. L. Rev. 239 (1967), G. Calabresi, "Fault, Accidents, and the Wonderful World of Blum and Kalven", 75 Yale L. J. 216 (1965); R. Keeton and J. O'Donnell, "Basic Protection", at Note 14.
17. Roger C. Cramton, "Driver Behavior and Legal Sanctions — A Study of Deterrence", 67 Mich. L. Rev. 450 (1969).
18. Alfred F. Conard, et. al., Automobile Accident Costs and Payments: Studies in the Economics Of Injury Reparation, (Ann Arbor: The University of Michigan Press, 1964). pp. 89-90.
10. James C. Mancuso, "The Utility of the Culpability Concept in Promoting Proper Driving Behavior", 55 Marq. L. Rev. 99 (1972).
20. Lawrence Lawton, "No-Fault: An Invitation to More Accidents", 55 Marq. L. Rev. 77, 78 (1972).

2. Compensation

In order to determine whether the standards for compensation of automobile accident victims under the present system are equitable, injured persons should be divided into two classes: eligible claimants and ineligible claimants.

It is obvious that under present law some injured persons will not be eligible for recovery. As Professors Blum and Kalven point out, the common law was not designed as a social welfare plan for accident victims:

> . . . the common law never has had information about the incidence of recovery which would follow from application of its liability rules. What is more important, it has had no expectations about incidence of recovery and could not have cared less. Its commitment to fault as a basis for shifting losses is independent of any estimates of how many losses will thus be shifted. . . . The striking point is that under the common law system it is intended that some victims will have to bear their own losses.[21]

Concern with gaps in coverage under the present system, they explain, stems not from a belief that it is unfair or inequitable for any one who has been involved in an automobile accident to bear his own losses, but rather from a knowledge that automobile accidents produce devastating economic effects and result in crushing economic burdens for the victims:

> . . . we ask ourselves whether we would allow the victim of a non-fault accident to shift his loss if everyone had ample economic means. Once we are freed of concerns about poverty, is there any case for compensating victims of misfortune apart from working corrective justice in redressing humanly caused wrongs?[22]

A decision to compensate all automobile accident victims will not be based on the fact that those persons were injured by automobiles, but from the socially undesirable results of their injuries. Thus the compensation to which currently eligible victims are entitled and the compensation which may be offered to currently ineligible victims under a reform proposal are likely to differ in type, manner, and amount, because the decision to compensate each group rests on a different basis. As Blum and Kalven put it:

> Under the common law the victims recover as a matter of right (because they were wronged) and not as a case for public charity or assistance. Perhaps this is why no one finds it congenial to argue for minimum subsistence compensation to eligible victims under a fault system, or conversely, to argue for full compensation to victims under a compensation plan.[23]

Thus, there is a clear distinction which must be made between gaps in insurance coverage and maldistribution of insurance benefits. For clarity of analysis this section will deal with the distribution of reparation funds among eligible claimants. The problem of the ineligible claimant will be discussed at a later point.

The tort claimant's right to recover general damages above and beyond his out-of-pocket losses flows from the fact that his injury was tortiously induced. Elements of damages as disability, loss of enjoyment of life, loss of earning capacity and pain and suffering, though intangible, are not susceptible of measurement or of monetary compensation. Instead, there is evidence to indicate that such losses are very real, that compensation for them is valued highly by injured persons, and that it would be exceedingly arbitrary and unfair to totally deprive the automobile accident victim of these benefits on an **ad hoc** basis while leaving intact the right of recovery of the person tortiously injured in some other manner.[24]

Professor Conard has defined the three functions of damages in personal injury cases as follows:

1. Restoring the injury victim to his job and to other aspects of effective living ("restoration");
2. Maintaining a minimum standard of living for the injury victim and his dependents ("subsistence");
3. Otherwise bringing the economic and psychic welfare of the victim to pre-injury levels ("loss equalization").[25]

It is the third of these, the loss equalization function, that is met by general damages. It is clear that they are the only type of insurance benefits that can make the seriously injured victim financially independent again or can provide funds so that the less seriously injured victim can purchase items of pleasure and comfort

21. W. Blum and H. Kalven, "Public Law Perspectives", p. 652-653.
22. W. Blum and H. Kalven, "The Empty Cabinet of Dr. Calabresi", p. 675.
23. W. Blum and H. Kalven, "Public Law Perspectives", p. 676.
24. See, Testimony of William Eagen, Hearings of Minnesota Automobile Liability Study Commission, December 10, 1971, Minutes p. 14; Testimony of Craig Spangenberg, Hearings, February 11, 1972, Minutes, p. 27; Testimony of Charles T. Hvass, Hearings, December 10, 1971, Minutes, Exhibit D.
25. A. Conard, Automobile Accident Costs, p. 77.

to make up for the enjoyment of life which he has lost due to his injury. As Professor Conard points out, all automobile other than liability insurance provides benefits only for restoration and subsistence.[26]

Thus it has seldom been seriously urged that the right to recover such damages be totally eliminated. Indeed, even the so-called "pure no-fault" proposals generally make provisions for damages above out-of-pocket losses in the serious cases and/or provide for first party general damage coverage.[27]

Dissatisfaction with general damages has focused not so much on their intangible nature as on the manner in which they are distributed among claimants under the present system. It is alleged that seriously injured eligible claimants are underpaid while those with minor injuries receive general damages many times greater than their economic losses. Since most of the statistics used to support this claim are national figures, the Commission was specifically interested in obtaining information regarding the equity of benefit distribution in Minnesota.

There are several ways in which the question may be approached. Since the source of reparations for these eligible persons is liability insurance, one method is to use insurance company claims payment statistics. The Department of Transportation study of the automobile reparations sytem concentrated heavily on this method. Two of the larger volumes in their study present the results of the closed claim survey which directly addressed itself to the manner in which payments by insurers were distributed among third-party claimants.[28]

Some of the data collected in this survey was presented in summary form in the final D.O.T. report to the Congress. Table 8 of that report compares the total percentage of loss dollars received by groups of claimants with varying degrees of economic loss with the percentage of loss dollars attributable to each group. The Department concluded that "Tort recovery . . . was found to be very unevenly distrtibuted among successful personal injury claimants,"[29] and went on to point out that persons with small amounts of economic loss received a large percentage of total payments dollars in comparison to their percent of total loss dollars and that persons with large individual losses accumulated a large percentage of loss dollars but received a small percentage of payment dollars. The statistics presented in that table were for all nineteen states which participated in the closed claim survey.[30]

The Commission, in studying the question of benefit distribution obtained the closed claim study statistics which were applicable solely to the state of Minnesota and which were extracted from the statistics that went to make up the tables in the Department's reports. The following table compares distribution of losses and benefits among various groups of claimants in Minnesota and the other eighteen states:

Percentage Distribution of Paid Personal Injury Claimants, Loss Dollars and Payment Dollars by Size of Economic Loss to Date of Settlement [31]
(Figure 5)

Economic Loss to Date of Settlement	Percent of Paid Claimants			
	Minnesota	Number	Other	Number
None	9.1	46	8.0	2,128
$1-1,000	79.2	399	81.2	21,713
$1,001-2,500	6.3	32	7.2	1,917
$2,501-10,000	4.6	23	3.2	855
$10,001 and over	.8	4	.4	108
Total	100.0	504	100.0	26,721

26. Ibid., p. 86.
27. See, Report of the Senate Committee on Commerce on S. 945, National No-Fault Motor Vehicle Insurance Act, June 20, 1972, p. 59-78; J. Davies, "The Minnesota Proposal for No-Fault Auto Insurance," 54 Minn. L. Rev. 938 (1970).
28. U.S. Department of Transportation, I and II, Automobile Personal Injury Claims, Automobile Insurance and Compensation Study, (Washington, D.C.: U.S. Government Printing Office, 1970).
29. U.S. Department of Transportation, Motor Vehicle Crash Losses & Their Compensation in the United States: A Report to the Congress & the President, Automobile Insurance and Compensation Study, (Washington D.C.: U.S. Government Printing Office, 1971) p. 35.
30. California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, Washington, and Wisconsin.
31. Chart prepared by Research Department, State Farm Insurance Co., based on Additional Crosstabs on Closed Claim Survey Data, December 1971.

Economic Loss to Date of Settlement	Percent of Loss Dollars				Percent of Payment Dollars			
	Minn.	Number	Other	Number	Minn.	Number	Other	Number
None	0	0	0	0	3.2	22,697	6.8	2,294,722
$1-$1,000	31.2	74,047	39.8	4,535,691	32.7	228,438	45.3	15,261,499
$1,001-2,500	20.9	49,537	25.8	2,937,859	20.8	145,092	24.0	8,074,549
$2,501-10,000	47.9	113,795	34.4	3,918,268	43.3	302,792	23.9	8,031,934
$10,001 and over	---b	------b	---b	---------b	---b	------b	---b	---------b
Total	100.0	237,369	100.0	11,391,818	100.0	699,019	100.0	33,662,704

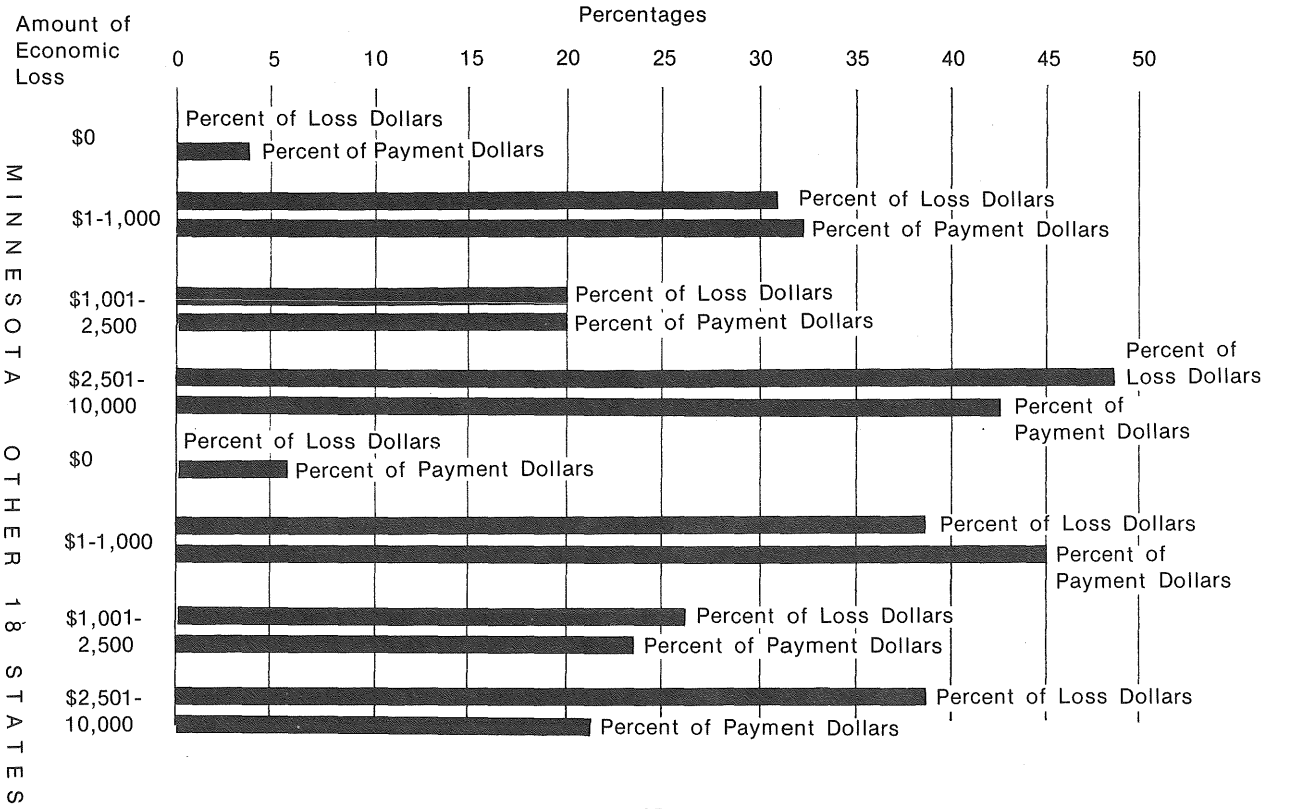
a This table excludes claims with total payments = 0. b Omitted due to small number of observations.

The chart shows quite different distributions of loss and payment dollars in Minnesota than in the other states. While the figures for the other eighteen states show that seriously injured claimants tend to receive less than their proportionate share of the payment dollars and those with minor injuries receive more than their share, the percentages of loss dollars and payment dollars are almost equal for each group of the Minnesota claimants.

Minnesota claimants with no economic loss incurred 0 per cent of the loss dollars and received 3.2 per cent of the payment dollars; those with economic losses of $1 to $1,000 incurred 31.2 percent of the loss dollars and received 32.7 percent of the payment dollars; those with economic losses between $1,001 and $25,000 incurred 20.9 percent of the loss dollars and received 20.8 percent of the payment dollars; those with economic losses between $2,500 and $10,000 suffered 47.9 percent of the loss dollars and received 43.3 percent of the payment dollars.

The contrast between Minnesota and the other states is made clearer by the following bar graph based on data from the above chart.

Relationship of Payment To Losses
(Figure 6)



Statistics for Minnesota also indicate that a small proportion of payment dollars go to pay general damage benefits to persons with minor injuries. The following chart is derived from the D.O.T. closed claim study; it shows the proportion of total payment dollars attributable to various elements of the tort recovery.

Tort Severity Analysis — Minnesota [32]
(Figure 7)

Item	% of Claimants	Average Cost (Closed With Payment)	Severity Component (Per Claimant)	% of Total
Medical	87.7%	$ 350.	$ 307.40	28.0%
Wage Loss	33.3%	$ 519.	$ 172.60	15.7%
Other Specials	xxxx	xxxx	$ 20.00	1.8%
Total Specials	91.2%	$ 548.	$ 500.10	45.5%
Gen. Dam - No Perm.	85.1%	$ 372.	$ 316.40	28.8%
Gen. Dam. - Serious	14.9%	$1896.	$ 282.50	25.7%
Total - Gen. Dam.	100.0%	$ 599.	$ 599.	54.5%
Grand Total	100.0%	$1099.	$1099.00	100.0%

Only 28.8 per cent of Minnesota payment dollars were used to pay general damage benefits to claimants with no permanent injury; this was the smallest percentgage of any state in the nineteen surveyed.[33] Thus more benefits were available in Minnesota to pay medical and wage loss benefits and to provide general damages for the seriously injured.

Although these figures indicate a relatively equitable distribution of insurance benefits in Minnesota, two specific groups of victims should be looked at in greater detail: those with very small economic loses and those with catastrophic economic losses.

It has been noted, particularly in the D.O.T. study that the person with catastrophic economic losses does not receive adequate compensation even when he is eligible. Unfortunately, statistics as to those persons and the payments received by them are not available for Minnesota. The chart on page 35 shows that there were so few paid claimants with economic loss above $10,000 that no reliable inferences could be drawn, and they were excluded for the purposes of computing distribution of loss dollars and payment dollars. It should be assumed, in the absence of evidence to the contrary that there is, to some degree, a problem of delivering adequate compensation to these victims in Minnesota, just as there is in other states.

While inadequate compensation of such persons is a serious criticism of the present system, the difficulty results more from a lack of funds in the insurance pool than from the manner in which the pool is distributed. The problem as the Department of Transportation pointed out, is frequently that these persons receive low benefits due to low liability insurance limits on the part of the tortfeasor:

> Insurance policy limits also explain part of the low recovery rates by the seriously injured . . . Since recovery under the tort system is virtually dependent on the availability of insurance, low coverage limits are tantamount to low recovery potential for the victim.[34]

Since the problem appears to be one of gaps in insurance coverage rather than of an inherent inequity in the manner of determining the level of awards and settlements, it will be discussed further in the Indemnity and Insurance Requirements sections below.

The second group of claimants deserving of special attention are those with "nuisance" claims. The general equity of distribution of payments in Minnesota does not necessarily deny the existence of the oft-cited problem of insurers settling small and exaggerated claims for an inflated sum in order to avoid the cost of a trial. The chart on page 35 showed that persons with no economic loss whatsoever received a little over three percent of Minnesota payment dollars.

The waste occasioned by this problem and the necessity of doing something to mitigate it has

32. Chart based on D.O.T. closed claim study statistics, prepared by Charles Hewitt, Hearings of Minnesota Automobile Liability Study Commission, December 15, 1972, Exhibit A.
33. Testimony of Charles Hewitt, Hearings of Minnesota Automobile Liability Study Commission, December 15, 1972, minutes, p. 7.
34. U.S. Department of Transportation, Crash Losses, p. 37.

forcefully and frequently been urged by commentators and critics of the present system.[35] An attempt has been made in some states to solve this problem by establishing tort exemptions or thresholds.

While such provisions are simple and efficient to apply, they are also, unfortunately, quite arbitrary. Conditioning the right to bring a lawsuit and the right to recover general damages on the amount of economic loss suffered by the claimant is an extreme measure to adopt in order to prevent to overcompensation of those with minor injuries, for nuisance claims cannot be concisely defined in terms of economic loss.

More evolutionary measures for preventing excessive compensation of these small claims have been suggested; two were offered by the American Bar Association in a recent report:

> One possible solution is to make quick, inexpensive, but careful trial of such cases readily available . . . Another and more appealing approach is to invent something to alter the balance of bargaining power.[36]

The arbitration provisions set forth in the "Commission Plan" and the "O'Neill Plan" are designed to provide a method for the rapid and inexpensive adjudication of small cases. Since the recommendations are similar to the compulsory arbitration plan in effect in Pennsylvania, a brief description of that system is in order.

The highly successful Pennsylvania plan began in 1952 when the state legislature enacted a statute permitting the court of common pleas in each county to provide, by rules of court, for compulsory arbitration of all civil cases, except those involving title to real estate, in which the amount in controversy was $1,000 or less. Since then the statute has been twice amended, and the current statute in effect since September 1971 allows the common pleas courts to set the maximum amount at $10,000 in counties of the first and second class and at $5,000 in all other counties.[37]

The statute also provides that three members of the local bar shall act as arbitrators.[38] The chairman is paid $50 per day and the other two arbitrators receive $35 each.[39]

Cases in which no suit has been filed may be voluntarily referred to arbitration by the parties by filing an agreement of reference in place of the pleadings.[40]

Hearings are normally held in the law office of the chairman. The rules of evidence are somewhat relaxed, although testimony is taken and cross-examination allowed as in a trial. Certain medical and property repair bills and affidavits supporting them may be received in evidence without further proof, thus making most expensive expert testimony unnecessary.[41]

Appeal from the arbitrator's decision is permitted within twenty days but the appealing party must pay the cost of arbitration.[42] The appeal is tried **de novo** to a jury.[43]

The Pennsylvania plan has been upheld by the state supreme court in the face of charges that it deprived claimants of the right to a trial by jury and that it was a special law in that it discriminated against persons with small claims.[44]

The decision by the Illinois Supreme Court that a similar arbitration plan provided for in that state's "no-fault" reform law, was unconstitutional was based on a provision, apparently unique to the Illinois constitution, that prohibits trials **de novo.** Thus the court reasoned that the appeal **de novo** from the arbitrators' decision could not be allowed, and as a result claimants would be totally denied their right to trial by jury.[45] No such problems would seem to exist in Minnesota.

Similar arbitration plans are now being tested in Monroe County, New York, and Cuyahoga County, Ohio, but little information regarding their effectiveness is available because the plans first went into effect in 1970.[46]

35. See, Ibid., p. 37; Testimony of Robert Keeton, Hearings of Minnesota Automobile Liability Study Commission April 7, 1972, Minutes p. 3,4.
36. American Bar Association, Report of the American Bar Association Special Committee on Automobile Accident Reparations (1970) p. 101.
37. 5 Purdon Penn. Stat. §30 (1971).
38. 5 Purdon Penn. Stat. §30 (1971).
39. 5 Purdon Penn. Stat. § 129 (1971).
40. 5 Purdon Penn. Stat. § 129 (1971).
41. Thomas J. Casey, "Arbitration & Company Procedures for Installing 'No-Fault' Coverage", Ins. L. J., January 1972, p. 24.
42. 5 Purdon Penn. Stat. § 71, 74, 75 (1971).
43. 5 Purdon Penn. Stat. § 71 (1971).
44. Application of Smith, 381 Pa. 223, 112 A.2d 625 (1955), app. dis. sub. nom. Smith v. Wissler, 350 U.S. 858 (1955).
45. Grace v. Howlett, 51 Ill.2d 478, 283 N.E.2d 474 (1972).
46. T. Casey, "Arbitration and Company Procedures", p. 26.

However, Pennsylvania results are available, particularly from Philadelphia which has had arbitration since the original statute allowing it was enacted. Arbitration has proven to be an inexpensive forum for resolving small disputes. Pennsylvania Arbitration Commissioner Bonnie has estimated that the cost of arbitrating a case is about ten times less than the cost of trying the same case in court.[47] The actual cost per arbitration is estimated at only $62; in one year two thousand full trials were avoided, resulting in an estimated savings of fifteen million dollars.[48]

The Philadelphia statistics show a very low rate of appeals from arbitrators' decisions. During 1958-1967 notices of appeal were filed in only five per cent of the 62,000 cases arbitrated.[49]

If the Pennsylvania results have any predictive value for Minnesota, it would seem that arbitration could go far toward solving the nuisance claim problem. If the cost of arbitration is only one-tenth of the cost of trial of a comparable case, insurers would find it financially worthwhile to deny small but questionable claims; the cost of paying the claim is much more.

A second possible approach to the problem of the nuisance claim is to use first party insurance coverage to alter the bargaining position of insurer and claimant. Oregon and Delaware have adopted reform plans which require all motorists to carry first party insurance but which retain the right to sue in all personal injury cases. Some early data from Delaware indicate a sharp reduction in claims payment as a result of the new law.[50]

However, the plans are still quite new and some insurance industry spokesmen have suggested that either no reduction in claims payment is evident or that further time is needed to evaluate the effect of these laws.[51]

The "Commission Plan" is based on the theory that when each claimant has a large share of his economic losses paid rapidly by his own insurer without regard to fault, the person with the small claim will not find it profitable to attempt to claim additional damages from the liability insurer of the other driver. When such a victim has recouped his actual losses there is little incentive for him to hire a lawyer and initiate a lawsuit to attempt to recover general damages, which in such cases are generally a modest sum.

In summary, Minnesota is fortunate to have relatively equitable distribution of insurance benefits among claimants. While some undercompensaton of seriously injured persons and overcompensation of nuisance claims is evident here, the difficulties are less serious than in most other states and may perhaps be alleviated by less extensive reforms.

3. Effective Procedures

Much of the criticism of the present system has centered around the alleged inefficiency of its procedures and around the difficulties of using a case-by-case adjudication of benefits. The problems most frequently mentioned are the frictional costs of the system and the difficulty of determining liability. Each of these must be considered with specific reference to the current situation in Minnesota.

The frictional costs of litigation and of out-of-court insurance claims settlement must be considered as one unit, for they are closely related. It has been pointed out by Craig Spangenberg that while the cost of each case tried is great, the costs of litigation are in a real sense largely attributable to the cost of claims settlement in general:

> I had the pleasure of being present . . . when Professor Mishke, from the Mitre Corporation, who has done the Automobile Accident Litigation Study which showed that 17% of court time was used on automobile cases, was asked doesn't this show that this is a costly, wasteful, inefficient system? And he said — no, on the contrary, I view it as a very efficient and reasonably inexpensive way of handling the problem. I certainly could not agree that it was inefficient. . . . He was asked to explain why . . . . He pointed out that . . . only . . . one-third of one percent of accident victims ever use the court for trial and verdict. . . . He said, view the trial not as an expensive process, but as a standard setter. You see what he means, if you want to know how long a yard is, you may go to the Bureau of Standards in Washington and see a platinum bar accurate to a millionth of an inch kept in an Argonne atmosphere. It is a hideously expensive device. Yet a paint store will give you a yardstick as an advertising gimmick, or you can buy one for $.10. The standard has been set from which other things can be duplicated quite inexpensively. The trial of the lawsuit sets the standards.[52]

47. "Arbitration: The Philadelphia Story", 145 Journ. of Amer. Ins. 3 (1969).
48. T. Casey, "Arbitration and Company Procedures", p. 24 & 25.
49. "Philadelphia Story", p. 3.
50. Daniel J. Ryan, "UMVARA, Delaware Auto Plans Compared", 13 F.T.D., December, 1972, p. 121.
51. Testimony of Dale Nelson and C. A. Ingham, Hearings of Minnesota Automobile Liability Study Commission, November 10, 1972, Minutes p. 12-15.
52. Testimony of Craig Spangenberg, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes p. 12-13.

This standard setting function of litigation clearly appears from Minnesota statistics. According to figures provided by Gerald R. Nelson, Clerk of the District Court for Hennepin County, only 1,370 of the 20,995 cases filed in the district courts of Hennepin County during 1970 were automobile personal injury cases. During that year only 136 auto accident personal injury cases were tried to a jury.[53] Yet there were between 22,000 and 31,000 automobile crashes involving personal injuries in Minnesota each year during the 1965-1970 period.[54] The D.O.T. closed claim study of 623 paid personal injury claims in Minnesota showed that of these only 67 suits were filed and only three were tried to verdict.[55]

Arbitration, by removing smaller cases from the courts, should reduce the proportion of cases tried still further and help to conserve judicial resources for those cases involving serious injuries. It is in such cases that full scale trial may be needed to protect the victim's rights and accurately evaluate his damages.

Attorney fees are frequently cited as a major element of the frictional cost of the system. Minnesota statistics, however, show the cost of attorney fees to be relatively low. The following charts from the D.O.T. closed claim study show attorney representation and total attorney fees for paid personal injury claimants for each of the nineteen states involved in the study.

Percent of Paid BI Claimants Represented By Attorney
By Size of Loss and By State In Which The Accident Occurred[56]
(Figure 8)

State of Accident	None	$1-500	$501-1000	$1001-2000	$2001 & over	Total
California	10.0%	30.3%	60.2%	73.8%	80.8%	38.2%
Colorado	---	21.7	54.5	71.4	82.4	28.2
Connecticut	16.7	49.7	74.3	87.5	86.2	55.4
Florida	11.7	35.3	73.4	79.5	77.1	40.6
Georgia	17.3	18.6	51.2	65.6	55.6	25.9
Illinois	18.6	46.1	78.2	80.0	82.6	51.9
Indiana	9.5	14.8	41.7	66.7	63.0	22.6
Massachusetts	34.8	79.7	92.9	91.5	89.7	78.8
Michigan	6.8	22.6	60.7	79.1	75.4	30.5
Minnesota*	12.8*	24.3*	47.1*	83.3*	64.3*	30.4*
Missouri	10.6	30.5	53.1	51.4	63.6	33.2
New Jersey	22.2	46.7	87.6	86.0	83.8	54.4
New York	13.0	61.9	88.0	87.8	91.3	64.5
North Carolina	12.5	18.1	55.8	61.0	63.2	25.7
Ohio	15.1	28.0	52.6	67.1	81.0	34.2
Pennsylvania	20.9	28.9	71.3	75.6	70.4	39.8
Texas	17.4	24.6	37.6	62.9	66.7	28.9
Washington	6.7	17.3	42.9	60.0	88.0	25.9
Wisconsin	7.5	24.4	64.0	55.6	70.4	30.7
All Paid BI Claims	15.2	41.7	70.7	76.9	78.3	46.5

53. Unpublished Survey by William Egan, Attorney at Law, Minneapolis, Minn., letter to George Pillsbury dated March 24, 1971; Testimony of W. Egan, Hearings of Minnesota Automobile Liability Study Commission, December 10, 1971, Minutes, p. 11.
54. Minnesota Department of Public Safety, Facts on Motor Vehicle Crashes in Minnesota During 1971, p. 7.
55. Data from Additional Crosstabs on Closed Claim Survey Data December, 1971, supplied by Research Department, State Farm Mutual Insurance Co.
56. D.O.T., I Automobile Personal Injury Claims, p. 78.

Attorneys Fees By State — 1968 [57]
(Figure 9)

STATE	Plaintiffs fees as % of Gross Payment to all Claimants	Plaintiffs Attorneys Fees ($000)	Defendants Attorneys Fees ($000)	Total Attorneys Fees ($000)
California	26.4%	$ 94,570	$ 21,439	$116,009
Colorado	28.5	6,879	1,559	8,438
Connecticut	30.0	17,412	3,947	21,359
Florida	27.5	27,722	6,285	34,007
Georgia	22.8	10,552	2,392	12,944
Illinois	28.5	50,517	11,452	61,969
Indiana	24.2	14,103	3,197	17,300
Massachusetts	32.3	40,235	9,121	49,356
Michigan	23.5	28,820	6,533	35,353
Minnesota *	23.4*	13,148 *	2,981*	16,129 *
Missouri	20.2	12,022	2,725	14,747
New Jersey	30.3	43,698	9,906	53,604
New York	31.8	112,059	25,403	137,462
North Carolina	24.1	13,493	3,059	16,552
Ohio	25.7	32,802	7,436	40,238
Pennsylvania	27.2	48,721	11,045	59,766
Texas	18.2	19,962	4,525	24,487
Washington	26.0	11,559	2,620	14,179
Wisconsin	23.6	14,669	3,326	17,995
United States	27.3%	$794,000	$180,000	$974,000

Compared to other states the Minnesota figures are encouraging. Only 30.4 percent of the paid Minnesota claimants were represented by counsel as compared to 46.5 percent of claimants for all nineteen states. The attorney fee figures show that plaintiff attorney fees average 23.4 percent of the recovery in Minnesota as opposed to the average of 27.3 percent for all states. The total dollar sum spent for plaintiff's and defendant's attorney fees is only $16,129,000, a relatively modest sum compared, for example, to the $137,462,000 spent in New York. The Minnesota expenditure is only about 1.6 percent of the national total.

Another approach to discovering the frictional costs of the system in Minnesota is to look to the loss adjustment expenses of insurance companies and to determine what percentage of insurance premiums are paid out in benefits.

The Commission has been told that on a national basis fourteen million dollars in auto insurance premiums were collected in 1970, and seven billion dollars were paid out in benefits for a pay-back ratio of 50 percent.[58] However, statistics from different sources vary, and the Commission has also heard testimony to the effect that in 1970 approximately 60 percent of premiums were paid out in benefits and 40 percent were retained, a ratio comparable to almost every other type of insurance, including health and accident, fire and collision for the same year.[59]

Payout statistics for Minnesota insurers are available from the Insurance Division of the Commerce Department. Some of the data for 1971 is as follows:

57. Ibid., p. 80.
58. Testimony of S. Lynn Sutcliffe, Hearings of Minn. Auto Liability Study Commission, August 11, 1972, Minutes, p. 4.
59. Testimony of Craig Spangenberg, Hearings of Minn. Auto Liability Study Commission, February 11, 1972, Minutes, p. 16-18.

1971 Automobile Business In The State Of Minnesota [60]
(Figure 10)

Total Premiums **Written** — (All types of automobile insurance)	$319,221,154.00
Total Losses **Paid** — (All types of automobile insurance)	$159,882,569.00
Losses paid under BI and PD liability, med. pay, UM, death and disability coverages	$104,539,284.00
Losses paid under comprehensive and collision coverages	$ 55,343,285.00
Ratio of Total Premiums to Total Losses	2.0:1

Premiums written represent the total annual premiums for all policies outstanding. Premiums earned are the total premiums received. For example: Mr. A. is insured July 1 at an annual premium of $100 (premium written) but pays only ½ or $50 (premium earned) since it is only for six months.

Losses incurred are higher than losses paid because reserves are set aside for pending cases that will be settled in later years but not paid in the reporting year.

The above figures represent the ratio of premiums written to losses paid, i.e. the highest income figure and the lowest loss figure. The other possible ratio, premiums earned to losses incurred, is more conservative since it uses the highest loss figure and the lowest income figure. Neither figure is a perfect representation of insurance payouts since neither premiums earned nor written in a given year will necessarily be used to pay losses resulting from automobile accidents occurring in that year. Which ratio is best depends upon the purposes of the inquiry, although earned to incurred is the more conservative of the two.

It would appear that the percentage of premiums paid out to compensate losses is rather low in Minnesota; however, the figures indicate that the ratio in the case of the bodily injury liability coverage is only slightly worse than in property damage liability coverage or in the first party automobile physical damage coverages.

More detailed information for various automobile lines in 1970 was presented to the Commission.

1970 Automobile Business in the State of Minnesota All Companies As Reported on Page 14 of Annual Statement [61]
(Figure 11)

	*Composite No Breakdown	Auto Bodily Injury	Auto Property Damage	Auto Physical Damage
Premiums Written	$205,702.00	$132,796,025.22	$57,224,488.54	$87,558,181.07
Premiums Earned	160,261.00	126,921,970.02	54,615,372.35	82,795,380.98
Losses Paid	31,967.00	61,801,891.64	34,369,509.07	54,476,118.19
Losses Incurred	42,961.00	74,225,698.89	34,935,974.98	54,682,534.37
Dividends Credited		436,020.77	192,523.07	189,609.98

*Represents a composite for Pacific Employers Company — they had as breakdown reported to Insurance Department.

60. Figures taken from annual financial statements of the 292 insurance companies licensed to write business in the state of Minnesota. Reports on file at the Insurance Division of the Commerce Department. Figures extracted from the reports by a research analyst from the Department of Public Safety; Hearings of Minn. Auto Liability Study Commission, November 10, 1972, Minutes, Exhibit B; Revised by Memorandum from Department of Public Safety, January 9, 1973.

61. Data provided by Insurance Division, Commerce Dept., Hearings of Minn. Auto Liability Study Commission, February 11, 1972, Minutes, Exhibit A.

The following ratios can be compiled from this data:

Auto Bodily Injury Premiums Written / Losses Paid	=	2.1 / 1	Pemiums Earned / Losses Incurred	=	1.7 / 1
Auto Property Damage Premiums Written / Losses Paid	=	1.7 / 1	Premiums Earned / Losses Incurred	=	1.6 / 1
Auto Physical Damage Premiums Written / Losses Paid	=	1.6 / 1	Premiums Earned / Losses Incurred	=	1.5 / 1

Whether the pay-out ratio can be significantly improved by paying all losses regardless of fault and by eliminating the case-by-case evaluation of general damages is a complicated question. The component of the insurance premium which reflects the expenses incurred in making such determinations and in investigating claims and trying lawsuits is known as "loss adjustment expense" in insurance accounting parlance. It is that element of the insurer's operating expense that reform plans which eliminate the cause of action for negligence would seek to reduce.

General administration expenses, the costs of simply operating a business would remain steady regardless of the type of insurance sold, and acquisition expenses — taxes, licenses and fees — are normally set at a fixed percentage of premiums and would be reduced only if premiums are somehow reduced first.[62]

American Insurance Association actuaries have estimated loss adjustment expenses under the present system to equal nineteen percent of premiums for the nation as a whole; they also predict that this could be reduced to ten and one-half per cent under the Uniform Motor Vehicle Accident Reparations Act.[63]

To attempt to obtain comparable figures for Minnesota the Commission obtained expense data for four of the five largest automobile insurers in the state. The following chart compares the proportions of earned premiums attributable to loss payments, loss adjustment expenses and total expenses for automobile liability insurance; automobile collision coverage; and fire, automobile theft, and comprehensive insurance.

Relationship of Losses and Expenses Incurred to Premiums Earned — Four Large Minnesota Insurers — 1971[64]

(Figure 12)

Net Losses Incurred As Percentage of Net Premiums Earned

Insurer	Auto Liability	Auto Collision	Auto Fire, Theft & Comprehensive
Company A (24.06% of insured Minnesota cars)	53.6	53.8	53.7
Company B (6.25% of insured cars)	66.1	54.7	65.2
Company C (4.66% of insured cars)	51.6	58.0	55.1
Company D	56.9	56.8	56.6

62. Testimony of C. Arthur Williams, Hearings of Minnesota Auto Liability Study Commission, June 9, 1972, Minutes, p. 5-6.
63. Ibid., p. 5-6.
64. Statistics taken from 1971 Insurance Expense Exhibit submitted by each of these companies to Ins. Division as part of annual report on file in office of Insurance Division, Commerce Department. Since this data is not intended to be used as praise or criticism of any particular insurer, the companies are simply labelled here as A, B, C & D.

Loss Adjustment Expenses Incurred
As Percentage of Net Premiums Earned

Insurer	Auto Liability	Auto Collision	Auto Fire, Theft & Comprehensive
Company A (24.06% of insured Minnesota cars)	15.0	12.6	12.5
Company B (6.25% of insured cars)	13.0	9.6	3.8
Company C (4.70% of insured cars)	12.6	8.2	3.0
Company D (4.66% of insured cars)	13.0	10.1	10.3

Total Expenses Incurred As
Percentage of Net Premiums Earned

Insurer	Auto Liability	Auto Collision	Auto Fire, Theft & Comprehensive
Company A (24.06% of insured Minnesota cars)	32.9	30.8	30.8
Company B (6.25% of insured cars)	35.7	31.5	30.8
Company C (4.70% of insured cars)	39.7	34.8	20.3
Company D (4.66% of insured cars)	33.4	30.7	31.6

The percentages of net losses and total expenses do not add up to equal 100 per cent because investment gain or loss dividends to policy holders and net income of the company are not included in this chart.

The chart shows that liability insurance loss adjustment expenses for these insurers are somewhat below the nineteen percent of premiums estimated by A.I.A. actuaries. If loss adjustment expenses under a plan like UMVARA would be approximately 10.5 per cent of premiums, then the savings in loss adjustment expenses in Minnesota from the adoption of such a plan would be slight.

Of interest are the comparisons between automobile liability insurance and the automobile first party coverages. The loss adjustment expenses for automobile comprehensive insurance are significantly lower than those for liability insurance only for two of the four companies listed. Regardless of the insurer involved, there are only a few percentage points of difference between the loss adjustment expenses of collision and liability coverages.

Even where there are differences in loss adjustment costs, the percentages of earned premiums attributable to insured losses scarcely vary for the three types of automobile insurance. The loss adjustment expense differences do not appear to be reflected in the overall payout ratio. For example, Company B's loss adjustment expenses were a smaller percentage of earned premiums for collision coverage than for liability coverage, yet more of the earned premiums are attributable to losses incurred under liability coverage than under collision coverage. Other similar examples are apparent in the chart data.

The prospects for achieving significantly higher payout efficiency by reducing loss adjustment expenses do not look particularly bright. Total expenses for insurers even in the first party automobile insurance coverages range from about twenty-seven to thirty-five percent of earned premiums, and an additional allowance for profits must be made. The Commission has been told that even under a "pure no-fault" plan such as the National Reparations Act, it could be expected that a maximum of sixty percent of the premiums would be paid out in benefits.[65]

65. Testimony of S. Lynn Sutcliffe, Hearings before Minnesota Automobile Liability Study Commission, August 11, 1972, Minutes, p. 35.

C. Arthur Williams, an Actuary and Dean of the School of Business Administration of the University of Minnesota, has commented:

> . . . if you saved all of the loss adjustment expense and nothing else — the premium could at most go down 10.5% . . . there is no question that if there are any premium savings that is where it is coming from primarily . . . a reduction in pain and suffering allowances.[66]

Although Dean Williams was referring to the national situation, his statements seem even more applicable to Minnesota. The savings that might be realized through a reduction of loss adjustment expenses are marginal.

A related criticism of the present system concerns the ease and reliability of making liability decisions. It has been suggested that the concept of negligence canot be applied to real fact situations with any accuracy in automobile accident cases. Obviously, little empirical information is available either to document or refute a claim of this nature. Apparently no local studies have been done; however, two national studies were undertaken to see how difficult it is for insurance claims adjusters and juries to make valid negligence determinations.

The first of these was made by Liberty Mutual Insurance Company in 1967.[67] They used claim files of 352 property damage and 106 bodily injury cases. The researchers concluded from the accident report and other investigative material contained in the files, that fault was "questionable" in only 7.4 percent of the property damage and 9.4 percent of the bodily injury cases. They also interviewed "working claims men" who, without knowledge of the results of the study, agreed that clear determinations of negligence could be made in seventy-five percent of the cases they handled on the basis of the accident report and in ninety percent of their cases after an initial investigation. The researchers concluded:

> Our studies indicate:
>
> A large proportion of all automobile accidents are uncomplicated events in which the fault determination is easy . . .
>
> The final positions of the cars, the tire marks, the location and extent of the damage, frequently establish clearly how an accident happened and who was at fault.
>
> In our Massachusetts experiment we found that our policyholders were reporting facts clearly indicating that the policyholder himself was at fault in about 57% of the cases. In many of these the policyholder stated he was at fault, along with his statement of the facts.[68]

The University of Chicago Jury Study Project studied the decisions of actual juries in real personal injury cases, some of which were the results of automobile accidents.[69] The judges in 1,500 of these cases answered questionnaires as to how they would decide the cases if they were triers of fact, prior to hearing the jury's verdict. The researchers concluded that the juries' decisions were remarkably consistent with those reached independently by the judges:

> . . . so far as the question of liability is concerned and looking at the data as a whole there was hardly any difference. The judge found for the plaintiff in fifty-seven percent of the cases and the jury in fifty-eight percent.[70]

The available evidence, though scant, seems to indicate that the factual questions raised by the issue of negligence are not particularly difficult to resolve. As explained above, what the jury is merely called upon to decide whether the defendant's conduct violated community standards of care and prudence; it would seem that a jury as a cross-section of that community would be particularly suited to making such decsions.

Of course, not every decision is perfectly made. Failures of proof will sometimes occur here as in other branches of the law; occasionally, a person injured by the negligence of another will be unable to find the evidence to prove his case, just as in the criminal branch of the law innocent men are occasionally convicted and guilty men occasionally acquitted.

There is probably no way to totally eliminate this problem. However, if every injured person entitled to first party benefits of $10,000, whether he could succeed in a tort claim or not, the occasional failure of proof would not be so tragic and would not sentence the victim to a future of economic hardship. Freed to concerns about the victim's possible poverty, the jury could perhaps make even more accurate decisions, for it is less likely that their interpretation of the facts would be influenced by sympathy for the plaintiff.

66. Testimony of C. Arthur Williams, Hearings of Minnesota Automobile Liability Study Commission, June 9, 1972, Minutes, p. 6.
67. Frank J. Maryott, "Mystery of Who's at Fault Easily Solved," 6 Trial 5 (1967).
68. Ibid., p. 6, 7.
69. Dale W. Broeder, "The University of Chicago Jury Study Project," 38 Neb. L. Rev. 744 (1959).
70. Ibid., p. 750.

4. Conclusion

The evidence does not show the law of negligence to be valueless in automobile accident cases. On the contrary, it indicates that the law is sound in theory, relatively equitable in its treatment of those it is designed to compensate, and capable of application without undue cost or uncertainty. While the automobile accident reparation system may be troubled by problems, even in Minnesota, these problems are not caused by the substance of the current law — but arise because the current law was never designed to deal with all of the losses caused by accidents and because of gaps in insurance coverage and because of certain procedural problems.

The law of negligence should not be abolished simply because it cannot singlehandedly accomplish all that must be done in the automobile accident reparation field. The moderate and cautionary words of Alfred F. Conard, a man who has pointed up many deficiencies in the present system and who advocates certain reforms, are most instructive here:

> Nothing . . . has indicated that the tort system of reparation for automobile injuries should be abolished. To be sure it has been shown to be inadequate; that is a reason for supplementing it, not for abolishing it. It has been shown to be expensive; that is a good reason for shifting to other regimes the things that they can do better. But there remain many tasks that the tort system alone can perform. These include, . . . the restoration of earnings above the minimal level that a universal insurance system will support, the reparation of property loss and psychic loss, the vindication of the innocent, and the punishment or admonition of the guilty. The tort system should be preserved and considerably amended to achieve these purposes . . . The major charge that has been levied against the tort system . . . is that it is an inefficient loss-spreading device. This is true. But it is a charge that will lose force when some of the functions of loss shifting have been cared for by more appropriate means. If new systems of rehabilitation, of subsistence, and of basic wage maintenance are introduced, the tort system will be miraculously cured of most of its ailments . . . In short, the most glaring inadequacies of the tort system can be remedied without touching a line of the tort law. [71]

B. Indemnity and Coverage of Accident Losses

The Commission's basic goal in this area was:

> To indemnify as many automobile accident losses as possible without raising insurance premiums to an unacceptable level and while maintaining equitable cost/benefit ratios for all insureds.

This can be divided into two sub-objectives:

1. To indemnify the majority of those accident losses not now covered by insurance.
2. To fund increased indemnity in a way which will keep premiums at an affordable level and which will give the buyer high value for his money.

Each of these will be considered in turn:

1. Increased Indemnity.

It is obvious, from the nature of the present system that not all injured automobile accident victims can receive indemnity for their losses for the law of negligence is not designed or intended to shift a large number of these losses.

No specific data is available as to the number of ineligible tort claimants in Minnesota, or as to the extent or consequences of their losses. However, the Department of Transportation national data should provide some idea of the scope of the problem.

Their figures for seriously or fatally injured victims show that forty-five percent of such persons received what they call "tort reparations." Ninety-one percent received some reparations from some source.

71. Alfred F. Conard, "The Economic Treatment of Automobile Injuries," 63 Mich. L. Rev. 445-446 (1964).

Sources Of Reparations For Economic Losses of Fatally Or Seriously Injured Auto Accident Victims [72]
(Figure 13)

Sources of Reparation	Percent Receiving Reparations
Families' Insurance:	
Medical	48%
Life	7
Auto Medical	35
Collision	30
Other	14
Miscellaneous:	
Net Tort	45
Sick Leave	18
Workmen's Compensation	7
Social Security Disability	2
Other	8
Future Compensation:	
Social Security	3
Other	1
Total Receiving Some Reparation	91%

It would seem that fifty-five percent of these victims were either ineligible to receive liability insurance benefits or were injured by financially irresponsible motorists.

The D.O.T. figures also show what percentage of total compensation was received from each reparation source. That data for seriously and fatally injured claimants is as follows:

Net Reparations Received And Future Benefits Expected By Dependents Of Deceased Persons And By Seriously Injured Persons In 1967 Auto Accidents [73]
(Figure 14)

	Millions of Dollars	Percent
Net Automobile Liability Payments	$ 813	32%
Auto Medical Payments Benefits	108	4
Auto Collision Insurance	141	6
Hospital and Medical Insurance	282	11
Life Insurance	358	14
Other Personal Insurance	101	4
Employee's Paid Sick Leave	75	3
Workmen's Compensation	52	2
Social Security Disability Payments	36	1
All Other Current Benefits	123	5
Future Social Security Benefits	317	13
All Other Future Benefits	127	5
TOTAL	$2,533	100%

The Department concluded that these seriously injured persons suffered a total of $5,127 million of compensable economic losses, and that $3,116 of this loss remained totally uncompensated.[74]

72. D.O.T., Crash Losses, p. 38.
73. Ibid., p. 10.
74. Ibid., p. 10.

The data for victims who were not killed or seriously injured is as follows:

Estimated Aggregate Reparations Received By Persons Not Killed Or Seriously Injured In 1967 Automobile Accidents[75]
(Figure 15)

	Millions of Dollars	Percent
Net Automobile Liability Payments	$2,256 (a)	57%
Auto Medical Payments Benefits	139 (a)	4
Auto Collision Insurance	1,246 (b)	32
Hospital and Medical Insurance	149 (c)	4
Other Personal Insurance	40 (d)	1
Employee's Paid Sick Leave	37 (e)	1
Workmen's Compensation	24 (f)	1
All Other Current Benefits	46 (g)	1
TOTAL*	$3,937	100%

*Detail may not add to total due to rounding.

D.O.T. estimated that these less seriously injured persons suffered total compensable economic losses of $5,422 million, and that $1,485 million was not compensated by any benefits.[76]

The Department computed similar figures for all automobile accident victims:

Estimated Net Reparations Received And Future Benefits Expected By All Persons Suffering Losses in 1967 Automobile Accidents[77]
(Figure 16)

	Millions of Dollars	Percent
Net Automobile Liability Payments	$3,069	47%
Auto Medical Payment Benefits	247	4
Auto Collision Insurance	1,387	21
Hospital and Medical Insurance	431	7
Life Insurance	358	6
Other Personal Insurance	141	2
Employee's Paid Sick Leave	112	2
Workmen's Compensation	76	1
Social Security Disability Payments	36	1
All Other Current Benefits	169	3
Future Social Security Payments	317	5
All Other Future Benefits	127	2
TOTAL*	$6,470	100%

*Detail may not add to total due to rounding.

They concluded:

> Thus, in summary, aggregate net reparations for auto accident victims in 1967 totaled about $6.5 billion compared with aggregate 'compensable losses' of $10.5 billion.[78]

75. Ibid., p. 11.
76. Ibid., p. 11.
77. Ibid., p. 14.
78. Ibid., p. 14.

Thus the total uncompensated "compensable losses" would be $4.0 billion.

"Compensable" economic losses as the term is used by D.O.T. includes medical expenses, wage loss, funeral expenses, costs of replacement services, future loss earnings, property damage and other miscellaneous out-of-pocket expenses. Deductions from this aggregate figure are made for future lost earnings of fatally injured persons with no dependent survivors and for the fact that the decedents would no longer consume resources for their own support.[79]

Whether these figures are applicable to Minnesota is not particularly simple to determine. It has been pointed out that the total number of victims who are ineligible to receive liability insurance benefits will decrease substantially In a comparative negligence state, but that it must be remembered that persons eligible by reason of a comparative negligence statute will be entitled to receive only partial compensation.[80] It is also likely that private health and accident insurance and private wage continuation plans will be more widely used in a state like Minnesota which has a high standard of living than in some other states where the standard is lower and the average person poorer. Consequently, more benefits from sources other than the tort liability system are likely to be available for the Minnesota automobile accident victim.[81]

Nevertheless, it is clear that a number of persons receive inadequate or no compensation for their automobile accident losses. These persons cannot be ignored by society.

The effects of uncompensated expenses for medical care and of the loss of normal wages or earnings as a result of an automobile accident fequently have a disastrous effect on the lifestyle of the victim and his family. The D.O.T. study of seriously injured victims points up some of the most significant of these effects:

Other Impacts On Families of Seriously Injured and Fatalities [82]

(Figure 17)

Impact	Percent of cases affected
Household help required	17
Other member of household went to work	5
Family moved to cheaper quarters	3
Money taken from savings or property sold	20
Money borrowed	14
Payments missed	12
Way of living was changed	16

Other severe effects occur in the area of emergency medical care. Studies have estimated that as many as twenty-three to twenty-five percent of persons killed or crippled in automobile accidents could be saved from death or totally cured of their injuries if proper emergency medical care were available.[83] It also appears that one of the difficulties in providing such care to automobile accident victims is that many of them lack funds to pay for it and that emergency care facilities find it difficult to continue to provide services for which they receive no compensation.

Senator Phillip A. Hart has thus summarized the problem:

> . . . 58 percent of the victims . . . treated never recover in tort because they are unable to prove fault or freedom from contributory negligence. Thus those who provide medical emergency services will often not be paid unless the automobile victim has other resources . . . The economic consequence of these facts on the emergency health care system is horrendous. . . . One-third of all emergency medical service is for injury resulting from vehicular accidents. Is it any wonder that the emergency room in almost every hospital in America operates at a loss? How can the directors of non-profit hospitals justify investing in emergency health care facilities. . . . (Footnotes omitted.)[84]

79. Ibid., p. 1-5.
80. Report of the Senate Committee on Commerce on S. 945, National No-Fault Motor Vehicle Insurance Act, June 20, 1972, p. 16.
81. Minnesota was recently ranked the second best state in the nation for general quality of life; and the annual average per capita income is 18th in the nation: St. Paul Dispatch, November 3, 1972, p. 1.
82. U. S. Department of Transportation, I Economic Consequences of Automobile Accident Injuries, Automobile Insurance and Compensation Study (Washington, D.C.: U. S. Government Printing Office, 1970) p. 57.
83. Philip Hart, "National No-Fault Auto Insurance: The People Need It Now," 21 Cath. U. L. Rev. 293 (1972).
84. Ibid., p. 292.

To a large extent, already supply of first party insurance benefits can solve these problems, for it is additional money to buy medical care, replace wages, and pay bills that is needed by these persons. First party benefits have been guaranteed to all victims in Puerto Rico and the results are most encouraging. The number of highway deaths per hundred million miles driven has decreased thirty-two percent since their automobile accident reparations reform law went into effect there, and the decrease has been largely attributed to improvements in the delivery and availability of emergency medical care and to the fact that accident victims who previously were too poor to afford medical care from their own resources now have access to it.[85]

Although Puerto Rico is a far poorer area than Minnesota, and such dramatic results are unlikely here, it is clear that even in a state with a high standard of living more money could mean improved medical care and reduce the possibility that an automobile accident would impoverish a family.

Although the tragic effects of a lack of compensation to the individual is obvious, the consequent detriment to society deserves some comment. Society is indeed injured when individuals are taken from the productive sector of the economy or suffer great economic hardship. This would seem to be an issue on which both opponents and advocates of "pure no-fault" could agree.

S. Lynn Sutcliffe, counsel to the U.S. Senate Commerce Committee told the Commission:

> . . . If we look at the automobile transportation system, with a blank slate and design, or attempt to design an automobile compensation system without any precedent . . . we would try to design a system that took care of the people most in need of taking care of. We would do this out of humane concern for those people, but we would also do it on a principle of economics. If those people are not compensated they become added to our welfare rolls![86]

A similar sentiment was expressed by Craig Spangenberg of the American Trial Lawyer's Association:

> The universal solution (to auto accident reparation problems) in all other countries is quite simple. They recognize two different interests: the interest of society, the interest of the victim. Society's interest, they think, is to patch up every victim whether it is their fault or not. To sew up his cuts, to set his fractures, to give him treatment and in that sense it makes no difference whether he drove the car into the tree himself or not.[87]

If more insurance money can reduce deaths and disabling injuries, remove accident victims and their families from the welfare rolls, return victims to a productive position in society and ease the crushing burden of an automobile accident, it should be provided. The simplest and most effective method seems to be a universal system of private first party automobile insurance.

The first party insurance provision of the "Commission Plan" would indemnify most of those economic losses which presently go uncompensated. The basic first party benefits offered there, $10,000 per person per accident, are more generous than those provided by most of the other state laws enacted to date.[88] Only the reform plans of Delaware, Puerto Rico and Michigan offer first party benefits which are as high as these, though the Massachusetts reform plan has been widely discussed and praised, it provides for only $2,000 of first party benefits per person per accident.

According to acutarial projections, $10,000 of first party benefits would indemnify eighty-five to ninety per cent of the total economic losses resulting from automobile accidents would allow ninety-five per cent of the victims in the state to recover one hundred per cent of their losses. These figures do not include loss of future wages in fatality cases.[89]

Since uncompensated automobile accident losses may cause severe economic detriment to the individual victim and to society as a whole, and since the present system is not designed for to provide full compensation of all accident losses, the reparation system should be reformed in such a way as to provide a meaningful amount of first party insurance benefits for all victims.

2. Cost

While the plight of the ineligible accident victim creates an urgent problem, the question of how to finance extended insurance benefits for these persons creates some complex issues which must be resolved.

The horrible cost of automoble accidents has been mentioned elsewhere in this report, but it is worthy of further discussion at this point. The Minnesota Department of Public Safety has conservatively

85. Ibid., p. 294.
86. Testimony of S. Lynn Sutcliffe, Hearings of Minnesota Automobile Liability Study Commission, August 11, 1972, Minutes, p. 25.
87. Testimony of Craig Spangenberg, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p. 5, 6.
88. See chart of other state reform laws, p. 7 and 8, Supra.
89. Testimony of Dale Nelson, Hearings of Minnesota Automobile Liability Study Commission, November 10, 1972, Minutes, p. 39-40.

estimated that the total economic loss resulting from personal injuries and deaths from automobile accidents in the state in 1971 was over eighty-eight million dollars.[90] That figure does not include the economic value of intangible losses. During 1970, over sixty-one million dollars in bodily insurance benefits was paid out to Minnesota automobile accident victims; this figure, of course, excludes the losses of those ineligible to recover.[91] Neither of these figures is a comprehensive measure of the cost of automobile accidents, for each excludes some losses; but it is clear that the total must be extremely high.

Since any plan which seeks to indemnify more of the economic losses of accident victims will require insurance to pay more victims than it does under the present system, the goal of indemnity conflicts, to some extent, with the goal of lowering insurance premiums.

Dr. Herbert Denenberg, Pennsylvania Insurance Commissioner, has highlighted the conflict inherent in an attempt to reduce insurance premiums in the current automobile accident environment:

> No one would argue against the system returning to the victim a higher proportion of the premium dollar. But there is some question about whether the system should cost less. There is good reason to assert that the system should cost more, not less.
>
> The heart of the problem is that we've permitted the automobile to kill, cripple, and maim, pollute the air, clog our court system, and strangle our cities. . . .
>
> Too many of our citizens believe they have a right to murder and maim on the highways and they want this right at bargain prices — even subsidized prices.[92]

There is only one way to compensate more victims while simultaneously reducing premiums, and that is to reduce benefits. Actuaries have emphasized in testimony before the Commission that the reform plans which have been designed to reduce premiums do so by eliminating in most cases the right of an individual who has been negligently injured to recover general damages.[93]

Indeed, it is not entirely clear that substantial premium reductions can be achieved even if benefits are reduced. Whether actuarial predictions show savings or increases in premiums depends on how much loss frequency is expected to increase when the currently ineligible victims are allowed to recover their economic losses and how much loss severity is expected to decrease when general damages are limited. Methods used for gathering data and projecting the changes in loss experience differ a great deal. As a result of the inherently speculative nature of the task, actuarial predictions for the same plan will often vary widely, with some data showing cost savings and other data showing increases.[94]

Estimates for each state vary also, so that estimates made on the basis of national figures or for another state's plan will not be valid for Minnesota. Five factors have been isolated to inter-state differences:[95]

1. The degree of urbanization of the state — A greater increase in claims frequency is predicted for rural states because there are more one car accidents there and because there is greater tendency litigate in urban areas.

2. The current level of general damages paid — If a plan reduces or limits the right to recover general damages, the amount of money saved by that provision will depend on whether present awards are generally higher or lower than the national average.

3. Whether the state has a guest statute — Claims frequency would increase more in a state which currently prevents a guest passenger from suing his host for ordinary negligence because all of these persons would become eligible for benefits.

4. The proportion of the premium dollar which is spent on bodily injury as opposed to property damage benefits — Since the partial or total elimination of general damages would affect only the bodily injury side, more reduction in payment could be expected if a large portion of the benefits paid now go for bodily injury losses.

5. Whether the state has adopted comparative negligence — Theoretically, if not as a practical matter, claims frequency should increase less in a state that has adopted comparative negligence, because fewer victims are totally ineligible to recover in such a state.

90. Infra., p. 99.
91. Supra, p. 41, note 61, Ch. IV.
92. H. Denenberg, quoted in Arthur C. Mertz, "An Overview of Automonia," Remarks Before the Claims Seminar, Conference of Mutual Casualty Companies, Chicago, May 1, 1969.
93. Testimony of Dale Nelson, Hearings of Minnesota Automobile Liability Study Commission, November 10, 1972, Minutes, p.p. 30-33, Testimony of David Rolwing, Hearings, November 10, 1972, Minutes, p. 7, Testimony of C. Arthur Williams, Hearings, June 9, 1972, Minutes, p. 5 & 6.
94. For a discussion of the methods used and the problems involved, see Testimony of C. Arthur Williams, Hearings of Minnesota Automobile Liability Study Commission, June 9, 1972, Minutes, p. 5-11, Report of the Senate Committee on Commerce, p. 32.
95. Report of the Senate Committee on Commerce, p. 34,35.

The general position of the State of Minnesota with respect to each of these factors can be determined and will be of some assistance in assessing the cost impact of any proposed change.

Although the majority of Minnesotans now live in metropolitan areas,[96] the state still has large rural areas and a high proportion of one-car accidents. Statistics presented to the Commission by actuary Charles Hewitt indicated that the number of eligible claimants in Minnesota would increase by fifty-five per cent if the Commission's recommendations or a "no-fault" plan were adopted and that sixty percent of these added claimants would be persons injured in one-car accidents.[97]

Data from the Department of Transportation closed claim study sheds some light on the level of general damage awards in Minnesota. Only 28.8 per cent of the payment dollars paid to Minnesota claimants in the study were attributable to general damages in cases where there was no permanent disability, a figure which is quite low compared to other states.[98]

The third factor is the proportion of the insurance benefits allocated to property damage. In Minnesota in 1970, approximately one hundred fifty million dollars was paid out in total benefits; of this eighty-eight million dollars or fifty-nine percent was paid to compensate property damage losses.[99] This is somewhat less than the national average, for it is estimated that two-thirds of the benefits paid nationally are for property damage losses.[100]

The other two factors are the simplest to determine. Minnesota does not have a guest statute,[101] and it does have a comparative negligence statute.[102]

The combined effect of these five factors is not certain. However, one actuary has concluded, primarily on the basis of the high number of one-car accidents and the low level of general damage awards, that midwestern states could not expect any significant savings from a "no-fault" plan such as might accrue in large eastern states which are highly urbanized and have a higher level of damage awards.[103]

The costing of the Uniform Motor Vehicle Accident Reparation Act, presented elsewhere in this report, illustrates the possible effects of geographical differences. The two trade associations which predicted savings from UMVARA, estimated that Minnesota would experience smaller savings than the national average and the trade organization which predicted cost increases, believed that the increase in Minnesota would be greater than the national average.[104] When the National Motor Vehicle Accident Reparations Act was costed, actuaries for Allstate Insurance Company predicted that the cost for full coverage would increase by seventeen per cent for Minnesota, a slightly smaller increase than they predicted nationally.[105] On the other hand, State Farm Insurance Company actuaries estimated that Minnesota premiums would increase by two per cent, a slightly higher figure than they predicted for a national average.[106]

It is best to rely only on costing data specifically prepared for the state of Minnesota.

There is, unfortunately, a popular tendency to compare Minnesota to Massachusetts and to predict that the adoption of that type of modified "no-fault" plan in Minnesota could bring huge premium savings without drastically curtailing general damages.

However, conditions in Massachusetts prior to the enactment of its "no-fault" law, were far different than those in Minnesota today . . . premiums for the required liability coverage were rising at a staggering rate and causing much public concern;[107] the bodily injury rate there was over two and one-half times higher than in other states;[108] there was an epidemic of exaggeration and fraud in small personal injury cases,[109]

96. Arlen I. Erdahl and Larry Anderson, The Minnesota Legislative Manual 1971-1972, p. 9.
97. Testimony of Charles Hewitt, Hearings of Minnesota Automobile Liability Study Commission, December 15, 1972, p. 18.
98. Supra, p. 36.
99. Supra, p. 41.
100. Testimony of S. Lynn Sutcliffe, Hearings of Minnesota Automobile Liability Study Commission, August 11, 1972, Minutes, p. 10-11.
101. Supra, p. 3; notes 7 and 8, Ch. I.
102. Supra, p. 4; note 12, Ch. I.
103. Testimony of Charles Hewitt, Hearings of Minnesota Automobile Liability Study Commission, December 15, 1972, minutes, p. 21.
104. Infra., p. 93.
105. Testimony of S. Lynn Sutcliffe, Hearings of Minnesota Automobile Liability Study Commission, August 11, 1972, Minutes, p. 19-20.
106. Ibid., p.p. 19-20.
107. Testimony of Victor Fanikos, Hearings of the Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 4.
108. Testimony of Craig Spangenberg, "Massachusetts No-Fault — A Successful Failure," Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, Exhibit B, p. 8.
109. Testimony of V. Fanikos, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 14.

availability of insurance was so restricted that all new customers forced to turn to the assigned risk plan regardless of their driving records.[110] In short, Massachusetts was most atypical.[111]

Three further factors cast greater doubt on the claim that a Massachusetts-type plan would benefit Minnesota and, in fact, raise serious questions as to whether the plan has produced any substantial savings for the people of Massachusetts.

First, the initial premium reduction and the subsequent rebates in Massachusetts did not come about as the result of market forces but were mandated by law. The no-fault law itself created the original reduction in bodily injury insurance premiums.[112] The rebates were ordered by the Insurance Commissioner who has the power to set rates and to control the profit made by the insurance companies.[113] In Minnesota, which has a file and use law, the Commissioner has no such power, and market forces determine insurance premiums.[114]

Second, some actuarial data indicates that insurance premiums were not actually reduced at all, but that instead, certain loss costs were merely shifted from bodily injury coverage to physical damage coverage. The following charts comparing actual rates in three different territories in Massachusetts demonstrate the point.

Effect Of Massachusetts Law On Insurance Premiums — Boston[115]

(Figure 18)

Territory — Boston (Central Metropolitan) — Annual Rates

Adult Over Age 25, No Business Use, Drives To Work Less Than 10 Miles, Pleasure Use

Coverage	(Prior To No-Fault) 12/31/70		(Beginning No-Fault) 1/1/71 Before Refund		(Beginning No-Fault) 1/1/71 After Refund		(Present No-Fault) 1/1/72	
Coverage A-BI (5/10)	$117.00		$ ---		$ ---		$ ---	
Coverage A-BI/PIP	---		99.50		73.70		73.80	
Coverage B-Guest Cov.	7.50		6.40		6.40		6.40	
Cov. A & B ($25,000/$50,000)	$124.50 x 1.37 =	$170.60	$105.90 x 1.37 =	$145.10	$80.10 x 1.37 =	$109.70	$80.20 x 1.62 =	$129.90
5/10 U.M.		2.00		3.00		3.00		2.00
$2,000 MPC		15.00		---		---		---
$5,000 PD		49.00		67.80		67.80		21.00
Full Comprehensive		126.00		126.00		126.00	(Opt 2) (Coll)	138.00
$100 Ded. Collision (Opt. 1)		196.00		196.00		196.00	42.00 + 239.00 =	281.00
Total		$558.60		$537.90		$502.50		$571.90

Principal Male Operator Under Age 25, No Driver Training Instruction

Coverage A-BI (5/10)	$374.50		$ ---		$ ---		$ ---	
Coverage A-BI/PIP	---		318.40		235.90		236.80	
Coverage B-Guest Cov.	7.50		6.40		6.40		6.40	
Cov. A & B ($25,000/$50,000)	$382.00 x 1.37 =	$523.30	$324.80 x 1.37 =	$445.00	$242.30 x 1.37 =	$332.00	$243.20 x 1.62 =	$394.00
5/10 U.M.		2.00		3.00		3.00		2.00
$2,000 MPC		27.00		---		---		---
$5,000 PD		109.50		151.20		151.20		62.00
Full Comprehensive		126.00		126.00		126.00	(Opt 2) (Coll)	138.00
$100 Ded. Collision (Opt. 1)		333.00		333.00		333.00	126.00 + 406.00 =	532.00
Total		$1,121.80		$1,058.20		$945.20		$1,128.00

NOTE: The above rates are for a new Ford Galaxy 4-door sedan (age group 1 for each year represented).

Collision Option 1 — All risk coverage; covers the actual cash value of the auto less the deductible; benefits payable without regard to fault. Waiver of deductible option offered (called buy-back).

Collision Option 2 — Restricted collision coverage, which applies to the insured automobile in accident situations in which the insured would ordinarily be able to recover from another person — rear end collisions, being struck while parked, or certain situations involving serious traffic violations on the part of the other driver.

Collision Option 3 — No coverage. The insured elects to cover his own vehicle crash losses, however they occur.

110. Testimony of V. Fanikos, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p.p. 15-16.
111. Testimony of Roger Fisher, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 22.
112. Anno. Laws of Mass., Ch. 231, § 6C (1971 Supp).
113. Testimony of V. Fanikos, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p.p. 48-49.
114. Supra, p. 5, Notes 34-36, Ch. I.
115. Data prepared by Dale Nelson, Hearings of Minnesota Automobile Liability Study Commission, November 10, 1972, Minutes, Exhibit C.

Effect Of Massachusetts Law on Insurance Premiums — Holyoke[116]

Territory — Holyoke (Figure 19) Annual Rates

Adult Over Age 25, No Business Use, Drives To Work Less Than 10 Miles, Pleasure Use

Coverage	(Prior To No-Fault) 12/31/70		(Beginning No-Fault) 1/1/71 Before Refund		(Beginning No-Fault) 1/1/71 After Refund		(Present No-Fault) 1/1/72	
Coverage A-BI (5/10)	$49.00		$ ---		$ ---		$ ---	
Coverage A-BI/PIP	---		41.70		30.90		34.30	
Coverage B-Guest Cov.	7.50		6.40		6.40		6.40	
Cov. A & B ($25,000/$50,000)	$56.50 x 1.37 =	$77.40	$48.10 x 1.37 =	$ 65.90	$37.30 x 1.37 =	$ 51.10	$40.70 x 1.62 =	$ 65.90
5/10 U.M.		2.00		3.00		3.00		2.00
$2,000 MPC		11.00		---		---		---
$5,000 PD		40.50		56.10		56.10		17.00
Full Comprehensive		43.00		43.00		43.00	(Opt 2) (Coll)	55.00
$100 Ded. Collision (Opt. 1)		117.00		117.00		117.00	36.00 + 119.00 =	155.00
Total		$290.90		$285.00		$270.20		$294.90

Principal Male Operator Under Age 25, No Driver Training Instruction

Coverage A-BI (5/10)	$157.00		$ ---		$ ---		$ ---	
Coverage A-BI/PIP	---		133.40		98.80		110.30	
Coverage B-Guest Cov.	7.50		6.40		6.40		6.40	
Cov. A & B ($25,000/$50,000)	$164.50 x 1.37 =	$225.40	$139.80 x 1.37 =	$191.50	$105.20 x 1.37 =	$144.10	$116.70 x 1.62 =	$189.10
5/10 U.M.		2.00		3.00		3.00		2.00
$2,000 MPC		17.00		---		---		---
$5,000 PD		90.50		125.10		125.10		52.00
Full Comprehensive		43.0		43.00		43.00	(Opt 2) (Coll)	55.00
$100 Ded. Collision (Opt. 1)		199.00		199.00		199.00	108.00 + 202.00 =	310.00
Total		$576.90		$561.60		$514.20		$608.10

NOTE: The above rates are for a new Ford Galaxy 4-door sedan (Age Group 1 for each year represented).

Collision Option 1 — All risk coverage; covers the actual cash value of the auto less the deductible; benefits payable without regard to fault. Waiver of deductible option offered (called buy-back).

Collision Option 2 — Restricted collision coverage, which applies to the insured automobile in accident situations in which the insured would ordinarily be able to recover from another person — rear end collisions, being struck while parked, or certain situations involving serious traffic violations on the part of the other driver.

Collision Option 3 — No coverage. The insured elects to cover his own vehicle crash losses, however they occur.

Effect Of Massachusetts Law On Insurance Premiums — Housatonic — Great Barrington[117]

Territory — Housatonic — Great Barrington (Figure 20) Annual Rates

Adult Over Age 25, No Business Use, Drives To Work Less Than 10 Miles, Pleasure Use

Coverage	(Prior To No-Fault) 12/31/70		(Beginning No-Fault) 1/1/71 Before Refund		(Beginning No-Fault) 1/1/71 After Refund		(Present No-Fault) 1/1/72	
Coverage A-BI (5/10)	$24.00		$ ---		$ ---		$ ---	
Coverage A-BI/PIP	---		20.40		15.10		16.80	
Coverage B-Guest Cov.	7.50		6.40		6.40		6.40	
Cov. A & B ($25,000/$50,000)	$31.50 x 1.37 =	$43.20	$26.80 x 1.37 =	$ 36.70	$21.50 x 1.37 =	$ 29.50	$23.20 x 1.62 =	$ 37.60
5/10 U.M.		2.00		3.00		3.00		2.00
$2,000 MPC		10.00		---		---		---
$5,000 PD		25.50		35.30		35.30		13.00
Full Comprehensive		34.00		34.00		34.00	(Opt 2) (Coll)	37.00
$100 Ded. Collision (Opt. 1)		102.00		102.00		102.00	26.00 + 111.00 =	137.00
Total		$216.70		$211.00		$203.80		$226.60

Principal Male Operator Under Age 25, No Driver Training Instruction

Coverage A-BI (5/10)	$77.00		$ ---		$ ---		$ ---	
Coverage A-BI/PIP	---		65.30		48.40		54.30	
Coverage B-Guest Cov.	7.50		6.40		6.40		6.40	
Cov. A & B ($25,000/$50,000)	$84.50 x 1.37 =	$115.80	$71.70 x 1.37 =	$ 98.20	$54.80 x 1.37 =	$ 75.10	$60.70 x 1.62 =	$ 98.30
5/10 U.M.		2.00		3.00		3.00		2.00
$2,000 MPC		13.00		---		---		---
$5,000 PD		57.00		78.70		78.70		39.00
Full Comprehensive		34.00		34.00		34.00	(Opt 2) (Coll)	37.00
$100 Ded. Collision (Opt. 1)		173.00		173.00		173.00	75.00 + 189.00 =	267.00
Total		$394.80		$386.90		$363.80		$443.30

NOTE: The above rates are for a new Ford Galaxy 4-door sedan (Age Group 1 for each year represented).

Collision Option 1 — All risk coverage; covers the actual cash value of the auto less the deductible; benefits payable without regard to fault. Waiver of deductible option offered (called buy-back).

Collision Option 2 — Restricted collision coverage, which applies to the insured automobile in accident situations in which the insured would ordinarily be able to recover from another person — rear end collisions, being struck while parked, or certain situations involving serious traffic violations on the part of the other driver.

Collision Option 3 — No coverage. The insured elects to cover his own vehicle crash losses, however they occur.

116. Ibid.

117. Ibid.

When bodily injury and property damage coverages are considered together, it is clear that total insurance rates for both kinds of drivers in all three territories have increased since December, 1970. This overall increase occurred in spite of the simultaneous decrease in the bodily injury insurance rates. It is the property damage portion of the premium which soared and caused total cost to rise.

An explanation for this phenomenon was presented to the Commission by actuary, Dale Nelson, and other witnesses. Prior to the enactment of the Massachusetts "no-fault" law, bodily injury liability insurance was compulsory, but property damage liability insurance was not. Consequently, many injury claims were made in cases where there had been no injury at all, so that the claimant could be certain to receive insurance benefits to repair the damage to his automobile.[118] After the "no-fault" law went into effect the number of bodily injury claims dropped dramatically while the frequency of property damage claims increased.[119] Travelers Insurance Company reported that bodily injury claim notices were down nine per cent in 1971, while property damage claim notices were up eighteen percent.[120] According to some actuaries the "no-fault" law resulted in a readjustment of the existing accident losses so that damage to automobiles is now paid for by property damage insurance instead of bodily injury insurance; thus, they conclude there were no real savings to Massachusetts policyholders.[121]

Third, the Massachusetts driver did trade off a substantial number of his rights: the right to recover general damages is rather substantially limited; the injured person is required to exhaust his wage continuation plan benefits before receiving automobile insurance benefits; full recovery of lost wages is not allowed except in those cases where the right to sue is retained. That benefits significantly reduced can be seen from the fact that the average sum paid for bodily injury claims dropped from $343 prior to the adoption of the plan to $160 in 1971.[122] It has been estimated that ninety percent of the victims who had valid tort actions prior to the adoption of the plan are no longer eligible to sue.[123]

Complex questions of policy are implicit in the decision to control insurance costs by reducing benefits. Economist Calvin H. Brainard uses the concept of cost/benefit ratio,[124] the ratio of the probable recovery one could expect if injured to the price one must pay for insurance, to explain the inequity which might result. Under the present system, the motorist with a good driving record pays lower premiums and can expect to receive higher insurance benefits if injured than the motorist who is likely to be negligent. Professor Brainard argues that when funds to compensate currently ineligible victims are produced by eliminating the innocent victim's right to recover general damages, the low-risk motorist will discover that the insurance benefits he could expect to recover if injured, will decrease by a far greater amount than will his premium costs. The converse would be true for the high-risk motorist: his expectancy of recovering substantial benefits would increase enormously while his premium rates would decrease. Thus, the real costs of the low-risk motorist would increase in spite of a reduction in premiums, for he would be forced to self-insure with respect to general damages and perhaps with respect to some of his out-of-pocket losses as well.

That widespread resentment may result from the adoption of a plan that reduces premiums by eliminating benefits can be seen from the Massachusetts experience with "no-fault" property damage. Since property damage accidents are common, a large segment of the motoring public soon discovered that they would be required to pay the deductible portion of their collision coverage, even though the accident had been totally the fault of the other driver. The result is well summarized by a poll taken by a Massachusetts legislator:

> Virtually all those answering the questionnaire who have had property damage accidents since the no-fault system became law cast votes against it . . .[125]

Another commentator referred to public "uproar" as a result of the scheme.[126]

118. Testimony of Craig Spangenberg, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p.p. 21-22.
119. Testimony of Roger Fisher, Hearings of Automobile Liability Study Commission, March 10, 1972, Minutes, p.23; Testimony of C. Arthur Williams, Hearings, June 9, 1972, Minutes, p. 20.
120. Testimony of R. Fisher, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 23.
121. Testimony of Dale Nelson and C. A. Ingham, Hearings of Automobile Liability Study Commission, November 10, 1972, Minutes, p. 13-14.
122. Testimony of Craig Spangenberg, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p. 20.
123. David J. Sargent, "A Drastic Legal Change," 6 Trial 22 (1970).
124. Calvin H. Brainard, "Prices and Politics," 6 Trial 25, 45 (1970).
125. Boston Herald Traveler, March 26, 1972, quoted in testimony of David Rolwing, Hearings of Minnesota Automobile Liability Study Commission, April 7, 1972, Minutes, p. 39.
126. Testimony of Robert McGowan, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 36-37.

Only a two-level plan which guarantees first party benefits to all while preserving the right to sue for negligence can indemnify more victims without reducing benefits. The highly successful Saskatchewan Plan adopted shortly after World War II follows this model.[127]

The compulsory first party plan is operated through the Saskatchewan Government Insurance Office and is financed by charges assessed on operators' licenses and motor vehicle owners' licenses. The first party benefits are: $5,000 benefits to dependent survivors; a wage loss indemnity of $25 per week for 104 weeks; supplemental benefits up to $2,000 for medical hospital and funeral expenses; lump sum payments for impairment of bodily function, based on a schedule and with a maximum of $4,000. The tort law remains intact, and liability insurance with limits of $35,000 is compulsory.

Canadian professor, A. M. Linden, points out the advantages of that plan:

> The Canadian scheme is marketable because it gives us the best of both worlds — tort and non-tort — while at the same time it avoids the shortcomings of both. Everyone is compensated to a degree without regard to fault, but this is not accomplished at the expense of those with meritorious tort claims. All of this has been accomplished without abolishing tort suits, without discarding jury trial, and without creating any new boards.[128]

Professors Blum and Kalven agree that the two-level plan may offer the most efficient and equitable solution to the compensation and cost problems:

> The two level arrangement has one paramount advantage. It permits the society to make independent judgments on matters that cannot be cleanly handled together — the setting of welfare payment levels and the setting of corrective justice damage levels.
>
> Such a regime might well rank highest . . . It would provide for all needy victims; it would maximize the range of individual choice; it would satisfy the demands for corrective justice; and most important, it would not externalize any auto accident costs.[129]

The "Commission Plan" provides for such a two level scheme. Four actuaries have costed the Plan and offer varying predictions as to the cost effects of such increased coverage. Their figures appear below.

Costing Of "Commission Plan" By Dale Nelson
Of State Farm Insurance Company[130]
(Figure 21)

	Coverage		
Present Reparations System	Minimum	Medium	Full
1. With 10/20/5 limits	100%	100%	100%
2. With 25/50/10 limits	115%	114%	108%
Study Commission Proposal			
3. With 25/50/10 limits and no tort limitation	141%	128%	116%

Minimum Coverage

Bodily Injury & Property Damage Liability and Uninsured Motorist coverage.

Medium Coverage

Minimum coverage plus $1000 medical pay coverage.

Maximum Coverage

Medium coverage plus full comprehensive and $100 deductible collision.

127. Rev. Stat. Sask. C. 409 (1965).
128. A. M. Linden, "Automobile Insurance — Canadian Style," 21 Cath. U. L. Rev. 376 (1972).
129. W. Blum and H. Kalven, "Auto Accidents and General Deterrence," p.p. 270-271.
130. Hearings of Minnesota Automobile Liability Study Commission, November 10, 1972, Exhibit C.

Costing Of The "Commission Plan" By Clyde H. Graves Of American Mutual Insurance Alliance [131]

(Figure 22)

Present system — Average Premiums

B.I. Liability ($10,000/$20,000)		$63.00
Uninsured Motorist		5.00
P.D. Liability ($5,000)		32.00
Medical Payments ($1,000)		12.00
	TOTAL	$112.00

Commission's Proposal — Projected Premiums

B.I. Liability ($25,000/$50,000)		$78.00
Uninsured Motorist		5.00
P.D. Liability ($10,000)		34.00
First Party Economic Loss Coverage ($10,000)		24.00
	TOTAL	$141.00

Conclusion of Dr. Graves

"The tentative plan as outlined by the Minnesota Automobile Liability Study Commission would cost Minnesota motorists approximately 25% higher for 25/50/10. This includes the $10,000 first-party coverage."

Costing Of The "Commission Plan" By Dale Comey Of The Hartford Insurance Group [132]

(Figure 23)

Family Automobile Policy Average Premiums

Minimum Coverage Comparison

1. Present Average Premiums 10/20/5 B.I. & P.D. Liability and 10/20 Uninsured Motorists	$122.14	
2. Study Commission Proposals: 25/50/10 B.I. & P.D. Liability, $10,000 Economic Loss Coverage, and 25/50 Uninsured Motorists	$158.37	+ 29.7%

Medium Coverage Comparison

1. Present Average Premiums 25/50/5 B.I. & P.D. Liability, 10/20 Uninsured Motorists, and $2,000 Medical Payments	$147.90	
2. Study Commission Proposals: 25/50/10 B.I. & P.D. Liability, $10,000 Economic Loss Coverage, and 25/50 Uninsured Motorists	$158.37	+ 7.1%

Full Coverage Comparison

1. Present Average Premiums 25/50/5 B.I. & P.D. Liability, 10/20 Uninsured Motorists, $2000 Medical Payments, Full Coverage Comprehensive, and $100 Deductible Collision	$247.05	
2. Study Commission Proposals: 25/50/10 B.I. & P.D. Liability, $10,000 Economic Loss Coverage 25/50 Uninsured Motorists, Full Coverage Comprehensive, and $100 Deductible Collision	$257.52	+ 4.2%

131. Hearings of Minnesota Automobile Liability Study Commission, November 10, 1972, Exhibit B.
132. Hearings of Minnesota Automobile Liability Study Commission, November 10, 1972, Exhibit A.

Costing Of The "Commission Plan"
By Charles Hewitt Of Allstate Insurance Company[133]
(Figure 24)

PRESENT PREMIUM	COVERAGE (OR COMPONENT)		PROJECTED PREMIUM
$62.30	Bodily injury	25/50/10 limits	$70.50
	Special Damages	-$37.40	
	General Damages	-$30.70	
	Out-of-state	-$ 2.40	
$37.10	Property Damage	No Tort Limit	$36.70
$12.00	Uninsured Motorist		6.60
$11.00	Medical Payments		$ 0.00
$53.20	Collision	No Tort Limit	$53.20
$20.30	Comprehensive		$20.30
$ 0.00	Personal Injury		$26.80
$111.40	Minimum Coverage —	BI PD UM	$140.60
$122.40	Medium Coverage —	BI PD UM MED PAY	$140.60 (14.1% increase)
$195.90	Full Coverage —	BI PD UM MED PAY COLL. COMP.	$214.10 (9.3% increase)

It can be seen from these tables that the estimated premium increase ranges from forty-one to twenty-five percent for minimum coverage, from twenty-eight to seven percent for medium coverage and from sixteen to four percent for full coverage. These variations result largely from the differing loss frequency increase assumptions used by different actuaries and from the fact that the definitions of minimum, medium, and full coverage differ slightly from one costing to another.

These estimates do not take into account any reductions in cost which might result from the fact that some persons would not wish to pursue tort claims for general damages if they were entitled to rapid and full payment of their economic losses. Nor is any cost effect assigned to the arbitration proposal, though it is hoped that it will reduce the payments made in small "nuisance" cases. Although such effects cannot be predicted with certainty and cannot be quantified in advance, logic dictates that they are likely to result. It must be remembered that such actuarial predictions are deliberately conservative.[134]

The "Commission Plan" requires all drivers to carry liability insurance with limits twice as high as current minimums and require $10,000 first party economic loss benefits. Today no economic loss coverage is required and persons who voluntarily purchase it normally have only $1000 or $2000 coverage. Obviously, such an increase in benefits is likely to raise rates somewhat, simply because more victims will be paid and some victims will be entitled to higher levels of benefits.

3. Conclusion

A two-level automobile insurance system recognizes two levels of responsibility for accident reparations: "personal responsibility for causing harm" and "society's collective responsibility to provide adequate reparations for the harm.[135]

If a two-level reform proposal will increase insurance premiums it is only because such a plan will provide more benefits for victims than any other type of system. To indemnify a high percentage of the economic losses of automobile accidents requires substantial funding, because the soaring costs of

133. Hearings of Minnesota Automobile Liability Study Commission, December 15, 1972, Exhibit A.
134. Testimony of Thomas Hunt, Hearings of Minnesota Automobile Liability Study Commission, December 1, 1972, p. 11-12.
135. John E. Simonett and David J. Sargent, "The Minnesota Plan: A Responsible Alternative to No-Fault Insurance," 55 Minn. L. Rev. 997 (1971).

automobile repairs, medical care, and wage replacement exert a continual upward pressure on insurance premiums.[136]

The choice facing Minnesota is clear: insurance premiums can be reduced only if motorists will trade off some of their existing rights and benefits; on the other hand, increased indemnity for economic losses may result in premium increases. The ultimate choice between these two competing alternatives will depend on whether high insurance benefits or low insurance premiums are more highly valued by Minnesotans. However, a state which has been ranked second highest in the nation with respect to the general quality of life [137] should not lightly require its motorists to purchase a cheapened insurance product.

C. Prompt and Certain Payment of Insurance Benefits

It will be remembered that the Commission's major goal in this area was:

> To guarantee that payment of insurance benefits is as prompt and as certain as is commensurate with a just assessment of the rights and liabilities of the insurer and claimant.

Two separate objectives are implicit in this main goal:

1. To eliminate all unjust and avoidable delay resulting from procedural defects in the reparation system.

2. To eliminate all unjust and unavoidable delay resulting from the substantive law of automobile accident reparations.

1. Procedural Delay

It is this type of delay that is normally labeled court congestion. It results from purely mechanical problems, such as insufficient courtrooms, judges, or other judicial resources, or from the use of an undue amount of time in preparing for and trying each case. It is primarily related to those few cases which are litigated; however, this type of delay affects cases in which suit is filed, but which are settled as the trial date approaches.

It has been said that backlogs of four to six years exist in many areas.[138] However, other information indicates that clogged civil calendars are a problem only in approximately fifteen large metropolitan areas in the United States.[139]

In Minnesota trial courts are generally current even in metropolitan areas. The 1971 annual report of the office of the State Court Administrator analyzed the question of delay in some depth. They concluded with respect to the state district courts, the Minnesota courts of general civil trial jurisdiction:

> The District Courts of Minnesota are maintaining their positions of currency in spite of the necessity of assigning more judges to criminal cases in the larger courts. . . . The creation of one additional judgeship in each of the Second and Fourth Judicial Districts should make it possible for these districts to maintain their present positions of currency. The court in Dakota County (First Judicial District) has made the most significant gain in reducing the delay in both court and jury cases . . .
>
> Improvement is shown in the age of pending cases. It is hoped that the judges, clerks and attorneys will continue their efforts to dispose of the old cases and that before too long all pending cases will be less than two years of age.[140]

The following tables from their report summarize the delay in court and jury calendars for the district courts in the more populous counties of the state. These figures refer to all civil cases but do not include criminal cases.

136. Testimony of Robert Kucera, Hearings of Minnesota Automobile Liability Study Commission, September 19, 1971, p. 11.
137. Supra, p. 48, Note 81, Ch. IV.
138. T. Lawrence Jones, "No-Fault: The Road to Reform," 21 Cath. U. L. Rev. 339 (1972).
139. Testimony of William Egan, Hearings of Minnesota Automobile Liability Study Commission, December 10, 1971, Minutes, p. 11.
140. The Supreme Court of Minnesota, Office of the State Court Administrator, Eighth Annual Report: 1971 Minnesota Courts, p. 7.

Delay Tables — Minnesota State District Courts[141]

(Figure 25)

Jury Cases

County	1971 Terminations Per Month	Total Cases Pending 12-31-71	Delay* Months	Change From 1970
Hennepin	259.1	3034	11.7	+1.6
Ramsey	140.0	1875	13.3	+ .3
Anoka	18.9	248	13.1	+1.8
Washington	16.2	109	6.7	+5.3
St. Louis (Duluth)	17.3	139	8.0	-3.1
Dakota	29.6	264	8.9	+6.2

Court Cases

Hennepin	212.0	1295	6.1	+ .5
Ramsey	110.7	831	7.5	- .6
Anoka	20.7	184	8.8	-2.6
Washngton	20.3	93	4.5	+3.5
St. Louis (Duluth)	42.4	133	3.1	+ .1
Dakota	33.7	40	1.1	+3.9

*Computation of the delay is purely statistical and is done by dividing the number of cases pending as of December 31, 1971 by the monthly average of cases terminated and does not necessarily reflect the time delay between note of issue and trial. It is reasonably accurate computation of the time delay before a court will reach for trial the next case to be filed in the particular court.

More detailed data for all ten of the judicial districts in the state is also enlightening. The following chart shows civil jury filings for 1971:

New Jury Cases Filed — Minnesota State District Courts[142]

(Figure 26)

District	1969	1970	1971	Change From Prior Year
First	572	596	607	+11
Second	1655	1880	1824	-56
Third	876	799	804	+5
Fourth	2929	3149	2743	-406
Fifth	654	708	748	+40
Sixth	446	461	487	+26
Seventh	742	832	765	-67
Eighth	461	404	424	+20
Ninth	541	567	553	-14
Tenth	583	547	568	+21
TOTAL	9459	9943	9523	-420

Jury cases are considered in more detail here, since it is the currency of the civil jury calendar which is particulary relevant to automobile accident cases. It can be seen that these filings decreased slightly for Minnesota as a whole, and that most of the decreases occurred in the second and fourth judicial districts, Ramsey and Hennepin counties respectively.

While the number of jury cases filed decreased slightly, the number of jury cases terminated in 1971 increased slightly:

141. Ibid., p. 7.
142. Ibid., p. 8.

Jury Cases Terminated — Minnesota State District Courts [143]

(Figure 27)

District	1969	1970	1971	Change From Prior Year
First	563	640	736	+96
Second	2209	1519	1681	+162
Third	781	842	876	+34
Fourth	3365	3127	3110	-17
Fifth	594	715	832	+117
Sixth	432	491	434	-57
Seventh	732	820	818	- 2
Eighth	490	366	430	+64
Ninth	523	569	521	-48
Tenth	568	510	637	+127
TOTAL	10257	9599	10075	+476

It should be noted that "terminated," as it is used here, does not necessarily refer to a jury trial. The vast majority of these cases are terminated by settlement either before or during trial as the following charts illustrate:

Settlements of Jury Cases — Minnesota State District Courts [144]

(Figure 28)

	1970		1971		Change From Prior Year	
District	During Trial	Before Trial	During Trial	Before Trial	During Trial	Before Trial
First	29	487	47	564	+18	+77
Second	73	1303	139	1409	+66	+106
Third	67	649	63	702	- 4	+53
Fourth	464	2378	411	2409	-53	+31
Fifth	75	543	52	664	-23	+121
Sixth	41	383	37	332	- 4	-51
Seventh	65	622	68	639	+ 3	+17
Eighth	24	269	42	314	+18	+45
Ninth	31	471	24	436	- 7	-35
Tenth	21	420	24	542	+ 3	+122
TOTAL	890	7525	907	8011	+17	+486

Percent of Jury Cases Settled — Minnesota State District Courts [145]

(Figure 29)

	Total Terminated		Jury Trials		1970 Percent	1971 Percent
District	1970	1971	1970	1971	Settled	Settled
First	640	736	124	125	80.6%	83.0%
Second	1519	1681	143	133	90.6%	92.0%
Third	842	876	126	111	85.0%	87.3%
Fourth	3127	3110	285	290	90.9%	90.6%
Fifth	715	832	97	116	86.4%	86.0%
Sixth	491	434	67	65	86.4%	85.0%
Seventh	820	818	133	111	83.8%	86.4%
Eighth	366	430	73	74	80.1%	82.7%
Ninth	569	521	67	61	88.2%	88.2%
Tenth	510	637	69	71	86.5%	88.8%
TOTAL	9599	10075	1184	1157	87.7%	88.5%

143. Ibid., p. 9.
144. Ibid., p. 12.
145. Ibid., p. 12.

It can be seen from a comparison of the above three charts that the 10,075 jury case filings resulted in only 1,157 jury trials. The settlement rate was well above eighty percent in all districts and above ninety percent in the second and fourth districts. The settlement rate increased slightly in nearly all the districts in 1971.

When figures for new filings and terminations are compared, it appears that the number of judges is sufficient to keep the processing of cases on a current basis. The following chart compares filings per judge in civil and criminal cases with terminations per judge in civil and criminal cases:

New Cases Filed Per Judge — Minnesota State District Courts, 1971 [146]

(Figure 30)

District	No. of Judges	Court, Jury & Criminal Filings	Average Per Judge	Average Terminations Per Judge
First	5	1621	324	356
Second	*11	4198	382	346
Third	6	2075	346	357
Fourth	*18	7159	398	410
Fifth	5	1818	364	355
Sixth	6	1815	303	263
Seventh	4	1593	398	404
Eighth	3	750	250	258
Ninth	6	1527	255	233
Tenth	6	1938	323	333
TOTAL	70	24494	350	346

*Juvenile Judge not included.

The average terminations per judge are generally keeping pace with the average new filings per judge. In six of the ten districts, the average annual terminations exceed the average cases filed. Thus, no case backlogs are presently developing in the state district courts.

Although the district courts probably process most of the automobile accident cases, the municipal courts also deserve some comment. They have original jurisdiction over all civil litigation where the amount in controversy is $1,000 or less.[147]

In 1971 the Legislature abolished all municipal courts, except those in Ramsey, Hennepin and St. Louis counties, and created a new county court system by combining the functions of the former municipal and probate courts; these courts have jurisdiction over civil cases, where the sum in controversy is $5,000 or less.[148] No data regarding delay in the new county courts is yet available and reporting of data from the old municipal courts is quite erratic.[149] However, statistics regarding delay in civil cases in the municipal courts of Ramsey, Hennepin and St. Louis counties are available. The State Court Administrator reported the following data:

Delay in the Trial of Civil Cases —
Minnesota Municipal Courts — Cities of the First Class [150]

(Figure 31)

		Average Terminations Per Month	Cases Pending 12-31-71	Backlog Months	Change From 1970
Court Cases					
Duluth	(2)	119.4	406	3.4 months	- 1.4
Hennepin	(16)	269.6	1017	3.8 months	- .9
Saint Paul	(5)	52.0	163	3.1 months	+16.7
Jury Cases					
Duluth		3.0	47	16.0 months	- 8.2
Hennepin		75.3	655	8.7 months	+ 2.3
Saint Paul		43.0	745	17.3 months	+ 5.3

146. Ibid., p. 15.
147. Minn. Stat. §447.01-.40 (1971).
148. Minn. Stat. § 447.01-.40 (1971).
149. State Court Administrator, 1971 Minnesota Court, p. 30.
150. Ibid., p. 30.

Thus, trial can be had more speedily in the municipal courts than in the district courts in Hennepin County. That situation is reversed in St. Louis and Ramsey counties where there is greater delay in the municipal courts than in the state district courts. The Administrator's report summarized the municipal court situation as follows:

> The Municipal Court of Duluth lost ground in jury and court cases during 1971 but not substantial enough to be cause for concern at this time. Hennepin County Municipal Court gained 2.3 months in its delay factor in jury cases and lost .9 months in its delay in court cases. The St. Paul Municipal Court reduced the delay factor in court cases from 19.8 months to 3.1 months and in jury cases from 22.6 months to 17.3 months and should be even more current in the future with the services of the additional judge provided by the 1971 legislature.[151]

The data appears to confirm the subjective impression of those who deal with the system on a regular basis that court congestion is not a problem in Minnesota and that trial can be had, if desired, within six months to a year anywhere in the state.[152]

However, it must be remembered that the judicial resources of Minnesota are limited. In spite of the present state of currency of the state district courts, the State Court Administrator's office warned that current statistics:

> . . . when compared to the previous year's report graphically demonstrates trends and warns of forthcoming problems which are best remedied before they become acute. [153]

Court congestion may become a problem in the future. Thus, it is advisable to create procedures for preventing the development of such difficulties, rather than waiting until they occur to design a solution.

Arbitration as proposed in the "Commission" and "O'Neill" plans, is one offer alternative to litigation in small automobile accident cases, and designed forestall congestion of civil jury calendars.

The Pennsylvania arbitration scheme is described elsewhere in this report. It has been most successful in solving the severe delay problems that existed in the large metropolitan areas of that state prior to its enactment.

The plan has had a spectacular effect in clearing up serious court backlogs. After an investigation of the functioning of compulsory arbitration there, the NAII concluded:

> A recapitulation of Arbitration in Philadelphia indicates that from February 17, 1958 to December 31, 1967, 60,121 cases, for which suit was instituted in County Court in Philadelphia, have been processed and closed and are off the backlog. Of these, reports and awards were filed for 40,541 cases, and 15,831 cases were settled and docketed after they were ordered for Arbitration, and 3,749 cases were disposed by miscellaneous procedure. This means that 60,121 courtrooms were available during the last ten years in Philadelphia, and since twelve jurors serve on jury cases in Philadelphia, 721,452 possible jurors were available for other cases.[154]

Further, they reported that much of the backlog of small cases was eliminated within the first three years that the plan was in operation.

> In 1958, seven thousand cases were backlogged in the Philadelphia County Court with an ever increasing list but in 1961, the list with respect to cases involving not more than $2,000.00, there was no backlog.[155]

The majority of cases arbitrated in Pennsylvania are automobile accident cases. At the end of December, 1970, 3,547 open cases were pending in the arbitration division of the court of common pleas in Philadelphia; of these 2,427 cases were trespass actions arising from motor vehicle and other traffic accidents. [156]

Litigants in the cases referred to compulsory arbitration have their cases heard and decided with amazing speed and efficiency. Three years ago Frank Zal, former Arbitration Commissioner in Philadelphia, stated:

> In 1968, in Philadelphia there is only **three** to **five month's** wait for Arbitration of a case in the

151. Ibid., p. 30.
152. Testimony of W. Egan, Hearings of Minnesota Automobile Liability Study Commission, December 10, 1971, Minutes, p. 11; unpublished letter from Bruce E. Sherwood to Representative Calvin Larson, March 5, 1971, on file.
153. State Court Administrator, 1971 Minnesota Courts, p. 7.
154. John Kokonos and E. F. Murphy, Jr., N.A.I.I. Committee on the Problem of Compensating Automobile Accident Victims, Arbitration of Small Claims, The Referee System, March 1, 1968, pp. 3-4.
155. Ibid., p. 3.
156. 1970 Annual Report of the Philadelphia Common Pleas & Municipal Courts, p. 9.

> County Court from the date of suit being instituted until hearing. He further states that **cases which are not within the jurisdiction of Arbitration in Philadelphia County must wait as long as three years for trial.**[157] (Emphasis in the original)

During the year 1968, the delay was reduced still further so that by 1969, arbitration cases could be heard within thirty days after filing.[158] As early as 1969, twenty-one of the less populous counties using arbitration sent their cases to hearing within thirty days.[159]

Perhaps even more important than the fact that this compulsory arbitration plan has vastly increased the efficiency with which small cases can be handled, is that it has apparently done so without sacrificing justice. The NAII position paper offers high praise for the quality of the decisions made by the arbitrators:

> Occasionally it is charged that the flexibility and informality of mandatory arbitration tends to break down the traditional safeguards built into the judicial process. One can argue, however, that justice is best served by speedy disposition of cases, and as former Commissioner Zal reported in 1968: It is almost the universal opinion among all litigants trying their cases in mandatory arbitration that justice is administered with real judicial-like stature . . . justice is being meted out with courtesy and business-like efficiency.[160]

As mentioned earlier in this report, the rate of appeals from the arbitrator's decisions is very low, indicating that the litigants are generally satisfied with the way their cases are handled.

It has been estimated that a Minnesota system of compulsory arbitration for small claims based on the Philadelphia plan would eliminate from the courts seventy to eighty percent of the automobile accident claims now tried.[161]

Thus, such a plan might conserve the resources of the state district courts, allow them to devote more attention to the larger automobile accident cases, and prevent any future congestion.

2. Substantive Delay

This type of delay results not from mechanical problems or from a lack of adequate judicial resources, but from the fact that the extent and permanency of the injury must be determined before a case can be tried or settled. Since any judgment or settlement is final and releases the tortfeasor and his insurer from further liability and since the judgment or settlement will include damages for all future consequences of the injury, the claimant himself must delay the termination of his case in order to protect his own interests.[162]

It is alleged that delay of this nature is more pervasive than that resulting from court congestion for it affects claims settled out of court as well as those tried,[163] and that it is most harmful in that it forces many victims to settle their claims for a fraction of their real worth due to economic pressure,[164] and results in under-utilization of rehabilitation facilities by automobile accident victims.[165]

Data reflecting the delay from filing to trial is not particularly useful in determining whether this type of delay plagues Minnesota claimants. Instead, information reflecting the time lag from the date of the insurance claim to the date that benefits are paid is needed.

The Department of Transportation's closed claim survey collected such information for the nineteen states involved in its study, and the Commission has obtained the statistics for Minnesota isolated from this data. The following chart compares the speed of settlement in Minnesota to that in other states:

157. Frank Zal, quoted in J. Kokonos and E. Murphy, Arbitration of Small Claims, p. 4.
158. "Arbitration: The Philadelphia Story," 145 Journ. of Amer. Ins. 3, (1969).
159. Maurice Rosenberg and Myra Schuben, "Trial By Lawyer: Compulsory Arbitration of Small Claims in Pennsylvania." in Dollars, Delay & the Automobile Victim, Walter E. Meyer Research Institute of Law, (Indianapolis: The Bobs-Merrill Company, Inc., 1968) p.p. 264-265.
160. J. Kokonos and E. Murphy, "Arbitrtion of Small Claims," p. 3.
161. W. Egan, Hearings of Minnesota Automobile Liability Study Commission, December 10, 1971, Minutes, p. 16.
162. D.O.T., Crash Losses, p. 71.
163. Ibid., p. 71.
164. Alfred F. Conard and J. Ethan Jacobs, "New Hope for Consensus in the Automobile Injury Impasse," in Dollars, Delay, & The Automobile Victim, p. 406.
165. D.O.T., Crash Losses, p.p. 58-59.

Cumulative Percentages of Paid Personal Injury Claimants, Loss Dollars and Payment Dollars by Elapsed Time from Accident to Settlement [a] [166]

(Figure 32)

Elapsed Time From Accident to Settlement	Cumulative Percent of:											
	Paid Claims Settled				Loss Dollars Settled				Benefits Paid			
	Minn.	Number	Other	Number	Minn.	Number	Other	Number	Minn.	Number	Other	Number
60 Days	39.5	199	33.1	8,857	5.4	19,476	7.8	1,052,659	5.5	43,827	10.4	3,728,007
180	63.7	321	57.8	15,436	16.1	58,374	24.6	3,301,797	16.2	129,990	26.1	9,390,303
365	77.0	388	75.8	20,264	29.9	108,521	46.9	6,311,853	31.8	255,436	47.6	17,143,566
998	92.2	465	92.8	24,790	88.2	320,248	82.8	11,132,718	87.2	701,348	81.8	29,452,937
All Claims		504		26,721		363,189		13,444,378		803,991		35,997,924

[a] This table excludes claims with total payments = 0.

It can be seen that Minnesota is not significantly better than the other states with respect to this sort of delay. Though nearly forty percent of Minnesota claimants were paid within sixty days, apparently these persons had very small claims, since only 5.4 percent of the loss dollars were settled, and only 5.5 percent of the total benefit dollars were paid within this time. These figures are quite similar to those for the other eighteen states in the study.

In fact, with respect to the more serious cases, it appears that there may be significantly more delay in Minnesota than in the other states. After six months only 16.1 percent of the loss dollars had been settled in Minnesota as compared to 24.6 percent in the other states. Only about sixteen percent of the Minnesota benefit dollars had been paid; the portion of benefit dollars for the other states was almost ten percentage points higher.

At the end of a year only 29.9 percent of the loss dollars had been paid in Minnesota, as contrasted with 46.9 percent for the other states, and only 31.8 percent of the benefits had been paid in Minnesota, while 47.6 percent had been paid in the other states. These discrepancies are particularly interesting that almost the same proportion of total claims — approximately seventy-five percent — had been paid both in all the states, including Minnesota, by the end of the first year. It would appear that many total dollars were involved in a few serious claims in Minnesota, while the loss and benefit dollars were spread more evenly across a larger group of claims in the other states. This explanation is consistent with the statistics relating to equity of compensation discussed earlier in this report. [167]

The relationship between representation by counsel and delay in settlement is also of interest. The following chart compares Minnesota with other states to determine whether the decisions to retain an attorney and/or to file suit affect the delay in settlement.

Cumulative Percentages of Claims Settled by Attorney Representation and Elapsed Time from Accident to Settlement [a] [168]

(Figure 33)

Elapsed Time Between Accident and Settlement	Cumulative Percentage of Claims Settled:															
	No Attorney				Attorney				Attorney No Suit				Attorney Suit			
	Minn.	Num.	Other	Num.	Minn.	Num.	Other	Num.	Minn.	Num.	Other	Num.	Minn.	Num.	Other	Num.
60 days	55.5	191	58.7	8,314	2.0	3	3.9	476	2.2	2	5.4	4.19	1.8	1	1.3	57
180	82.8	285	86.2	12,211	21.1	31	25.4	3,117	29.3	27	37.1	2,903	7.3	4	4.8	214
365	92.7	319	95.4	13,519	41.5	61	53.8	6,601	57.6	53	73.8	5,775	14.5	8	18.6	826
998	98.0	337	99.6	14,117	78.2	115	85.0	10,438	89.1	82	97.9	7,654	60.0	33	62.5	2,784
Total		344		14,172		147		12,273		92		7,822		55		4,451

[a] This table excludes claims with total payments = 0.

166. Chart prepared by Research Department, State Farm Insurance Co., Based on Additional Crosstabs on Closed Claim Survey Data, December, 1971.

167. Supra, pp. 31-34, Figures 4 & 5.

168. Chart prepared by Research Department, State Farm Insurance Co., Based on Additional Crosstabs on Closed Claim Survey Data, December, 1971.

Obviously, claimants who neither hired attorneys nor filed suit received settlement payments far sooner than any of the others, both in Minnesota and in the other states, with nearly seventy-five percent of such claimants receiving payment within a year in all states.

Those retaining counsel suffered more delay, and the delay in Minnesota was greater than in the other 18 states; only 41.5 percent of the Minnesota claims were settled in a year as opposed to 53.8 percent in the other states. However, when this group is divided into those who filed suit and those who did not, it is clear that filing suit delays the process of settlement to a much greater extent than does the mere presence of an attorney. Fewer than twenty percent of the claims of victims who filed suit had been settled in a year in any of the states, including Minnesota; indeed, only slightly over sixty percent had been settled after more than three years.

Some commentators have attributed statistics like these to dilatory practices of trial lawyers and have argued that in attempting to obtain the largest possible settlements for their clients, attorneys tend to prolong the periods of treatment and rehabilitation, and delay a final assessment of the permanency or seriousness of the injury.[169] However, the explanation offered by the Department of Transportation is probably more logical: claimants who retain attorneys are likely to have serious injuries, and large losses.[170] Naturally, serious injuries require a longer period of medical evaluation, and large claims are more difficult to settle because of the high stakes involved.

Separate data compiled to study delay in serious injury cases substantiates the conclusion that the extent of the injury may be the determinative factor in speed of payment:

Average Time Lapse in Months to Final Settlement of Those Fatality and Serious Injury Cases with Tort Settlement by Economic Loss [a] [171]
(Figure 34)

Total Economic Loss	Average Lapse in Time [Months]			
	Minnesota	Number [b]	Other	Number [b]
$1-2,499	24.3	11	24.9	503
$2,500 or more	25.6	8	24.4	267
All Cases	24.8	19	24.7	770

[a] This table excludes claims in which no suit was filed or in which there was no permanent injury or death. Includes claims closed without pay.

[b] N = Number of claims.

Delay was far greater in these cases of permanent and fatal injuries. Regardless of economic loss, settlement was delayed for an average of two years both in Minnesota and in the other states. When this is compared to the fact cited above, that more than ninety percent of all claims are settled in one year, the plight of these seriously injured claimants becomes apparent. The claimants who can least afford to wait for payment are most likely to be forced to do so.

Substantive delay is a serious problem in Minnesota, as it is throughout the country. Some attempt has been made to attack the problem with advance payments of liability claims by insurance companies. Under such an arrangement, the insurer pays out-of-pocket losses as they accrue and pays for rehabilitation of the claimant even though no final lump sum settlement has been agreed upon, and occasionally, even though the insurer has not decided to admit that its insured is liable.

Unfortunately, it appears that the advance payment technique is used only infrequently. The following chart from the Department of Transportation closed claims survey compares the frequency of advance payments in Minnesota to those in the other eighteen states:

169. Phillip A. Hart, "National No-Fault Insurance: The People Need It Now," 21 Cath. U. L. Rev. 295 (1972).
170. D.O.T., Crash Losses, p. 45.
171. Chart prepared by Research Dept., State Farm Insurance Co., Based on Additional Crosstabs on Closed Claim Survey Data, December, 1971.

Percentage of Claimants, Payment Dollars and Loss Dollars Covered by Interim Payments by Selected Size of Loss [a] [172]
(Figure 35)

All Paid Claims	Economic Loss to Date of Settlement					
	Claimants		Payments		Losses	
	Minn.	Other	Minn.	Other	Minn.	Other
Total	7.1	5.3	4.3	2.6	9.5	6.9

[a] This table excludes claims with total payments = 0.

Although advance payments were used slightly more frequently in Minnesota than in the other states, they are clearly exceptional. Such payments covered fewer than ten percent of claims loss dollars and benefits paid in all states.

The use of advance payments is also affected by attorney representation, as the following statistics demonstrate:

Percentage of Claimants, Payment Dollars and Loss Dollars Covered by Interim Payments by Selected Size of Loss and Attorney Representation [a] [173]
(Figure 36)

Attorney Representation	Economic Loss to Date of Settlement (Total)	
	Minnesota	Other
Without Attorney		
Claimants	7.8	7.8
Payments	10.0	7.1
Losses	24.2	17.7
With Attorney		
Claimants	6.1	2.4
Payments	1.4	1.1
Losses	2.8	3.0

[a] This table excludes claims with total payments = 0.

Apparently, attorney representation is as highly correlated with advance payments as it is with speed of payment in general. The percentage of benefits covered by such advance payments in Minnesota drops from 10 to 1.4 when counsel is retained, and the percentage of loss dollars covered in cases with no attorney is 24.2 percent, compared to only 2.8 percent where there is attorney representation. However, nearly as many Minnesota claimants receive advance payment when they have counsel as when they do not, indicating that once again the seriousness of the injury may be the causative factor, resulting both in the claimant's decision to retain counsel and in the insurer's decision that the case is inappropriate for advance payment.

There is, however, some evidence to indicate that advance payments are not such a failure as the above figures would lead one to believe. It must be remembered that the closed claims survey was undertaken in the fall of 1969; thus, it predates the Minnesota statute which encourages advance payments by providing that they do not constitute admissions of liability, that evidence of them is inadmissable in court, and that they must be set off against final judgment or settlement.[174]

172. Ibid.
173. Ibid.
174. Supra, p. 4, Note 26, Ch. I.

The Commission distributed an informal questionnaire among twenty of the largest automobile liability insurers doing business in the state of Minnesota; among the questions asked were several regarding the use of advance payments.[175] Seventeen of the twenty insurers responded that they used the procedure "routinely" in cases where liability was clear. Five insurers reported that fifty percent or more of their total claims were paid in this manner, and one company estimated that it used advance payments in ninety percent of its claims.

The three insurers who responded that they did not use advance payments routinely offered the following explanations: claimants often do not ask for such payments and sometimes refuse them even when they are offered; they are not suitable for multi-car accidents or cases with multiple claimants because the limits of liability may be insufficient to cover all damages in such cases; they generally are not used except in cases where liability is clear.

While the utilization of this technique appears to be increasing, it is obvious that it cannot produce prompt payment for all accident victims or even for all of the third-party liability claimants.

Comprehensive first-party insurance can deliver benefits promptly to the vast majority of victims because benefits would be paid as expenses accrue rather than in a lump sum, limited to reimbursement for tangible losses, and paid regardless of fault, that such benefits can be delivered more rapidly than third party liability insurance benefits, may be seen from the Workmen's Compensation experience. In California, in 1970, for example, 77.9 percent of the Workmen's Compensation claimants received their first payment checks within fourteen days from the date of the disability. The balance of the claimants received their first checks within twenty-nine days.[176]

To speed up the process still further, the "Commission" and "O'Neill" plans would require the insurer to pay all bills within thirty days after receiving satisfactory proof of the validity of the claim. If the insurer frivolously or arbitrarily failed to pay a claim, the trial court or arbitrators would have the discretion to award reasonable interest and/or reasonable attorney fees to the claimant. The combination of first party "no-fault" benefits and legal sanctions for dilatory claims settlement practices by insurers has led to "notably superior delivery of services" in Massachusetts.[177]

Since the thirty-day rule would also apply to first party property damage coverages, substantial progress should be made toward providing more efficient delivery of benefits in property damage cases. While delay here is obviously not as harmful to the individual as is delay in personal injury cases, it constitutes a persistent nuisance and results in many complaints to the Minnesota Insurance Division complaint personnel.[178]

If first-party benefits were efficiently delivered, the victim with a valid tort claim would also benefit. If $10,000 in first-party benefits were at the victim's disposal, he would be able to pay for medical care and rehabilitation and provide himself with the normal necessities of life while waiting for a final evaluation of the extent of his injury and a final settlement or adjudication of the claim. The negligence claim could be negotiated and evaluated more objectively when the pressures and hardships of delay were removed from the process; as one commentator stated:

> Claimants' lawyers should rejoice because their clients would be relieved of distress while awaiting a tort settlement and would not be forced by desperation to accept a premature settlement. On the other hand, defendants' lawyers should rejoice because the temptation of jurors and judges to turn a tort action into a private charity would be greatly diminished.[179]

Naturally, some substantive delay would remain. Questions as to whether the claimant's injury was really a pre-existing condition, whether the claimant was actually disabled, or whether the medical care was actually needed will remain; questions of statutory interpretation would be created. Such issues are litigated now in medical payment or health and accident insurance claim disputes.[180] They are also litigated with relative frequency in Workmen's Compensation cases, although Workmen's Compensation statutes were designed to keep litigation at a negligible level.[181]

175. Hearings of Minnesota Automobile Liability Study Commission, July 7, 1972, Exhibit A.
176. Division of Industrial Accidents for the State of California, cited in Phillip Hart, "National No-Fault," p. 284.
177. Testimony of Robert McGowan, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 39.
178. Testimony of J. Elliott, Hearings of Minnesota Automobile Liability Study Commission, January 7, 1972, Minutes, p. 16.
179. A. Conard and J. Jacobs, "New Hope for Consensus," p. 406.
180. Testimony of C. Spangenberg, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p. 39.
181. W. Blum and H. Kalven, "Public Law Perspectives," p. 685.

Nothing can be done to guarantee immediate payment in all cases; however, the suggested arbitration plan is intended to include suits on these first-party policies. With such a speedy forum available, delay resulting from the inevitable disputes regarding the rights of the parties could be kept to a minimum.

3. Conclusion

The problems of court congestion and delay in Minnesota do not, standing alone, justify abrogation of the cause of action for negligence. The advantage of the "no-fault" plans in attacking the problem of delay flows not from the fact that they partially or totally eliminate the concept of negligence, but rather from the fact that they mandate immediate payment of economic loss benefits. Such a mandate could aid Minnesota victims who suffer from substantative delay.

Those interested in reforming the present system seek to eliminate delay because it causes further injury to the accident victim. The victim who receives sufficient first-party benefits to finance medical and rehabilitative expenses and for support during convalescence, will not be harmed if he must wait for some time to receive his final settlement and his general damages.

Although Minnesota does not suffer from significant court congestion, reforms such as arbitration, can still be valuable to prevent any development of procedural delay and to process small claims more efficiently.

D. Insurance Requirements

The main goal here was:

> To provide insurance requirements which are sufficiencly strict so that all motor vehicle owners will be financially responsible for accident losses without unduly restricting the availability of insurance and while keeping premium costs within the reach of the average purchaser.

This may be divided into the following objectives:

1. To provide requirements which will close insurance coverage gaps.
2. To assure that the requirements will not unduly restrict the availability of insurance either because insurers are unwilling to sell the product or because it has become too expensive for the consumer to buy.

1. Close Coverage Gaps

Perhaps the major gaps in insurance coverage today is the uninsured motorist gap. Statistics as to the number of uninsured motorists in Minnesota vary. Data from the Highway Department Accident Records Division indicate that only six percent of the persons involved in motor vehicle accidents are uninsured.[182] However, Department of Transportation estimates showed a very different situation:

182. Testimony of Berton Heaton, Hearings of Minnesota Automobile Liability Study Commission, January 7, 1972, Minutes, p. 9.

Distribution of Selected States* by Percentage of Private Passenger Vehicles Insured for Liability 1967 [183]

(Figure 37)

90 percent and over	80 - 84 percent (continued)	70 - 74 percent
New York		Arizona
North Carolina		Kansas
Maryland**	Iowa	Missouri
	Maine	New Mexico
85 - 89 percent	Nebraska	North Dakota
Connecticut	Pennsylvania	Tennessee
Michigan	Wyoming	Utah
New Hampshire		
New Jersey		**65 - 69 percent**
Oregon	**75 - 79 percent**	Kentucky
South Carolina	Delaware	Texas
Vermont	Florida	West Virginia
Wisconsin	Idaho	
	Minnesota	**Under 65 percent**
80 - 84 percent	Montana	Alabama
California	Ohio	Arkansas
Colorado	Rhode Island	Georgia
Hawaii	South Dakota	Mississippi
Indiana	Washington	Nevada

* Omitted are data for Alaska, District of Columbia, Illinois, Louisiana, Massachusetts, Oklahoma, Virginia. For explanation see text.

** This study was unable to determine the percent of motorists insured for automobile liability coverages in Maryland; however, a sample survey of motor vehicle registrations done by the state in November 1967 indicates 92% of private passenger vehicles were covered by liability insurance.

These statistics show that roughly twenty-one to twenty-five percent of the private passenger vehicles in Minnesota were not covered by liability insurance in 1967.

The Department of Transportation cautions that care must be taken when applying their data to a single state:

> While the figures are to be recognized as estimates, we believe they are the best available approximation of the percentage of private passenger vehicles insured for liability. We suggest using them only in five percent groupings . . . as an unjustified degree of accuracy is suggested by citing the exact percentage . . . While our methodology appears correct we have identified three areas which could cause distortion in our figures: population movements, definitional differences and military personnel. In general, we believe that these areas have no more than slight influence on our approximations. [184]

The Department of Transportation methodology involved in comparison of statistics for private passenger cars in use with Insurance Rating Board assigned risk data reporting the total number of car-years of insurance protection provided to all insureds.[185] This approach seems more thorough than does the Minnesota Accident Record Division's use of accident report data, Commissioner Berton Heaton of the Minnesota Insurance Division told the Commission that it is possible that many uninsured drivers, when involved in an accident, to fail to file the motor vehicle accident report because of the danger of a license suspension.[186]

It would seem from the Department of Transportation figures that Minnesota has a relatively high percentage of uninsured motor vehicles in comparison to the other states studied. Such a large coverage gap should be closed.

183. U. S. Department of Transportation, Driver Behavior and Accident Involvement: Implications for Tort Liability, Automobile Insurance & Compensation Study (Washington, D.C.: U.S. Government Printing Office, 1970) p. 205.
184. Ibid., p. 204.
185. Ibid., p.p. 203, 204, 210.
186. Testimony of B. Heaton, Hearings of Minnesota Automobile Liability Study Commission, January 7, 1972, Minutes, p. 10.

Normally, the innocent victims of these financially irresponsible motorists would be unable to receive any compensation at all, regardless of the validity of their claims. However Minnesota has attempted to alleviate this problem through expanded uninsured motorist coverage, which is, by law, a mandatory portion of all liability insurance policies sold in the state.[187] While the use of such insurance can alleviate the hardship of the victims of uninsured drivers, it is not a complete solution. For example, such insurance will not assist the habitual pedestrian who is struck by an uninsured driver.

More importantly, uninsured motorist coverage is intended as a reparation source of last resort, it was never designed to compensate a substantial proportion of accident losses. The American Bar Association has outlined two problems of uninsured motorist insurance which are aggravated as it is extended to cover a large number of losses:

> The questions that nag are (1) whether it is proper to force the policyholder himself to pick up the tab for the damages caused by those who refuse to insure, and (2) whether the conflict of interest between the policyholder seeking to collect damages caused by the uninsured at the expense of his own company is an intolerable conflict. If the uninsured claims against the policyholder, it is to the company's financial interest to establish the innocence of its policyholder. But in the claim made by the policyholder against the uninsured, the financial interest of the company encourages an effort to establish that it was the policyholder himself who was at fault. [188]

Frequent use by uninsured motorist insurance also subverts the public policy goal of distributing accident losses on the basis of negligence. The uninsured driver pay no insurance premiums at all while other drivers bear the costs of his accidents and pay the added premium costs. Uninsured motorist coverge does create a subsidy flowing from the good driver to the bad driver.[189]

Compulsory liability insurance is an alternative solution. Department of Transportation data shows that compulsory insurance laws produce a much higher percentage of insured vehicles than do financial responsibility laws. The Department of Transportation found only three states in which over ninety percent of the private passenger vehicles are insured for liability; two of these states, New York and North Carolina, have compulsory insurance laws. The only other state in the nation, at the time of the Department of Transportation's inquiry, to have such a law was Massachusetts. While the Department of Transportation was unable to collect any information with respect to Massachusetts, the Massachusetts Insurance Commissioner's office has estimated that almost one hundred percent of the vehicles there are insured and that the minimal percentage of uninsured motorists consist mainly of "accidental non-insureds" — persons who have forgotten to renew their insurance coverage or who are unaware that the coverage they purchased was never actually placed because the premium was either lost or converted by the agent.[190]

Massachusetts has had its remarkable success in obtaining compliance with the law by the use of simple legal and administrative sanctions.

Knowing failure to drive without insurance is punishable by a fine and license suspension. Moreover, insurance must be purchased before a motor vehicle can be registered and license plates obtained; the insurance agent stamps the registration application to certify compliance with the law. If the insured fails to renew his policy or lets it lapse, the insurer is required to notify the state's motor vehicle registry; registry agents or the local police then immediately confiscate the license plates of the vehicle.[191]

Both the "Commission" and "O'Neill" plans recommend compulsory liability insurance in an attempt to increase the number of insured vehicles on the road.

A related problem is the amount of compulsory liability insurance that should be required. Apparently, the limits of liability carried by most drivers are inadequate to provide compensation for seriously injured accident victims. As explained earlier in this report,[192] this problem is one of the major reasons why seriously injured persons recover a smaller percentage of their losses than do persons with minor injuries. As Jacob Fuchsberg has pointed out:

> Non-fault advocates have made a great to-do by citing that the most seriously injured are now the most under-compensated.

187. Supra, p. 4, Note 24, Ch. I.
188. A. B. A. Report, p. 123.
189. Testimony of C. Spangenberg, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p. 51-52.
190. Testimony of V. Fanikos, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 46.
191. Ibid., p.p. 16-17.
192. Supra, p. 34, Note 31, Ch. IV.

> However, a chief cause of this failing is the lack of financial responsibility on the part of those causing accidents where large damages follow. A remedy would be compulsory insurance at meaningful limits or even, as is done in Europe, no limitations. The cost is slight, the benefits enormous. [193]

There is some indication that the "low-limits" gap is not as severe a problem in Minnesota as it is in most other states; it appears many Minnesotans may purchase excess coverage voluntarily. The Department of Transportation closed claim data shows higher limits of liability insurance in Minnesota than would be expected in light of the state's financial responsibility law and on the basis of the distribution of insurance limits, which the Department of Transportation found in closed claims data for other states:

B.I. Liability Insurance Coverage
Distribution of Claims by Policy Limits [194]
(Figure 38)
Minnesota (583 Claims)

Dollar limits per person	Percent of all claims made against insured with this coverage	Number of claims made against insureds with this coverage	Expected number of claims — based on distribution of claims in other states
$5,000	0	0	25
$10,000	12.0%	70	207
$15,000	0	0	48
$20,000	.7%	4	32
$25,000	26.4%	154	93
$30,000	.3%	2	10
$35,000	.2%	1	1
$50,000	44.6%	250	75
$100,000	14.2%	83	91
$150,000	.2%	1	1
$200,000	.5%	3	5
$250,000	1.2%	7	10
$300,000	.7%	4	7
over $300,000	.7%	4	12

NOTE: Uninsured motorist claims are omitted.
Percentages do not equal 100% due to rounding.

Some caution in the use of these figures is required. First, the methodology involved use of the closed claim study figures; therefore, the sample of insureds was drawn from the universe of insureds against whom bodily injury liability claims had been made. This procedure may affect the result somewhat, because it obviously does not produce a random sample of all insureds. Moreover, these figures are raw data taken from computer runs, and no statistical test for consistency or validity has been run on the data. Thus, it may not be safe to generalize extensively from these figures or use them to predict conditions in Minnesota today; they should, perhaps, be viewed as facts rather than statistics.

Nevertheless, in spite of these difficulties, the differences between the actual distribution of insurance coverage in Minnesota and the expected distribution based on statistical projections from the data on closed claims in other states, is startling. It was obviously expected that the majority of insureds claimed against would have liability limits of $10,000 per person. Surprisingly, $50,000 was by far the most common coverage in the sample and $25,000 was second in frequency. More defendants carried $100,000 liability coverage than the statutory $10,000 coverage.

These figures are most encouraging. However, it is clear that there are still a number of Minnesota motorists who do not purchase adequate insurance coverage.

Underinsured motorist insurance is now being used on a limited scale to attempt to close this gap. This coverage is an optional feature of the standard liability policy and functions in the following manner: if

193. Jacob D. Fuchsberg, "Should Justice Be Rationed?" 6 Trial, 47 (1970).

194. Data provided by Research Department, State Farm Insurance Co., Based on Additional Crosstabs on Closed Claim Survey, December, 1971.

the policyholder is injured by a driver with limits of liability too low to provide full compensation for his injury, he can then make a claim against his own insurer for the balance of his damages. The limits of the underinsured motorist rider are normally the same as the limits of the liability coverage itself. Minnesota has been the leader in the nation in promoting such coverage;[195] the law requires all insurers to offer it to all policyholders, and it must be included in the liability policy unless rejected in writing by the insured.[196]

However, since it is so similar to uninsured motorist coverage, the same objections to the wholesale use of that insurance apply here; it cannot solve the entire problem of low liability insurance limits.

The "Commission Plan" would require liability limits of $25,000 bodily injury per person, $50,000 bodily injury per accident and $10,000 property damage, which are more than double the present required amounts,[197] and are much higher than the modest amounts presently required by the compulsory insurance or financial responsibility laws of most states. The American Bar Association reported in 1969:

> The standard or basic limits required to comply with most state financial responsibility or compulsory insurance laws are $10,000 for bodily injury sustained by one person as the result of one occurrence, $20,000 for all such damages sustained by two or more persons as the result of one occurrence, and $5,000 for property damage in one occurrence. Three states (Louisiana, Mississippi and Oklahoma), which are financial responsibility states, have limits of only $5,000/$10,000/$5,000, and one of the compulsory insurance states (Massachusetts) requires only $5,000/$10,000. Only one state (Connecticut) has limits as high as $20,000/$40,000/$5,000, and only five (Alaska, California, Maryland, Virginia and Washington) require $15,000/$30,000/$5,000.[198]

Apparently no significant changes have been made in state laws since this was written. Thus, the "Commission Plan" would give Minnesota motorists the highest degree of liability insurance protection in the United States and would provide compensation for the vast majority of the losses, both tangible and intangible, suffered by the innocent accident victim. Moreover, it has been predicted that insurance companies will always desire to market, and many motorists desire to purchase, coverage in excess of any minimum limits set by laws.[199]

The basic first party insurance policy should also be made compulsory. The experience of the state of Minnesota with voluntary first-party insurance coverage does not indicate that widespread use of the first-party system could be achieved without some sort of legislative coercion. The modest first-party benefits provided for in the new Minnesota law,[200] which requires liability insurers to offer additional coverages to their insured, are not particularly costly. The St. Paul companies estimate that on the basis of their rates, it would cost approximately $28 per year for a husband and wife to purchase all of these coverages for themselves; if uninsured and underinsured motorists coverages were excluded, the cost for husband and wife would be approximately $23 per year.[201] Yet the Companies' experience has been that very few people elect to purchase the accidental death, medical payments and wage replacement coverages, either because the public is not familiar with them, because the agents do not convince insureds that they are worthwhile, or because the policyholders themselves do not want to pay the extra premium.[202]

Such an experience appears to be typical. If each person is allowed to decide whether to gamble by driving without insurance, it is unlikely that the goal of widespread indemnity of accident losses can be met. When asked why he believed that first party insurance should be made compulsory, Richard Walsh of the U.S. Department of Transportation replied:

> Unfortunately we see the consequences of a great many people doing that today who end up wards of the state simply because they had not made provision against this very real contingency of catastrophic automobile accident loss.[203]

Moreover, the first party policy is not solely for benefit of the named insured; since his children, family members, friends, and pedestrians injured by him can also, in many circumstances, claim benefits

195. Testimony of C. Spangenberg, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p. 42.
196. Supra, p. 4, note 25, Ch. I.
197. Supra, p. 5, Note 30, Ch. I.
198. A.B.A. Report, p. 126.
199. Ibid., p. 124.
200. Supra, p. 4, Note 25, Ch. I.
201. Testimony of Kernel Armbruster, Hearings of Minnesota Automobile Liability Study Commission, December 10, 1971, Minutes, p. 31.
202. Ibid., p. 31.
203. Testimony of Richard Walsh, Hearings of Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p. 80.

under his policy, the policyholder should not be allowed to deprive these persons of their guarantee of substantial economic loss benefits.

A combination of compulsory liability insurance and compulsory first-party insurance, both with meaningful minimum benefit limits, can assure that a high percentage of the economic and non-economic losses of automobile accident victims will be compensated, and that the costs for doing so will be equitably distributed among drivers. It can also provide access to the insurance pool for all accident victims and is a substantial step toward the distribution of all accident losses through insurance.

2. Availability

It is well recognized that the growing tendency of government and society to treat insurance as a prerequisite to the operation of a motor vehicle, combined with competitive underwriting practices, has caused an access problem for high-risk drivers.[204] Under financial responsibility laws, high-risk drivers can, and frequently do, choose not to insure.

Since a compulsory insurance would force these persons to insure in order to drive, it is important to study the availability of insurance coverage in the state of Minnesota and to assure that there are means available to provide coverage for the high-risk driver. If such coverage is not available to these persons, it is likely that they will discover methods of driving without procuring it, in spite of compulsory insurance laws.

The Department of Transportation study of hard-to-place drivers reported:

> The more difficult or costly it is to obtain insurance, the greater the temptation of individuals to drive without adequate coverage. To the extent this occurs, the chance that accident victims will be uncompensated is increased. [205]

It has been alleged that compulsory insurance would result in increasing numbers of drivers who are unable to obtain coverage in the standard or voluntary markets, subsidization of bad drivers through assigned risk plans, and increasing premium costs. However, several factors make it most unlikely that such severe market problems would develop in Minnesota.

First, most Minnesotans have no difficulty in obtaining coverage under the present system. The cancellation and non-renewal provisions of Minnesota law [206] have reduced arbitrary denials of coverage that have been a problem in other states. Insurance Commissioner Heaton has told the Commission that Minnesota insurers are reluctant to cancel a policyholder unless the facts dictating such a course of action are very clear.[207] The Commissioner's power to review non-renewal decisions has also been a valuable tool for protecting the rights of Minnesota insureds; although there is as yet no great body of law as to what constitutes a capricious or arbitrary cancellation, the Commissioner's office has succeeded in getting a reversal of the non-renewal decision in a fairly high proportion of the cases where a complaint as to the original decision is filed. [208]

Such laws do much to protect the rights of the policyholder who has originally been able to obtain insurance coverage. However, they are not directed toward solving the problems of motorists who are unable to procure insurance in the first instance. Statistics indicate that most Minnesotans are able to obtain coverage in the voluntary market, either at standard or non-standard rates. Few are forced into the assigned risk plan, as the following Department of Transportation data shows:

204. Report of the Division of Industry Analysis Bureau of Economics, Federal Trade Commission to the Department of Transportation, Insurance Accessibility for the Hard-To-Place Driver, Automobile Insurance and Compensation Study (Washington, D.C.: U.S. Government Printing Office, 1970), p.p. 1-5.
205. Ibid., p. 5.
206. Supra, p.p. 5, Notes 37-39, Ch. I.
207. Testimony of Berton Heaton, Hearings of Minnesota Automobile Liability Study Commission, January 7, 1972, Minutes, p. 12.
208. Ibid., p. 12.

Registered Vehicles in Assigned Risk Plans, 1968 [209]

(Figure 39)

State	Total Registered Vehicles	Assigned Risk Vehicles	%	State	Total Registered Vehicles	Assigned Risk Vehicles	%
Alabama	1,806,111	14,729	.8	Montana	463,344	779	.2
Alaska	123,329	509	.4	Nebraska	909,123	2,112	.2
Arizona	943,598	1,156	.1	Nevada	302,352	278	.1
Arkansas	1,022,559	2,994	.8	New Hamp.	363,194	13,021	3.6
California	11,123,467	234,716	2.1	New Jersey	3,333,523	179,734	5.4
Colorado	1,299,608	4,137	.3	New Mexico	589,489	870	.1
Connecticut	1,626,186	49,904	3.1	New York	6,310,107	511,038	8.1
Delaware	283,118	9,052	3.2	North Carolina	2,572,949	587,381	22.8
District of Col.	257,405	8,455	3.3	North Dakota	413,824	653	.2
Florida	3,627,987	124,375	3.4	Ohio	5,441,963	18,351	.3
Georgia	2,324,317	21,205	.9	Oklahoma	1,610,387	3,436	.2
Hawaii	354,973	1,990	.6	Oregon	1,242,368	8,427	.7
Idaho	470,930	1,392	.3	Pennsylvania	5,546,819	117,853	2.1
Illinois	4,990,073	54,174	1.1	Puerto Rico	---	---	--
Indiana	2,739,206	9,827	.4	Rhode Island	452,336	13,930	3.1
Iowa	1,703,221	1,923	.1	South Carolina	1,250,002	206,294	16.5
Kansas	1,500,549	15,442	1.0	South Dakota	411,007	797	.2
Kentucky	1,690,646	21,937	1.3	Tennessee	1,906,774	30,245	1.6
Louisiana	1,661,572	63,201	3.8	Texas	6,179,683	140,939	2.3
Maine	480,270	13,091	2.7	Utah	571,336	582	.1
Maryland	1,703,846	103,491	6.1	Vermont	206,607	5,935	2.9
Massachusetts	2,336,490	69,028	3.0	Virginia	2,047,557	128,394	6.3
Michigan	4,316,967	98,922	2.3	Washington	1,987,376	10,744	.5
Minnesota	2,085,639	2,128	.1	West Virginia	804,860	5,077	.0
Mississippi	1,061,292	22,059	2.1	Wisconsin	2,027,121	10,897	.5
Missouri	2,345,389	5,793	.3	Wyoming	225,601	736	.3
				Total	101,048,450	2,959,133	2.9

Source: National Association of Independent Insurers.

Only .1 percent of the registered vehicles in Minnesota were in the assigned risk plan, whereas the average for all states is 2.9 percent.

While it is probably true that compulsory insurance would add more high-risk insureds to the market, simply because they are the persons least likely to purchase coverage under the present system, there is no evidence to show that this would increase the number of persons in the assigned risk plan to an unacceptable level or that it would result in serious problems of availability.

There is normally an inverse relationship between the number of persons in the assigned claims plan and the size of the voluntary substandard market as the following chart shows:

209. D.O.T., Insurance Accessibility, p. 34.

Nonstandard Automobile Insurance Premiums as a Percent of Total Premiums, 1966 and 1968 [210]

(Figure 40)

State	Assigned Risk (1966)	Voluntary (1968)	State	Assigned Risk (1966)	Voluntary (1968)
Alabama	1.4	5.9	Montana	0.5	7.4
Alaska	.5	6.9	Nebraska	.6	8.2
Arizona	.5	6.1	Nevada	.4	7.3
Arkansas	1.5	3.5	New Hamp.	6.6	.7
California	3.3	6.8	New Jersey	6.7	2.2
Colorado	.9	9.1	New Mexico	.7	6.0
Connecticut	4.6	7.5	New York	8.5	.9
Delaware	5.0	2.4	North Carolina	18.4	2.1
District of Columbia	3.9	10.9	North Dakota	.7	6.8
			Ohio	.7	5.2
Florida	4.4	10.2	Oklahoma	.6	7.5
Georgia	1.6	7.3	Oregon	1.9	8.6
Hawaii	1.8	7.5	Pennsylvania	2.3	2.2
Idaho	1/ .8	5.3	Rhode Island	4.9	.9
Illinois	1.1	6.9	South Carolina	16.1	4.8
Indiana	.9	4.9	South Dakota	.4	5.0
Iowa	.4	7.2	Tennessee	1.2	6.0
Kansas	1.7	4.2	Texas	3.0	1.8
Kentucky	2.9	3.4	Utah	.5	7.0
Louisiana	4.3	2.1	Vermont	4.9	1.3
Maine	4.3	1.7	Virginia	6.4	4.0
Maryland	6.8	2.9	Washington	1.3	8.5
Massachusetts	1.9	.5	West Virginia	1.4	6.0
Michigan	3.6	7.1	Wisconsin	1.8	7.5
Minnesota	.3	10.3	Wyoming	.9	5.5
Mississippi	5.8	3.7			
Missouri	.7	6.1			

1/ Estimated.

Source: Best's Executive Data Service, High Risk Auto Study; and National Association of Insurance Commissioners.

This inverse relationship holds true for Minnesota; there is a large voluntary substandard market here. When the percentage of premiums in the voluntary high risk market and those in the assigned risk plans are added together, the total percentage of premiums involved is 10.6 percent, exceeding the national average of approximately eight percent. [211]

It is instructive to compare Minnesota to the three compulsory insurance states. They tend to use assigned risk plans almost to the exclusion of private high risk specialist insurers due to strict regulatory laws which limit the activities of such companies. [212] Thus, all three of these states have a higher percentage of premiums sold on an assigned risk basis than does Minnesota. The total percentage of premiums involved in the substandard market was actually lower in New York and Massachusetts than in Minnesota, according to the figures in the chart above.

210. Ibid., p. 27.
211. Ibid., p. 25.
212. Ibid., p. 25.

Apparently, factors other than the degreee of legal compulsion to purchase insurance have a major role in determining the tightness of the voluntary insurance market. According to the Department of Transportation, one of these is the degree of control which the state regulatory authority has over insurance rates:

> Of late it has been recognized that state regulation of insurance pricing may adversely affect availability in the market for automobile insurance. After a careful study of the operation of rating laws, the New York State Insurance Department concluded that '. . . an open competition rating law, with appropriate safeguards, will make rates more responsive to actual experience and to competition itself and will alleviate the tight markets that exist in many lines of insurance today.' Open rating should yield a range of prices at which heterogeneous risks may be profitably insured, with insurers willing to offer insurance to most motorists. [213]

Since the Department of Transportation data on substandard insurance markets was gathered in 1966 and 1968, Minnesota has adopted a "file-and-use" type of open competition statute. [214]

In light of the strong voluntary high risk market and the open and competitive nature of the insurance business in the state, there is little reason to predict that compulsory insurance would force a large number of Minnesota motorists to enter the assigned risk plan. Of course, this does not imply that Minnesota can eliminate the entire problem of the hard-to-place driver. As the Department of Transportation put it:

> The existence of a substandard or hard-to-place market appears to be inevitable in the context of a fully competitive insurance system. Only by placing restrictions on competition through underwriting could such a residual market be reduced in size or eliminated. [215]

However, the Minnesota assigned risk plan should have the ability to equitably and efficiently provide insurance for those few persons who under the present system or under a compulsory system are unable to procure it in the voluntary market. The Minnesota plan, unlike some plans in other states, does not subsidize the drivers in it with premiums paid by good drivers. Instead it is self-supporting; the rates charged drivers in it are adequate to pay for the losses they cause. The following chart compares Minnesota's plan to those of other states:

213. Ibid., p. 78.
214. Supra, p. 5, Notes 34-36, Ch. I.
215. D.O.T., Insurance Accessibility, p. 22.

Loss Ratio Experience of Assigned Risk Plans by Jurisdiction, 1966 [216]
(Ranked by percent of 1966 registered vehicles insured in assigned risk plan)
(Figure 41)

State	Percent of Total Reg. Vehicles in Assigned Risk	Loss Ratio 1	State	Percent of Total Reg. Vehicles in Assigned Risk	Loss Ratio 1
No. Carolina*	22.2	125.3	Illinois*	.9	73.8
So. Carolina*	14.9	101.7	Tennessee	.9	105.4
New York*	7.7	120.2	Hawaii	.8	92.9
New Jersey*	5.6	116.7	West Virginia	.8	78.2
Maryland*	5.2	103.4	Georgia	.8	72.2
Louisiana*	4.1	121.7	Arkansas	.7	146.9
Virginia*	3.8	97.0	Alabama	.7	97.5
New Hamp.	3.5	95.3	Colorado	.6	73.1
Mass.*	3.4	146.2	Indiana	.6	76.9
Delaware	3.3	79.8	Idaho	.5	84.7
Dist. of Col.	3.0	77.8	Wyoming	.4	73.1
Michigan*	2.7	69.2	Ohio	.4	77.3
Connecticut*	2.7	90.8	Nebraska	.4	75.8
Vermont	2.7	99.1	Alaska	.4	84.8
Rhode Island	2.6	71.8	Missouri	.3	64.7
Maine	2.6	99.4	New Mexico	.3	64.3
California*	2.4	79.5	North Dakota	.3	99.0
Florida*	2.1	87.9	Oklahoma	.3	79.2
Texas*	2.0	96.5	Montana	.3	80.0
Mississippi	1.7	79.0	Arizona	.2	62.9
Kentucky	1.6	90.7	Utah	.2	73.0
Pennsylvania*	1.5	103.5	Iowa	.2	47.1
Oregon	1.2	86.7	Nevada	.2	66.9
Wisconsin	1.0	71.5	South Dakota	.2	63.8
Kansas	1.0	77.2	Minnesota	.2	82.4
Washington	1.0	68.5			
	*15 Principal States with largest number of Vehicles in Assigned Risk Plans			3.2%	106.6%
	35 Other States and the District of Columbia			2.0	80.0
	Total — United States			2.8%	103.4%

1/ Incurred losses as a percentage of earned premiums paid on assigned risk bodily injury and property damage liability policies.

Source: Compiled from data provided by National Association of Independent Insurers.

Although on the average, losses incurred constitute 103.4 percent of the premiums earned for all the plans in the United States, the ratio in Minnesota was only 82.4 percent. A plan with such a favorable loss ratio creates no problem of inequity for other policyholders in the state.

Although the three compulsory insurance states have very unfavorable loss ratios — incurred loses exceed 120 percent of earned premiums in all of these states — the problem does not seem to flow from the

216. Ibid., p. 47.

fact that insurance is compulsory. Rather, according to the Department of Transportation, the subsidy seems to have been purposefully arranged:

> In some of these states, loss experience of the plans reflects a conscious policy choice to provide maximum availability at relatively low rates. In the case of New York, the subsidy of assigned risk losses by standard policyholders is recognized and intentionally adopted. Although no statements of policy are available for Massachusetts and North Carolina, the reluctance of these states to raise assigned risk rates indicates that they, also, are intentionally spreading the cost of compulsory coverage by the subsidization of assigned risk losses through the rates paid by standard policyholders. [217]

However, in states where preservation of the negligence principle as a basis of distributing losses is deemed to be an important public policy objective, there would appear to be no need to subsidize the assigned risk pool. In Minnesota assigned risk rates may not be used without the Commissioner's prior approval and may not be excessive, inadequate or unfairly discriminatory. [218]

Meaningful access to the assigned risk plan is virtually guaranteed to Minnesota drivers. To assure the availability and adequacy of assigned risk coverage, the Department of Transportation has recommended the adoption of the proposal promulgated by the National Association of Insurance Commissioners, or the one suggested by the National Industry Commission on Automobile Insurance Plans (known as Plan "C"). Both provide that assigned risk eligibility standards should be modified to require only a valid driver's license and ability to pay a premium, that coverages be broadened to include higher liability limits and first party coverage, and possibly that provisions for installment premium financing also be made. [219] Minnesota has already adopted the first two of these reforms. The statute establishing the plan says that its purposes are to:

> . . . provide the guarantee that automobile insurance coverage will be available to any person who is unable to procure such insurance through ordinary methods. [220]

Coverage must be offered to all qualified applicants to the plan, and a qualified applicant is defined as a person who is a resident of the state of Minnesota and who either owns a registered motor vehicle, has a valid driver's license, or is required to file proof of financial responsibility with the Commissioner of Public Safety. [221] The participating insurers are required to make available to qualified applicants excess liability coverage with limits up to 50/100/10, medical payments coverage with a "reasonable selection of limits", and all physical damage coverages. [222]

This reform is a substantial step toward universal availability of insurance coverage, according to the Department of Transportation.

> Were Plan C or its equivalent adopted nationwide, problems of adequate access to insurance coverage would be substantially reduced. [223]

It has also been suggested that compulsory insurance may unduly raise insurance premiums; apparently, this prediction is based largely on the high rates which have for years prevailed in Massachusetts. Yet there is little, if any, logic to support the conclusion that compulsory insurance alone will necessarily result in excessive rates, as the American Bar Association has pointed out:

> Another (objection) often stated is that compulsory insurance increases claims frequency and thus pushes costs upward. Massachusetts does have a high claims frequency, and insurance costs in urban areas are high. But since neither New York nor North Carolina present a similar picture and since all three compulsory states differ in these respects as among themselves, it is probable that the true explanation underlying high claim rates and high insurance costs is a combination of demographic factors and traffic conditions. [224]

Naturally, increasing the legally approved minimum limits for liability insurance coverage may result in some increases in premiums; the actuarial studies of the "Commission Plan" are presented above.

However, it should be remembered that any cost increases as a result of the new insurance requirements are really a result of increased insurance benefits for accident victims. Professor Sajjad A. Hashmi put it well:

217. Ibid., p. 48.
218. Minn. Stat. § 65B.08 (1971).
219. D.O.T., Insurance Accessibility, p.p. 50-79.
220. Minn. Stat. § 65B.01 (1971).
221. Minn. Stat. § 65B.02 (1971).
222. Minn. Stat. § 65B.06 (1971).
223. D.O.T., Insurance Accessibility, p. 80.
224. A.B.A. Report, p. 123.

> . . . an increase in claim frequency is built into compulsory insurance. The purpose is to reimburse the innocent victims who are unable to collect when insurance is not compulsory . . . an increase in claim frequency is not the fault but the natural and desirable outcome of compulsory insurance . . . Almost every year there are states without compulsory insurance whose percentage increase in accidents is greater than any of the three compulsory insurance states.[225]

Since the purpose of compulsory insurance with meaningful limits is to assure compensation for all legally eligible victims, a slight-to-moderate price increase may be justified to achieve these ends. As has been pointed out elsewhere in this report, adequate insurance benefits cannot be free; consumers will get only as much as they pay for.

3. Conclusion

Several insurance coverage gaps of serious magnitude exist in the present system; an insufficient number of accident losses are fully distributed by insurance at the present time. Obviously, society as well as the injured victim would benefit if these losses were distributed rather than left to rest on injured individuals. Unfortunately, a relatively large proportion of motorists seem unwilling to provide high levels of third-and-first-policy coverage without legal coercion.

Compulsory liability and first party insurance can fill the gaps in the present system and may increase the total benefits available to accident victims without restricting the availability of insurance, subsidizing bad drivers, or causing excessive increases in premium costs.

E. Subrogation, Reimbursement and Coordination of Benefits and Coverages

The Commission's basic goal in this area was:

> To provide a role for subrogation and reimbursement which is consistent with the role assigned to the law of negligence in any reform scheme and to assure that the rules of coordination of benefits are simple but equitable.

This may be subdivided into two simpler goals:

(1) To develop rules for subrogation and reimbursement with respect to first party benefits which will preserve the concept of negligence as a basis for shifting loss.

(2) To develop simple and equitable rules for the coordination of various insurance benefits.

1. Subrogation

The "Commission" and "O'Neill" Plans grant the first party insurer the rights of subrogation and reimbursement, so that it may recover the benefits paid out on a first-party basis to the victim from the liability carrier of the tortfeasor in all cases where the victim's injury resulted from negligence. Such a provision would preserve insurance rate variability based on the accident-causing characteristics of the driver, and would distribute losses among insureds on the basis of their likelihood to be negligent or to cause losses.

The two alternatives to subrogation of this sort are both undesirable. The first, to allow the victim to retain both his first party benefits and his tort recovery, would mandate a windfall for a large segment of the victim population. This is clearly inappropriate since the entire new first-party system is designed to provide only basic indemnity for certain economic accident losses; it is strictly compensatory. To allow these widespread double recoveries, particularly in light of the fact that both first- and third-party insurance coverage would be compulsory, would be extremely expensive.

The other alternative is to leave the loss up to $10,000 with the first party insurer, and refuse to shift it beyond that point. This would, as a practical matter, if not technically, create a tort exemption of $10,000 and would result in an inversion of the insurance rating system. Policyholders would be forced to pay on the basis of their likelihood of suffering loss rather than their likelihood of causing loss. As one insurance executive put it:

> . . . (it) would penalize the family man with many children while the long-haul truck man will pay less.[226]

225. Sajjad Hashmi, The National Underwriters, August 16, 1968, quoted in A.B.A. Report, p. 124.
226. Thomas J. Slattery, "AIA Exec. Scores Industry Critics of Auto Proposal," The National Underwriter, December 27, 1968, p.p. 1, 4.

The Commission was told that such socially undesirable consequences have been avoided under the Massachusetts plan by the use of subrogation:

> . . . we provide for this inter-insurer subrogation.This is the only waythat we saw possible to maintain the differential between the various classes because if I am under 25, and I am hitting three people and it is always my fault — but say I never get injured — my record would be perfectly clear and it would look like I am a good driver. Meawhile these three people would have collected from their own companies, so we have to give the companies inter-insurer subrogation rights — they would come after my company — they would get paid — my company would end up showing that they paid out so much money and it would be entered on the under 25 class and they have a differential that is up about 3½ times the regular rate, and this is the only way, you see, that we can maintain these differentials. [227]

It can be seen from these comments that not only the proper rating of the individual driver, but the proper rating of whole classes, would be altered and disrupted if subrogation were disallowed, for as Victor Fanikos of the Office of the Massachusetts Insurance Commissioner pointed out, the loss experience records of the classes would be significantly disturbed:

> . . . it (subrogation) enables the department . . . to keep the differential between the classes in their proper perspective — for example, quoting now from the actual rates — in Boston, class 10, the new 1972 rate is $73.80 — that is the lowest possible rate in Boston for 4,000/10,000 coverage. That is somebody over 25, no business use, no commuting use. Now to go to our highest category — which would be class 22 — male, under 25, owner, principal operator, no driver training, his rate is $237.00 for the same exact coverage. . . . The only way our actuaries can see of preserving this differential is to have this inter-insurer subrogation because now if this kid gets in an accident, if he hits me in the rear and I collect from my own company — it doesn't appeal on his record at that stage — and if you didn't permit inter-insurance subrogation — if you didn't permit my company to go after his company — so that ultimately the loss would show up on his record or in his category . . . $2,000 that I recover does not show up in class 10 but would show up in class 22. . . . then you have the shift in the burden, the shifting of the cost that everybody is so fearful of and talks about. [228]

Such problems have developed in the Canadian provinces which have non-subrogation "no-fault plans," the Commission was told:

> There may be some small cost to the inter-insurer process of subrogation . . . this is worth it because I simply don't think that either you or we want to see a situation such as pertains in the Province of Manitoba . . . which has a pure no-fault system, complete elimination of tort liability and the result has been that two-thirds of the insurance rates in Manitoba have gone up and the two-thirds that have gone up are the so-called good drivers. The family man with a steady position and two or three children and a station wagon perhaps — his rates have gone up because you have shifted the rating emphasis which was formerly on the basis of the risk of causing loss to the risk of sustaining loss — so now this fellow whose risk of causing loss was low has a high risk of sustaining loss, because if he goes to the hospital he is going to have the biggest medical expense. He is going to have substantial salary loss. It is going to take him longer to heal because he is a little older. All of these factors — his wife might be with him in the car so they have to hire a housekeeper. All of this has resulted in a rate increase to this particular type of driving public and the 16 and 17 year old single driver, who, statistically, is the worst of all possible risks . . . becomes your better risk because his bones heal faster, he has no dependents, he has no wage loss, and from the insurance company's point of view he represents a very minor exposure. [229]

It is obvious that such a subsidy, flowing from the low-risk driver to the high-risk driver and from the owner of the private passenger vehicle to the owner of the larger commercial vehicle, would be totally inconsistent with the goal of allocating losses on the basis of negligence.

Some members of the insurance industry, notably the American Insurance Association, believe that actual subrogation of these claims is unnecessary because the same companies will be selling both first- and third-party insurance policies and that the mix of such business for most companies will result in a situation where the losses will wash; they reason that arbitration is wasteful since there would be no net cost difference

227. Testimony of V. Fanikos, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 18.
228. Ibid., p. 45-46.
229. Testimony of Robert McGowan, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, pp. 38-39.

whether or not subrogation was engaged in. They also allege that inversion of the rating structure could be avoided by the use of accident records, which would be maintained in any event.[230]

However, other industry spokesmen doubt that small insurers have a sufficient mix of business so that a plan without subrogation could succeed; they argue that even if there is no net cost difference to the insurer, subrogation should be required for loss allocation purposes on the theory that mere record keeping will not be sufficient to prevent distortion of ratings. The National Association of Independent Insurers and the American Mutual Insurance Alliance take this more conservative view of the matter.[231] In view of the importance of rating equity it is desirable to take the safer route of adopting inter-insurer subrogation and preserving the insurer's right to reimbursement from the successful tort claimant.

However, subrogation claims may be profitably removed from the courts and lawsuits on such claims be barred. There is no need to use valuable judicial resources to settle these matters, nor to force an accident victim who does not wish to pursue a negligence action to become an unwilling participant in a full-scale law suit. The "Commission" and "O'Neill" plans would require the first-party insurer, if it wished to proceed by subrogation rather than claiming reimbursement from its insured's judgment, to make use of inter-company arbitration procedures. Inter-company arbitration is well established and frequently used on a voluntary basis; it has proven itself to be an efficient, quick and inexpensive method of adjudicating the subrogation claim.[232] James Faulstich, Vice President of the N.A.I.I., told the Commission:

> Our association is in favor of mandatory inter-company arbitration, believing that this is the least expensive way and a very negligible expense at that to shift these type losses . . . subrogation is not a very expensive feature for the benefits that it produces in this loss-shifting where you have transferred the cost to the people who are responsible and negligent in motor vehicle accidents.[233]

In short, inter-insurer subrogation is consistent with the principle of preserving responsibility for negligent driving conduct, and would not result in excessive cost, delay, or inefficiency which would impede the smooth functioning of the reparation system.

2. Coordination of Benefits

The problem of coordination of benefits arises when the injured victim is entitled to receive or does receive insurance or other benefits from more than one source. The question of how first-party benefits are to be treated when the victim was injured by someone's negligence and is entitled to receive liability insurance, is also a matter of coordination of benefits. If subrogation is to be retained, the collateral source rule may not be entirely abolished; the relationship between subrogation and the refusal to mitigate damages by the amount of collateral source benefits is explained elsewhere in this report.[234]

However, certain problems arise when the accident victim is entitled to receive benefits from life insurance, health and accident insurance, wage continuation plans, Workmen's Compensation, public welfare or any one of a number of other sources, as well as the benefits of his first party automobile insurance policy.

It is true that under the present system, accident victims may receive multiple payments for medical bills and lost wages as a result of the application of the collateral source doctrine, and that some duplication of coverages will remain under a proposal which makes automobile insurance primary.[235] This multiple coverage is to be strongly discouraged where it allows the victim to actually profit from his injury. Nevertheless, reducing automobile insurance benefits to the extent of collateral source benefits could create more problems than it would solve. First, such a proposal would deprive the injured person of benefits which he had already purchased with his premium dollars. It may not be possible for the policyholder to avoid purchasing insurance policies that overlap to some extent, for he does not have the opportunity to dictate the content of the insurance policies he buys. The insured will need health and accident insurance to protect him against non-automobile accidents and illness; it is not infrequent that one family will find that it needs more than one such health policy. The employee is frequently given automatic coverage in a group health and/or

230. Testimony of Tom Hunt, Hearings of Minnesota Automobile Liability Study Commission, October 6, 1972, Minutes, pp. 46-47.
231. Testimony of James Faulstich, Hearings of Minnesota Automobile Liability Study Commission, October 6, 1972, Minutes, pp. 47-48, Testimony of David Rolwing, Ibid., p. 49; Comments of Elmer Kaardal, Ibid., p. 47.
232. Testimony of David Rolwing, Hearings of Minnesota Automobile Liability Study Commission, April 7, 1972, Minutes, p. 38.
233. Testimony of James Faulstich, Hearings of Minnesota Automobile Liability Study Commission, October 6, 1972, Minutes, p. 48.
234. Supra, p. 14, Note 7, Ch. II.
235. Testimony of Robert Keeton, Testimony of Minnesota Automobile Liability Study Commission, Hearings, April 7, 1972, Minutes, p. 26-27.

wage continuation plan as a fringe benefit of his employment. In these circumstances there is nothing the policyholder can do to prevent overlapping of the coverages; he is forced to purchase duplicate benefits if he wishes to adequately protect himself and his family from other health problems.[236] Under these circumstances it would be most inequitable to deprive the victim of the added benefits, as the American Bar Association has pointed out:

> . . . as a matter of simple justice the plaintiff should not be deprived of the benefits of his own thrift, whether that thrift took the form of buying health and accident insurance from his own pocket or of having an employment contract that involves the continuation of wages during disability.[237]

Not only would the policyholder be required to pay two premiums while only receiving one set of benefits in automobile accident injuries, but he might also find that he had exhausted all of the benefits available in his general health plan as the result of an automobile accident claim. Willis Park Rokes has stated that, many of the collateral source benefits are likely to be of the type with upper benefit limits per year that are consumed as they are used:

> . . . making automobile compensation excess coverage over collateral source benefits would required insureds to use up their sick leave, union-negotiated wage continuation benefits, health insurance, social security, retirement pay, welfare payments, disability income, Blue Cross and other available funds.[238]

The Massachusetts plan reduces automobile insurance benefits by wage continuation plan benefits and it attempts to avoid the problem of depriving the individual of benefits which he may need at a later date. However, the mechanism it uses to affect this result is cumbersome and confusing: the statute provides essentially that if the benefits are exhausted and the person needs them for another medical problem within one year after receiving his last "personal injury protection" benefits for his automobile injury, the first policy automobile insurer must pay him wage loss benefits during his subsequent incapacity in amount up to the original reduction in "personal injury protection" benefits.[239]

In spite of this provision in the Massachusetts law, there has been a general feeling, particularly among labor unions, that the law is inequitable in that it deprives them of valuable benefits. Victor Fanikos, of the Office of the Massachusetts Insurance Commissioner, testified before the Commission:

> What we notice and it is just beginning to come into effect is that the unions instead of pushing for accident or sick pay, are pushing for other types of benefits, because you see, they have taken the position and I think with some merit, that why should an auto insurance company take advantage of a fringe benefit. This is the way it is . . . They do take advantage of this wage continuation plan and there have been many union contracts negotiated in the last six months whereby they have cut back on this payout when you are sick and substituted other benefits.[240]

That solution has a most undesirable side effect of leaving the employee without any wage replacement protection in the event of illness or non-automotive accident.

Eliminating the collateral source rule with respect to automobile liability insurance payments encounters the same difficulty. Again, two premiums have been paid. In any event, there will be a windfall to one party or the other; as the American Bar Association has stated:

> If it comes down to a choice between giving the injured plaintiff the benefit of the 'windfall' or giving a credit to the negligent defendant in the form of a reduction of the damages he caused, it is the plaintiff who has better claim. A statutory change, even if acceptable to legislatures, would deprive people of the benefit of their own thrift and transfer such benefits to the negligent defendant or his insurer.[241]

Such a rule in these cases, then, would have the added disadvantage of subsidizing the negligent driver by lowering his liability insurance rates and increasing the careful driver's health and accident rates.

Second, if automobile coverage were excess, the costs of automobile accidents would not be internalized to the automobile insurance system. As discussed earlier in this report, the bulk of automobile

236. Ibid., p. 26-27.
237. A.B.A. Report, p. 91.
238. Willis Park Rokes, No Fault Insurance, (Santa Monica California: Insuror's Press, 1971) pp. 195-196.
239. Anno. Laws of Mass., Ch. 90, § 34-A (1971 Supp.)
240. Testimony of V. Fanikos, Hearings, Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 19.
241. A.B.A. Report, p. 91.

accident costs should be paid for by motorists.[242] If collateral source benefits were to be deducted from automobile insurance benefits, much of the cost of crashes would be hidden; they might appear to be costs of illness or of accidents in general. The result would be improper loss allocation and a decreased emphasis on social accounting.

S. Lynn Sutcliffe, Counsel to the U.S. Senate Commerce Committee, has commented that the importance attached to the principle of internalization should, to a large extent, determine whether first-party automobile insurance is to be primary or secondary.[243]

Naturally, abolition of the collateral source rule with respect to liability insurance benefits would also tend to divert some of the costs of motoring to other sectors of the economy and would undermine internalization perhaps to an even greater extent, since more total dollars probably would be transferred.

Third, serious administrative problems would be created if either liability or first-party automobile insurance were made secondary. It has been suggested that the mechanics of coordinating benefits might be so complex that any possible savings from the elimination of double recoveries might be offset by the administrative costs. S. Lynn Sutcliffe pointed out that it is inefficient to coordiante benefits by:

> . . . trying to create an administrative program whereby you can get certification by a health insurer that he is picking up the cost of a health part of the automobile insurance compulsory liability package. By the time you chase through all of that administrative morass it is pretty difficult to demonstrate that you will have significant price savings by going to a health insurer source versus a casualty insurer source.[244]

Related to the purely mechanical problem of administration is the need to develop procedures for discovering whether the claimant has received any collateral source benefits. In-depth investigation would be required before it could be determined with any certainty whether the claimant was secretly retaining a double recovery. The potential for fraud and inequity in this area was described by the President of the Kemper Insurance Group:

> There is also a huge potential for fraud in the concealment of collateral source benefits which, if disclosed, would reduce the amount of recovery.[245]

While this would create delay and expense even in liability claims, where an investigation of the facts by the insurer is likely regardless of the collateral source rule, the problem would be even more serious with respect to first party claims. One of the major advantages of first party insurance is that it can deliver benefits more promptly; this would be largely undermined if the insurer found it necessary to verify that no undisclosed collateral sources existed in any of the cases. The purely practical problems of coordinating benefits in this manner present a strong case against such a system.

The "Commission" and "O'Neill" Plans attempt to reduce duplicate coverage without incurring the major disadvantages listed above. First party automobile insurance benefits would be reduced only by any benefits payable under social welfare programs or Workmen's Compensation.

None of the three objections to the deduction of ordinary insurance benefits would apply here. Since the claimant would not have provided the consideration for these benefits, he would not stand to lose the value of his premium, as in the private insurance example. There is no inequity in denying the claimant a double recovery unless he has paid a double premium. Nor would internalization be so severely undermined; benefits paid under social welfare plans of this nature are generally closely tied to a narrowly defined activity, and it is often difficult to say that certain accident losses should not be considered costs of these activities rather than costs of motoring. For example, if an auto accident occurs in the course of a worker's employment, a strong argument can be made that the accident is really a cost of engaging in a business enterprise, for one of the major purposes of Workmen's Compensation laws is to assure that prices of industrial products include the cost of the inevitable injuries that will occur in industry. Nor would the administrative problems be severe with respect to these types of benefits. Eligibility for and payment of social welfare benefits, unlike private insurance benefits, is frequently a matter of public or semi-public record and the insurer would have relatively ready access to this information.

The second way in which double coverage could be reduced is to allow insureds with adequate collateral sources to purchase first party insurance which is subject to a deductible. Under this system the

242. Supra, p. 31, Notes 12 & 13, Ch. IV.
243. Testimony of S. Lynn Sutcliffe, Hearings, Minnesota Automobile Liability Study Commission, August 10, 1972, Minutes, p. 37.
244. Ibid., p. 37.
245. James S. Kemper, Jr., "Keeton-O'Connell Plan: Reform or Regression?" 6 Trial 22 (1967)

insured would have a choice and could decide for himself whether he preferred a chance for double payment to reduced premium rates.

The deductible plan is used in Massachusetts with apparent success. Deductibles of $500, $1,000 or the full $2,000 per accident are allowed, but they apply only to benefits payable to the named insured or members of his household. A deductible of $500 applying to the named insured only would reduce the insured's premium by approximately six percent; the $2,000 deductible applying to the named insured and members of his household would lower the premium rate by thirty percent.[246] A high proportion of Massachusetts insureds have chosen to buy insurance with deductible features.'[247]

The deductible plan does not result in as serious difficulties as would be likely to result if automobile insurance were made secondary by law. Since the deductible agreement and the appropriate premium adjustments are made at the time the policy is purchased rather than after an accident, the insured pays only for the benefits that he will get. There would be no advantage to the claimant in concealing his collateral sources, for he is allowed double recovery if he wishes it and he, himself, chooses the amount by which his automobile benefits would be reduced. Even the use of deductibles, however, does result in the externalization of some automobile accident costs.

3. Conclusion

The "Commission" and "O'Neill" plans seek to strike an equitable balance between the two extremes of allowing the claimant to cumulate all the benefits for which he might conceivably be eligible or totally forbidding any multiple recovery.

First and third party automobile coverages are coordinated by subrogation to preserve the negligence principle and to prevent clearly excessive recoveries. Automobile and non-automobile benefits are coordinated only where this can be done equitably and efficiently and where there is an obvious advantage to so doing. While it is not sound public policy to encourage multiple recoveries, the proper method for eliminating the problem may be to simply provide opportunities for policyholders to purchase insurance coverage that does not overlap and to provide incentives so that they will take advantage of these opportunities.

F. Applicability of Coverages

The Commission's goal in this area was:

> To assure that the coverages provided by automobile insurance are extended to as many accident victims as possible without shifting losses from one group of motorists to another in an inequitable fashion.

This is the simplest of the goals to be considered. There is no need to divide it into any sub-objectives, for the recommendations in this subject area are essentially procedural. The specific priorities of coverages and exclusions of coverage of the "Commission"and"O'Neill" plans are outlined in Chapter III of this report,[248] as are the basic reasons for applying the basic first party policy in that manner. Only a few specific items need be considered here: guaranteed access to a first party insurance policy for all injured persons entitled to receive benefits and the special treatment to be accorded commercial, mass transit, and two-wheeled vehicles.

1. Providing access for all victims.

All accident victims, except those engaged in conduct substantially more antisocial than mere negligence, should be guaranteed access to the benefits of a first party insurance policy regardless of whether they themselves were motorists and regardless of their status at the time of the accident. However, it is contrary to public policy to allow these first party benefits to be extended to persons engaging in certain egregious conduct which should not be subsidized to any extent by other motorists.

Certain issues remain to be resolved. Double coverage would result if the owner of the insured vehicle were responsible for providing first party reparations for his passengers and any pedestrians he might strike, and those same passengers and pedestrians were also covered by policies issued on vehicles owned by them or members of their households. Consequently, rules as to priority of recovery must be established. The two basic methods for accomplishing this are to have policy coverage follow the insured vehicle or to have it follow the members of the household of the named insured.

246. Testimony of Victor Fanikos, Hearings, Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 6.
247. Ibid., p. 6.
248. Supra, pp. 23-24.

If insurance were to follow the vehicle, the owner of that vehicle would provide primary coverage for any persons injured while in the vehicle and any pedestrians struck by it. If insurance follows the insureds, then the named insured's policy would provide primary coverage for the named insured and the members of their household, whatever their status at the time of the injury.

The advantages of each approach were well summarized by Richard Walsh of the U.S. Department of Transportation:

> In our final report we urge that the coverage follow the household. As a matter of fact, in the bill of the National Conference of Uniform Law Commissioners, they have made the rule that the coverage will follow the car. Largely on the grounds that the insurance industries argue that it is easier to deal with claims in that fashion. This will mean that we lose one of the, at least theoretical advantages, of the way in which we suggested, that is in every case possible, the man will be dealing with the insurance company of his choice. When I am a passenger in some other vehicle, and if we follow the rule that the coverage follow the car — I am going to have to turn to that insurer for my reparations.[249]

The advantage of allowing the insured to choose the insurance company with which he will deal if he becomes an automobile accident victim is particularly important if substantial deductibles to the first party policy are allowed. If the insurance follows the household the deductibles can be utilized more fully, for the purchaser can be certain that the deductible will apply whether he was injured while in his own vehicle or while in another. Thus he should be able to obtain this coverage at lower rates than if the insurance followed the vehicle and the purchaser could use his deductible only if injured in his own vehicle.

These considerations seem more important than the slight improvement in claim processing efficiency which might accrue if the insurance followed the vehicle.

2. Commercial and Mass Transit Vehicles

Such vehicles present particular problems with respect to first party coverage. As is mentioned earlier in this report,[250] care must be taken to assure that the owners of commercial vehicles bear the high costs of the losses caused by them. While neither large commercial vehicles nor their occupants are likely to be seriously injured in an accident with a private passenger vehicle, the automobile and its occupants will probably suffer severe damage. Council of State Government data indicates that for every two deaths of truck drivers in truck-automobile accidents, forty-eight deaths occur among the occupants of the automobiles.[251]

The need to preserve equitable allocation of the losses caused by these larger vehicles was pointed out by Roger Fisher, President of the Travelers Insurance Co.:

> . . . if they (commercial vehicles) are going to be under the no-fault plan then it should be similar to Massachusetts where there would be a chance to shift back on a fault basis against that particular vehicle. If you bring them in with no loss shifting at all I think it is very obvious that you are suddenly going to put a great bit of exposure transferred from commercial vehicles to the private passenger — because that is where the people are and the trucks today are responsible under the fault basis for a great many private passenger accidents.[252]

Retaining the concept of negligence and allowing full subrogation rights, solves this problem to a large degree. Yet, such provisions only apply to shifting losses from first party to third party insurance. Additional provisions are needed to assure that the commercial vehicle's first party policy and not the first party policy of an ordinary individual will reimburse the major portion of losses involving commercial vehicles in cases where no loss shifting on the basis of negligence will occur.

To achieve this result, the commercial vehicle owner must have the responsibility to provide primary first party protection for the benefit of all employees, passengers in the vehicle, and pedestrians injured by it. In that way more of the costs of using these vehicles can be placed on the owners. This rule reflects both the high risk that these vehicles will cause losses and the fact that a certain number of accidents and consequent injuries may be viewed as a necessary cost of doing business.

Mass transit vehicles present a slightly different problem. They are totally eliminated from the first party plan because their high volume results in excessive loss exposure. It has frequently been pointed out

249. Testimony of Richard Walsh, Hearings, Minnesota Automobile Liability Study Commission, February 11, 1972, Minutes, p. 81.
250. Supra, pp. 79-80.
251. Council of State Governments, quoted by Elmer Kaardal, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, Minutes, p. 25.
252. Testimony of Roger Fisher, Hearings of Minnesota Automobile Liability Study Commission, March 10, 1972, p. 25.

that if bus companies were required to provide first party insurance for the benefit of all their riders, the costs would be prohibitive. [253] Such a result would be particularly inequitable because there is no indication that mass transit vehicles are unusually dangerous; instead the high costs seem to flow solely from the large number of passengers they accommodate. The better alternative is to require passengers in these vehicles to seek first party coverage from their own policies.

3. Motorcycles.

Motorcycles present the most complex problem of all. While the occupants of an automobile are not likely to be injured in a crash with a motorcycle the rider of the cycle could be expected to sustain serious injuries in even a low speed crash.

The following data from the Minnesota Department of Public Safety shows how high the rate of personal injury is among crashes involving these small vehicles:

Minnesota Motorcycle Crashes [254]

(Includes motor bikes, motor scooters and other motorized two-wheel vehicles)
(Figure 42)

	1965	1966	1967	1968	1969	1970	1971
Number vehicles involved in:							
Total crashes	1,400	2,058	1,610	1,338	980	1,291	1,723
Fatal crashes	28	44	24	40	26	40	48
Personal injury crashes	1,255	1,813	1,373	1,054	745	1,026	1,351
Property damage crashes	117	201	213	244	209	225	324
Number killed	30	44	25	40	32	43	51
Number injured	1,601	2,359	1,832	1,394	1,217	1,262	1,628
Registered motorcycles	39,395	49,775	55,892	60,886	61,199	71,914	90,150

It can be seen that nearly eighty percent of the motorcycle accidents involve personal injuries in 1971 while only about thirty-seven percent of the total motor vehicle accidents in Minnesota resulted in such injuries in the same year. [255]

That the rates of first party insurance coverage for motorcycles would be high is obvious from these unfavorable loss statistics. Availability of coverage might also be restricted. The National Association of Independent Insurers argues:

> It is our considered opinion that the inclusion of motorcycles in any 'no-fault' program, even a limited program, must have a very adverse effect on the cost of motorcycle insurance — much more so than insurance covering other types of motor vehicles. The effect can be so adverse, in our estimation, as to result in a loss of the insurance market for motorcycles and even to price motorcycle ownership out of the reach of most persons or, in fact, to encourage operation of motorcycles without insurance. [256]

They sugest that such unfortunate results have already come about in Delaware where first party insurance is required for motorcycles:

> Of the states that have enacted 'No Fault' laws, to date, only Delaware saw fit to include motorcycles directly within the scope of the law, a circumstance which saw a virtual drying up of the motorcycle insurance market in that state when the law went into effect on January 1, 1972. [257]

The Commission was told that motorcycle premiums rose to a minimum of $900 a year in Delaware soon after the adoption of the law. [258] Nevertheless, it will be remembered that a major goal of an effective reform plan, is to provide compensation for injured accident victims insofar as it is possible to do so. The frequent and severe losses caused by motorcycle accidents indicate a need for reparation. However, the

253. Walter S. Jeffrey, "Is Automobile Insurance Doing the Job," Underwriters Review, November 1967, p. 16-18.
254. Minnesota Department of Public Safety, Facts on Motor Vehicle Crashes, p. 17.
255. Ibid., p. 7.
256. Statement of the National Association of Independent Insurers With Respect to the Inclusion of Motorcycles in No-Fault Laws, June 21, 1972, p. 7.
257. Ibid., p. 7.
258. Testimony of Gordon Nesvig, Hearings of Minnesota Automobile Liability Study Commission, May 5, 1972, Minutes, p. 28.

unusual characteristics of motorcycles mitigate the need for compensation to victims to a certain degree for two basic reasons suggested by the NAII:

> . . . (Motorcyclists) have recognized the extraordinary hazard involved in motorcycle riding and are willing to assume the risk themselves, much as other sports participants do. Moreover, the passenger hazard has not been as much a factor in motorcycle operation as it is in the operation of automobiles and there has been, therefore, less incentive for a motorcyclist to purchase medical payments coverage to protect passengers than there is for the owner of an automobile. [259]

Thus a complete guarantee of first party benefits is not as important in the case of motorcycles as in the case of private passenger vehicles. This fact suggests the desirability of the compromise solution offered in the "Commission" and "O'Neill" plans.

Although motorcyclists would be required to purchase the basic first party policy, insurers would be required to allow any customer who wished to do so to purchase this coverage subject to a deductible of $1000 per person per accident. Thus cyclists could continue to assume the risk of the smaller losses, but could be certain the funds would be available to pay medical bills or lost wages in the event of a serious injury. The deductible, it is hoped, will also allow the owners of motorcycles to purchase insurance in the voluntary market at a more reasonable cost.

It must also be remembered that those recommendations contemplate the retention of the tort system and the full use of subrogation to reimburse the first party insurer for any benefits paid to compensate for losses caused by the negligence of another. Since it has been estimated that a large majority of the automobile-motorcycle accidents in Minnesota are caused by the negligence of the automobile driver,[260] it would seem that a large percentage of the losses paid by first party motorcycle insurers would be shifted back to automobile liability carriers.

Because of this factor, it is perhaps, inaccurate to predict what would happen to Minnesota rates on the basis of the Delaware experience. The Delaware statute does abrogate the cause of action in negligence to the extent of the first party benefits, [261] and, thus; the first $10,000 of loss in each motorcycle accident remains on the first party insurer. The greater loss shifting effect of the Commission's proposal should have a significant effect on the premium rates for motorcycle coverage.

4. Conclusion

The "Commission" and "O'Neill" plans attempt to organize the application of first party insurance benefits so that all victims entitled to recover can be assured that a policy will cover them in the event of an accident. The priorities of recovery have been designed to allow the individual maximum freedom in choosing both the insurer and the insurance policy that will cover his losses.

In the case of special vehicles with unusual loss-causing characteristics or unusual loss-sustaining potentials, sufficient insurance should be provided to indemnify the majority of the victims' losses without raising costs to an unacceptable level and without creating a situation where one group of motorists would be subsidized by another.

259. N.A.I.I. Statement, p. 6.
260. Testimony of Gordon Nesvig, Hearings of Minnesota Automobile Liability Study Commission, May 5, 1972, Minutes, p. 27.
261. Supra, p. 7, Figure 1, Note 55, Ch. I.

CHAPTER V

DISSENTING AND ADDITIONAL VIEWS OF COMMISSION MEMBERS

The views expressed in this Chapter are those of Commission members who entirely or substantially reject the recommendations contained in the "Commission Proposal" and the "O'Neill Proposal" and the references drawn from the data presented in Chapter IV of this report.

These members all agree that the right to sue for negligence in automobile accident cases must be abrogated to some degree. However, they disagree regarding the extent of such reform. Consequently two separate plans are included in this Chapter; the "Knutson-Pillsbury Proposal", which urges the adoption of the Uniform Motor Vehicle Accident Reparation Act, and the "Olson-Kaardal Proposal", which suggests a threshold-type "no-fault" law.

A. The "Knutson-Pillsbury Proposal"

1. The Minority Report

For the reasons stated herein, the undersigned members of the Auto Liability Study Commission respectfully dissent from the recommendations made by a majority of the members of the Commission. As an alternative, we urge the 1973 session of the Minnesota Legislature to enact the Uniform Motor Vehicle Accident Reparations Act, as drafted by the National Conference of Commissioners on Uniform State Laws and approved by it and recommended for enactment in all of the States.

Recommendations of a Majority of the Members of the Auto Liability Study Commission. It is our sincere belief that the recommendations of a majority of the members of the Commission are based upon a number of assumptions which indicate that much of the voluminous testimony concerning the inefficiency and ineffectiveness of the present auto liability system to compensate automobile accident victims in a humane way, and the desires of the insurance-buying public to protect itself, at a reasonable cost, from economic loss arising out of automobile accidents were ignored. In its summary of the Commission's recommendations (Chapter III), the majority report reaches what we believe is an erroneous conclusion, namely, that the best interests of insureds and automobile accident victims "are seldom coextensive and are frequently in conflict." It is our belief that the vast majority of automobile accident victims are also insureds, albeit liability insureds, and that the interests of insureds and automobile accident victims are, indeed, anything but mutually exclusive. The interest of insureds is to buy the best possible protection at the lowest possible cost, and the interest of automobile accident victims is to be assured of protection from losses arising out of automobile accidents. Neither of these goals is accomplished by the majority recommendations.

It is our belief that these conclusions may have been reached because the Commission, rather than looking at the inefficiency of the present auto liability insurance system in the aggregate, looked at the ability of the present system to respond to a particular accident victim in a satisfactory manner. Unfortunately, this approach ignores the uncontroverted findings of the Department of Transportation Automobile Insurance and Compensation Study, which found that, in the aggregate, those with minor injuries are grossly over-compensated and those with significant injuries are grossly under-compensated, and that this constitutes a significant and fatal defect in the present automobile insurance mechanism. The recommendations of a majority of the members of this Commission do nothing to eliminate the possibility of overpayment to those with minor injuries, and do little to assure adequate compensation for those suffering major injuries. Paradoxically, the failure of the majority's recommendations to rectify these deficiencies of the present system is accompanied by a substantial estimated **increase** in the cost of automobile insurance in Minnesota.

The majority justifies its failure to place any limitations on tort liability by asserting that to do so would do violence to the concept of individual responsibility. We feel that the individual responsibility, while a good and desirable concept, has been in practice so strongly shifted to insurance companies that the concept, per se, has no realistic bearing on the individual and his driving care or lack of it. The majority further

rationalizes that the auto insurance mechanism presently in use in Minnesota does not have problems as significant as those which occur in other states, without any substantiation of that claim. It further states that any minor problems which may exist in Minnesota "may be dealt with without sacrificing the advantages of tort law" without giving any indication of what advantages the present tort system offers for Minnesota drivers, in the aggregate, as opposed to isolated examples where an advantage may be found.

We agree with the majority that excessive general damages are occasionally recovered in automobile accident cases, but we disagree that the use of threshholds must cause results that are arbitrary and unjust. Indeed, we believe that the threshhold contained in the Uniform Motor Vehicle Accident Reparation Act, which we support, is much less arbitrary and more just than the ability of the present automobile insurance system to respond to an individual's admitted right to general damages in certain cases only where the individual is fortunate enough to have been injured by a person carrying liability limits which are adequate to pay the deserved general damages.

In summary, it is our belief that the legislature should adopt an automobile reparations act which protects all automobile accident victims, whether or not at fault, from serious economic hardship as a result of an accident, and that this is economically feasible only if some limitations are placed on tort actions for injuries sustained in automobile accidents. Because the majority of the members of this Commission have premised their recommendations on erroneous assumptions, their basic conclusion with respect to the lack of necessity for eliminating tort is necessarily defective.

An Alternative Proposal. As we stated at the outset, we believe that the legislature should enact the Uniform Motor Vehicle Accident Reparation Act promulgated by the National Conference of Commissioners on Uniform State Laws. A reasonably concise summary of the major features of this Act is attached to this Minority Report. This Act was drafted by lawyers from every state in the nation, with financial assistance being supplied by the Ford Foundation and the United States Department of Transportation. The Commissioners had the advantage of input from various private groups, as well as from elected officials representing the Council of State Government. It is the belief of the undersigned that the Act which was promulgated by the National Conference of Commissioners in August of this year is a complete proposal which represents thoughtful consideration and careful drafting to accomplish the goal of rectifying the serious deficiencies in the present automobile insurance system, all of which were well documented by the Department of Transportation Study of the present system.

The drafting of any proposal which would accomplish significant reform in the automobile insurance system is necessarily complex; the Uniform Motor Vehicle Accident Reparation Act attests to the inability to do so in a few short pages and still "cover all the bases". We believe that the Commissioners have done a superb job of drafting a uniform act which accomplishes what must be the goal of any reform of the auto insurance system, namely, to reduce the inefficiencies of the present system and to make available a reasonable level of benefits for all automobile accident victims at the lowest possible cost. The recommendations of a majority of the members of this Commission accomplish none of these goals. We must, therefore, dissent from the majority's recommendations and urge the enactment of the Uniform Motor Vehicle Accident Reparation Act so that the interests of all Minnesotans will be furthered.

Notwithstanding the very generous minimum coverages required under the Uniform Act, the cost of providing these coverages is indeed reasonable. If the Uniform Act is enacted in Minnesota, we are informed that the average Minnesota policyholder would receive an 8% **reduction** in his insurance premiums. This assumes that the average policyholder presently carries 25/50 bodily injury liability coverage, 10/20 uninsured motorist coverage, $1,000 medical pay coverage, $10,000 property damage liability coverage, full comprehensive coverage, and $100 deductible collision. This must be contrasted with the substantial increase in the cost of automobile insurance which would result from the majority's recommendations.

Joseph P. Graw
Howard A. Knutson
George S. Pillsbury

2. Statement By Commission Chairman Senator George Pillsbury

As chairman of the Minnesota Automobile Liability Study Commission I have consistently made an effort to maintain an unbiased opinion and objective position on the matter of automobile insurance in the State of Minnesota.

Now that we have heard all the testimony available to date on this subject and the Commission's recommendations have been made, it is clear to me Minnesota citizens would be best served if tort action, except in the most extreme circumstances, were eliminated. This has been recommended in the UMVARA proposal (Uniform Motor Vehicle Accident Reparation Act) presented by State Representative Howard Knutson.

Minnesota citizens will not be well served by what the majority of the Commission members have recommended. The proposal, similar to the Minnesota Bar plan, simply provides for additional first party coverage and has failed to address itself to the excessive costs of litigation and court action.

More benefits are included yet the cost is significantly higher and outweighs the benefits.

The UMVARA proposal which I am supporting as a minority report rectifies many of the problems inherent in our present tort system. Accident victims will be better compensated, more quickly and at a lower average cost than the present system.

As chairman I believe the Commission's recommendations have well served the motoring public by showing the added costs of combining first party insurance without any limit on tort action. The Legislature and Minnesota citizens now have the data necessary to make an informed and proper decision.

3. Summary of the Uniform Motor Vehicle Accident Reparations Act [Official Draft Adopted August, 1972]

Compulsory — Yes. Owner of a motor vehicle registered or operated in this state must continuously maintain security for payment of tort judgments and basic reparation benefits under this act — Section 7(c). Liability limits are $25,000 for bodily injury to any one person as a result of any one accident (subject to no aggregate limit) and $10,000 property damage as a result of any one accident — Section 10. Pre-registration requirement may be imposed by states — Section 7(j). Penalty for noncompliance is maximum of $300, or 90 days, or both — Section 37.

Vehicles Included — Private passenger — Yes — Section 1(a)(7).
Public passenger — Yes — Section 1(a)(7).
Commercial — Yes — Section 1(a)(7).

First Party Benefits —

a) **Allowable expense —**

i) **Medical** — Unlimited. All reasonable medical expenses, including rehabilitation and rehabilitative occupational training. No time limit — Section 1(a)(5)(i).

ii) **Funeral** — Up to $500 for expenses related to funeral, cremation and burial — Section 1(a)(5)(i).

b) **Work loss; replacement services loss; survivor's economic loss; and survivor's replacement services loss** — Up to $200/week for all such loss attributable to the injury of any one person. No time limit or aggregate dollar limit. If earnings are seasonal or irregular, weekly limit will be apportioned on an annual basis — Section 13.

i) **Work loss** — Loss of income from work, plus expenses incurred by injured person (especially a self-employed person) in obtaining services to replace those he would have performed for income, minus income from substitute work which injured person did, or could have performed, after injury — Section 1(a)(5)(ii). If work loss benefits are not taxable income, value of tax advantage (not to exceed 15% of loss of income) shall be subtracted from benefits — Section 11(b).

ii) **Replacement services loss** — Expenses incurred by injured person **beginning one week after injury** in obtaining services to replace those he would have performed gratuitously for the benefit of himself or his family — Sections 1(a)(5)(iii), 12.

iii) **Survivor's economic loss; survivor's replacement services loss** — "Contributions of things of economic value," excluding services, which deceased would have given to survivors, plus expenses incurred in obtaining services to replace those that decedent would have performed for benefit of survivors. Benefits to

survivors shall be reduced by expenses which survivors avoided because of decedent's death — Section 1(a)(5)(iv), 1(a)(5)(v). "Survivors" are to be defined by reference to the wrongful death statutes of the various states — Section 1(a)(12).

Tort Exemptions; Limitation on General Damages — Section 5(a) abolishes tort liability arising from the ownership, maintenance or use of a motor vehicle within this state, except as to liability for:

(1) Damages resulting from an uninsured motor vehicle;
(2) Personal injury or property damage resulting from an act or omission arising in the course of a business of repairing, servicing, or otherwise maintaining motor vehicles;
(3) Damages resulting from intentionally caused harm;
(4) Physical damage to property other than a motor vehicle and its contents;
(5) Physical damage to a motor vehicle and its contents arising in the course of a business of parking or storing motor vehicles;
(6) **Special damages** for work loss, replacement services loss and survivor's loss which were not recoverable as basic reparation benefits because of Section 13's $200/week limit **and** which occurred after the injured person was disabled for more than 6 months, or after his injury-caused death; and
(7) **General damages** in excess of $5,000, but only if the accident causes death, significant permanent injury, serious permanent disfigurement, or more than 6 months of "complete inability of the injured person to work in an occupation." The quoted phrase is defined as the "inability to perform, on even a part-time basis, even some of the duties required of his occupation, or if unemployed at the time of injury, of any occupations for which the injured person was qualified."

In effect, this section provides that a person who is held liable for general damages for one of these four reasons is entitled to a $5,000 deduction from his liability for general damages.

Benefits — Primary or Secondary — Basic and added reparation benefits are primary, but social security, workmen's compensation and state-required temporary, nonoccupational disability benefits are subtracted — Section 11(a).

Insurance Follows Family — Yes. Except for occupants or drivers of vehicles used in business of transporting persons or property, and employees driving or occupying vehicles furnished by an employer, the policy under which the injured person is a basic reparation insured applies to his injury — Sections 4c(1), 4(a), 4(b). If an occupant or driver is not a basic reparation insured, the policy applicable to such person's injury is the policy covering the vehicle — Section 4(c)(2). A nonoccupant not otherwise covered is protected by the policy covering any vehicle involved in the accident — Section 4(c)(3).

Subrogation — No. An insurer providing basic or added reparation benefits shall not be subrogated to the rights of a recipient of such benefits to the proceeds of his claim or cause of action for general damages (i.e. in those cases arising under the four "serious injury" exceptions — Section 5(a)(7)) — Section 6(a).

Whenever a person entitled to basic or added reparation benefits has a cause of action against any other person for breach of an obligation or duty causing the injury, (e.g. a person outside the system) the insurer **is** subrogated, **and** has a separate cause of action, to the extent that the insurer has paid, or has become obligated to pay, such benefits, and that special damages equivalent to such benefits are recoverable — Section 6(b).

An insurer paying basic or added reparation benefits for personal injury or property damage has a right to **indemnity** against a person who has converted, or has intentionally caused harm with, a motor vehicle involved in an accident for: benefits paid; cost of processing claims for those benefits; and attorneys' fees and other expenses of enforcing the right of indemnity — Section 6(c).

Property Damage — Basic reparation benefits do not cover physical damage to property — Section 15. However, tort liability is not abolished for property other than a motor vehicle and its contents — Section 5(a)(4).

Added Reparation Benefits — Commissioner **may** require insurers to offer specific added reparation benefits: for loss excluded by limits on hospital charges, funeral, cremation, and burial expense; work loss; replacement services loss; and survivor's economic and replacement services loss; and additional benefits for damage to property; loss of use of motor vehicles; and noneconomic detriment — Section 16(a).

Triple Option — Insurers who provide first party benefits **shall** offer additional first party benefits for: motor vehicle collision damage, subject to a $100 deductible; and such damage only to the extent the insured

has a valid claim in tort against another identified person (or would have had such a claim, if tort liability had not been abolished under Section 5(a)(4)) offered both with and without a $100 deductible — Section 16(b).

Added reparation benefits are payable for injuries or damage suffered in this state or anywhere in the United States or Canada — Section 16(e).

Optional Deductibles and Exclusions — Insurers **shall** offer: (1) deductibles of $100, $300, and $500 (allocated equally among 2 or more insureds under one policy if they are injured in the same accident); (2) a deductible of $1,000/accident for an occupant or passenger on a two-wheeled motor vehicle; and (3) an exclusion of 10% of work loss, replacement services loss, survivor's economic and replacement services loss. These deductibles and exclusions are applicable only to named insureds and their household relatives, and must be accompanied by reduced premium rates — Section 14(a).

Payment of Benefits — Payable monthly as loss accrues. Overdue if not paid 30 days after receipt of proof of loss by insurer. Overdue payments bear interest at 18% per annum — Section 23. If claimant recovers overdue benefits in a suit, or after notifying insurer that claimant has retained an attorney, insurer must pay reasonable fee to claimant's attorney — Section 24.

Lump Sum and Installment Settlements; Changed Circumstances — Lump sum and installment settlements up to $2500 permitted. Approval of court required for settlements in excess of $2500. Installment settlement may be modified in future if materially changed circumstances warrant — Section 26.

Lump Sum and Installment Judgments; Changed Circumstances — In an action by a claimant, judgment may be entered for lump sum or installment payment for work loss, replacement services loss, and survivor's economic and replacement services loss which would accrue after the date of the judgment. A lump sum judgment must be based upon a finding that: it will contribute to injured person's health or rehabilitation; present value of such benefits does not exceed $1,000; or both parties consent and award is in claimant's best interest. An installment judgment may be entered only for a period in which the court can reasonably determine future net loss; installment judgment, like installment settlement, may be modified in future if materially changed circumstances warrant.

Judgment may also be entered for reasonable cost of medical treatment if it is presently foreseeable that such treatment will be required in the future — Section 27.

Availability of Insurance — Commissioner shall adopt a plan to assure that liability and basic reparation motor vehicle insurance will be available to all applicants required to provide security under this act — Section 35(a). All insurers authorized to write liability and basic reparation motor vehicle insurance in this state must participate — Section 35(c). Commissioner must first adopt or approve rates and rate modifications under the plan to assure that they are reasonable and not unfairly discriminatory among applicants — Section 35(d).

Allocation of Burdens — Provides that basic and added reparation insurers, and motor vehicle owners suffering uninsured vehicular damage, are entitled to proportionate reimbursement from other insurers so that the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injuries or vehicular damage due to differences in: weight; occupant-protection devices; characteristics; or regular uses — Section 38(a).

When Commissioner determines that adequate statistical information is available, he may establish reimbursement system based upon pooling, reinsurance, or another means of reallocation in lieu of case-by-case reimbursement. Insurers may voluntarily enter into reimbursement agreements subject to approval by the Commissioner. If such agreements are entered into, the Commissioner may apply his system only to insurers who have not entered into such agreements, instead of applying it to all insurers — Section 38(c).

Case-by-case reimbursement systems, based upon fault, for privately owned automobiles will not be established or approved by the Commissioner. Other case-by-case reimbursement claims are to be submitted to arbitration if not settled by agreement — Sections 38(d), 38(e).

Alternative Allocation System — If, in a particular case, there is no applicable reimbursement system established by agreement among insurers and there is no such system adopted by Commissioner, then allocation is to be made in accordance with weight ratio formula — Section 39.

Assigned Claims Plan — If insurers fail to organize and maintain such a plan subject to approval of Commissioner, the Commissioner shall organize and maintain the plan. All insurers writing insurance under this act must participate — Sections 18, 19.

Evidence — Insurer has right to petition court for physical or mental examination of injured person seeking basic reparation benefits — Section 32(a). Claimant or insurer has right to disclosure of facts about injured person's work and medical history — Section 33.

Out-of-State Application — Yes. Basic reparation benefits are payable to insured, and to driver and other occupants of insured's motor vehicle — Section 2(b).

Out-of-State Motorists — Yes. Act applies to motor vehicles "registered or operated" in this state. Penalty provision applies to owner of motor vehicle "when he knows or should know that he has failed to comply with" security requirement — Section 37.

Rates — Governed by applicable state law — Section 40.

4. Minnesota Cost Projections for UMVARA

Minnesota Private Passenger Premium Cost Estimates
For Uniform Motor Vehicle Accident Reparations Act
by C. Arthur Williams, Dean of the School of Business Administration, University of Minnesota

According to estimates prepared for the National Conference of Commissioners on Uniform State Laws the premium "savings" in Minnesota under UMVARA for a person currently purchasing a common package of coverages would range from a 15 per cent savings to a 16 per cent increase. This commonly purchased package includes the following coverages:

$25,000/$50,000 Bodily injury liability insurance
$10,000/$20,000 Uninsured motorists coverage
$1,000 Medical payments insurance
$10,000 Property damage liability insurance
$100 deductible Collision insurance
Comprehensive insurance

Including a $100 deductible provision applicable to economic losses would produce "savings" of 18 per cent to -10 per cent. With a $300 deductible the savings would range from 21 per cent to -6 per cent; with a $500 deductible from 23 per cent to -3 per cent.

These "savings" estimates for Minnesota are based on (1) countrywide estimates prepared by actuaries representing three trade associations and (2) the state estimates calculated by one of these three associations. The three associations are the American Insurance Association (AIA), the American Mututal Insurance Alliance (AMIA), and the National Association of Independent Insurers (NAII). Only the NAII actually prepared estimates for Minnesota.

The three countrywide estimates are as follows:

AIA — 17 per cent savings
AMIA — 7 per cent savings
NAII — 10 per cent increase

These estimates assume that property coverage premiums would be reduced 8.4 per cent because the elimination of tort liability for damage to automobiles would subject all collision losses to a $100 deductible. If it is assumed that the insured would purchase coverage that would enable him to collect from the other driver if that driver were at fault, the savings would be reduced about 5 percentage points.

The three estimates differ primarily because of differences in the following assumptions:

1. Increase in claim frequency (65 per cent increase expected by AMIA and NAII, 27 per cent by AIA)
2. Proportion and average dollar cost of long-term disability and death claims (AMIA and NAII assume higher costs than AIA)
3. Assigned claims costs (NAII and AMIA assume such costs, AIA assumes none)
4. Reduction in loss adjustment expenses (NAII assumes no reduction)
5. Residual tort liability costs (NAII assumes much higher costs than the other two associations.)

All three trade associations agree that premium savings will vary among the states but disagree on the extent of this variation. Factors affecting these relative savings are (1) whether the state has a guest statute, (2) whether the state is an urban or rural state, which affects the proportion of single-car accidents, (3) the proportion of tort liability settlements paid for general damages, (4) whether the state has enacted compulsory temporary disability insurance legislation, and (5) the mix of bodily injury and property coverage premiums.

NAII estimates that under UMVARA premiums in Minnesota will increase 16 per cent. If the variations among states assumed by NAII is correct, the AIA countrywide estimate suggests savings in Minnesota of 12 per cent. The derived AMIA estimate for Minnesota is 2 per cent savings. If the variation among the states is half the variation assumed by the NAII, the three estimates are as follows: AIA 15 per cent savings, AMIA 4 per cent savings, and NAII 13 per cent increase.

These estimates are described in more detail in a 1972 report submitted to the Special Committee on UMVARA of the National Conference of Commissioners on Uniform State Laws. This report also explains the effect of variations in UMVARA provisions.

Minnesota No-Fault Automobile Insurance — UMVARA Average Premium Comparisons
Prepared by Robert A. Brian of Aetna Life and Casualty
(Figure 43)

Coverage	Present System	UMVARA
25/50 Bodily Injury Liability	$87.51	$82.62
Basic Limits Uninsured Motorists	5.00	-
$1,000 Medical Payments	9.11	-
$10,000 Property Damage Liability	49.09	4.91
Comprehensive — Full Coverage	28.21	28.21
Collision — $100 Deductible	74.54	74.54
Basic Property Protection (Full Coverage)	-	44.18
(Pays $100 deductible in those cases where the insured is not at fault.)	$253.46	$234.46
		-7.5%

The exhibit displays our cost estimates for UMVARA in Minnesota. Note that the bottom line savings estimate is 7.5 per cent of the premiums for all coverages. The savings on personal injury coverages of Bodily Injury Liability, Uninsured Motorists, and Medical Payments is 19 per cent. Savings are not projected for property damage coverages; the Property Damage Liability reduction is transferred to a full coverage first party Property Protection coverage.

The data base for this costing estimate is that underlying the American Insurance Association's Complete Personal Protection Plan as presented in the "Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations". The costing study of principle reference was that prepared by the AIA earlier this year for the National Conference of Commissioners on Uniform State Laws.

Consideration was given to the adjusting of data to Minnesota conditions in two principle areas. The first area was that of estimated claim frequency expectations under No-Fault. The AIA data contains an estimate frequency increase of 27 per cent. After considering this item carefully, the 27 per cent increase was maintained in the Minnesota costing. The reasoning was that while Minnesota is a more rural state than those studied by AIA, it nevertheless does not currently have a Guest Law, it does have a Comparative Negligence Law, and interspousal suits are permitted. It was estimated that these latter factors offset the first and, therefore, the 27 per cent frequency factor was maintained.

The other area of principle concern was that of savings due to the reduction of payments for General Damages. The Automobile studies of the United States Department of Transportation indicate that Minnesota insurance rates contain a lesser portion of general damages than other states in the study. This analogy would also hold true if Minnesota were to be compared with states studied by AIA. Therefore, an adjustment was made in this area to reflect the lower savings.

B. The "Olson-Kaardal Proposal"

1. Position Paper by Senator Alec Olson

After a year of studying the automobile accident reparation system we have concluded that the citizens of Minnesota both want and need a first-party, no-fault automobile insurance system. The terms first-party and no-fault are far from synonymous: "first-party means simply that the accident victim recovers under his own insurance policy rather than the policy of the other vehicle involved in the accident, while

no-fault necessarily implies that the concept of negligence will be totally or partially eliminated as a criterion for shifting and distributing losses. Thus it is entirely possible to have a third-party no-fault system with cross-over strict liability where all victims recover without regard to fault from the insurance of the other driver or a first-party fault system where negligence is retained although victims originally recover from their own insurance policies.

The recommendations promulgated by the majority of the Commission do provide for first party insurance, they do not, as the majority reports itself tacitly admit, create a no-fault system. Thus the Commission's proposals should not be confused with modified no-fault plans such as the Massachusetts law: the essential nature of the two types of plans is very different. Though the changes made in Massachusetts were limited in scope, they were from the point of view of legal theory most significant; fault is no longer an essential factor in making automobile accident reparation decisions in Massachusetts. In the plans developed by the majority of the Commission, fault is still predominent and still determines not only what reparations are to be made, but also who will ultimately bear all automobile accident losses.

The Commission's plans make no fundamental changes in the present system, all they do is add a compulsory first-party medical payment and wage loss insurance policy on top of the existing structure. When the true nature of these plans is thus made clear, it is obvious that they cannot improve the automobile accident reparation environment in the state of Minnesota, rather they will increase the expense, wastefulness and inequity of the present system.

Since lack of compensation, inequitable distribution of compensation among claimants and the waste of premium dollars on case by case determinations of fault flow from the concept of negligence, they cannot be eliminated by a plan that leaves the tort law intact. The ultimate test of the effectiveness of any reform scheme is how it treats the negligence action.

We believe that some tort limitations are absolutely essential to reform, for it is through such limitation that present insurance benefits can be redistributed to provide a reasonable level of compensation for all automobile accident victims and not merely the fortunate few who can prove negligence. Since benefits are unevenly distributed in the present system with claimants with minor injuries being seriously overcompensated while seriously injured claimants go largely uncompensated it is clear that a tort limitation and a tort limitation alone can redistribute benefits. When new benefits are simply added on top of existing ones the problem of maldistribution remains untouched while costs soar. Redistribution of existing benefits, however, would be both economically efficient and just for the present insurance rates are adequate to produce some economic loss benefits for all if waste were trimmed and the excessive payments now made to some victims eliminated.

Thus some limitation of tort is the crux of the whole automobile accident reparation reform controversy. We cannot subscribe to any scheme that leaves the tort system in wholly unchanged.

Once the decision to limit tort has been made, setting actual level of the exemption is largely mechanical. The only question which remains to be asked at that point is how much of the present general damage payments made to claimants with less serious injuries must be shared with presently uncompensated and undercompensated victims in order for all victims to have some basic security against the economic losses of automobile accidents.

We cannot recommend to the Minnesota Legislature the "Commission" and "O'Neill" proposed changes in our auto reparation system which all actuarial studies agree will increase auto liability premiums. We, likewise, cannot recommend UMVARA because actuarial projections indicate unacceptable premium increases for basic policies. The "Commission" and "O'Neill" recommendations fail in that the basic need to limit tort recovery is absent. UMVARA, on the other hand, will subject Minnesota auto owners to unnecessary premium increases by its failure to limit benefits to levels that will benefit the vast majority of auto accident victims.

Since insurance must be compulsory under any "no-fault" system, the cost consideration must begin with the individual who can afford only to purchase the minimum package. We learned that twenty per cent of Minnesotans carry minimum insurance and over ten per cent of the vehicles in Minnesota have no insurance. These thirty per cent of the vehicles which have no insurance or minimum insurance are generally owned by the economically disadvantaged or by those who have difficulty getting insurance.

To mandate premiums that are in excess of those required for an insurance package that compensates the vast majority of accident victims would work a severe hardship at least on those who, for various reasons, have inadequate incomes. There is ample testimony available to the effect that reform can be had in our auto reparation system and that adequate options are available to design needed changes that will meet the test of public need for acceptance. Specifically, the change in our auto reparation system must be

achieved by placing a ceiling on the recovery for economic loss and a medical threshold for any tort action for pain, suffering, mental anguish and inconvenience. This threshold should not apply in cases of death, dismemberment, permanent total or significant permanent partial disability or permanent serious disfigurement.

This modified approach is similar to that which has been successful in Massachusetts and Florida.

Signed:

Elmer A. Kaardal

Calvin R. Larson

Alec A. Olson

2. Summary of "Olson-Kaardal Proposal"

Basic First-Party Benefits

First party insurance is made compulsory and all policies are to provide the following benefits:

a) Medical benefits for all reasonable medical, hospital, rehabilitative, and related expenses up to $2,000 per person, per accident.

b) Disability benefits equivalent to 85 per cent of lost income with a limit of $100 per week per person and a total limit of $2,600 per person; a two-week waiting period may be required.

c) Benefits to procure substitute or replacement services in lieu of those the victim would have provided for his household up to $10 per day and subject to a total limit of $1,800 per person.

Insurer must pay these benefits promptly upon receiving satisfactory proof of loss.

Optional First Party Benefits

Insurers are required to offer Catastrophic Economic Loss Coverage to their policy holders which would provide a total of at least $100,000 in first party benefits.

Tort Exemption

No action to recover general damages may be brought unless the claimant requires medical services having a reasonable value of at least $1,000 unless one of the following consequences resulted from the injury:

a) Death

b) Dismemberment

c) Permanent total or significant permanent partial disability

d) Serious permanent disfigurement.

Deductions from any award for lost earning are to be made to adjust for the claimant's income tax advantage.

Coordination Of Benefits

a) Subrogation is retained but claims may be pursued only through intercompany arbitration.

b) First party policy follows the vehicle.

c) First party benefits are primary except with respect to Workmen's Compensation benefits and United States Government employee benefits.

Miscellaneous

a) Persons guilty of certain illegal conduct are excluded from eligibility for benefits.

b) An assigned claims plan is established.

c) Penalties from making fraudulent claims against insurers are required.

3. Minnesota Cost Projections for "Olson-Kaardal Proposal"

Costing of "Olson-Kaardal Proposal"
by Charles Hewitt of Allstate Insurance Co.
(Figure 44)

	Present Average Premium	Projected Average Premium	
Minimum Coverage	$111.40	$105.50	5.3% saving
Medium Coverage	122.40	105.50	13.8% saving
Full Coverage	195.90	179.00	8.6% saving

Mr. Hewitt has made a cost analysis for this bill, assuming aggregate limits of $5,200 rather than $2,600 for income loss, and $3,600 rather than $1,800 for substitute services (in other words, basing his analysis on the availability of such coverage for 22 weeks rather than 26 weeks).

CHAPTER VI

REPORT OF THE HIGHWAY SAFETY SUBCOMMITTEE

Because the Commission felt that the laws and community practice regarding highway safety have a substantial impact on the automobile accident reparations system and because the reduction of accidents and related injuries could reduce premiums under any type of insurance system.

The Highway Safety Subcommittee was established at the May Commission meeting and consisted of the following members:

Robert Rotenberg, M. D. (Chairman)

John Corcoran

William De Parcq

Calvin Larson

Janet Moulton

Thereafter the subcommittee met monthly to study the present state of highway safety in Minnesota and to develop recommendations for Legislative, industry, and community action which might reduce automobile accidents and injuries.

The final report of the subcommittee presented below, was unanimously adopted by the full Commission at its November meeting.

Premiums for automobile insurance, like the prices of all other goods and services, are a function of the unit cost of the product. The unit cost of insurance is the average loss cost and is equal to the frequency of claims multiplied by the average severity of claims.[1]

Since insurance policies will never be sold at a price below this unit cost, the present system, like various reform plans, attempts to control insurance prices by reducing the frequency and severity of claims through selective reimbursement. Under the present system, claims frequency is controlled by the law of negligence; since liability policies conform to this law many injured persons are ineligible for benefits. Severity of claims is reduced by the rule of comparative negligence. No-fault proposals do not attempt to reduce the frequency of claims: indeed they increase it. Instead they sharply reduce severity by limiting benefits payable to each claimant.

REPORT OF THE SUBCOMMITTEE

Selective reimbursement is not the only method of reducing loss cost. The frequency and severity of automobile accident injuries themselves may be reduced. This approach aids the consumer by providing insurance at a lower cost without restricting the benefits to injured persons.

Automobile accidents and their resulting injuries are currently all too frequent in Minnesota. In 1971, the crash rate per 100 million vehicle miles was 445.[2] As a result of these crashes there were 1,024 fatalities

1. For further discussion of these concepts, see Calvin H. Brainard and Stephen A. Carbine, Price Variability in the Automobile Insurance Market, Report of the Division of Industry Analysis, Bureau of Economics Federal Trade Commission to the Department of Transportation, Automobile Insurance & Compensation Study (Washington, D.C.; U. S. Government Printing Office, 1970), pp. 1-10.
2. Minnesota Department of Public Safety, Facts on Motor Vehicle Crashes in Minnesota During 1971, p.8.

and 39,242 personal injuries.[3] This is equivalent to a fatality rate of 4.38 per 100 million vehicle miles and a personal injury rate of 166.75 per 100 million vehicle miles.[4]

The Minnesota Department of Public Safety has made the following "conservative" estimate of the total cost of automobile accidents in Minnesota last year, using the factors recommended by the National Safety Council:[5]

Cost of a death:	$41,500	x 1,024 fatalities	=	$42,496,000
Cost of an "A" injury:*	1,730	x 15,223 "A" injuries	=	26,335,790
Cost of a "B" injury:	1,230	x 9,561 "B" injuries	=	11,760,030
Cost of a "C" injury:	575	x 14,458 "C" injuries	=	8,313,350
Cost of a property damage crash:	330	x 77,964 PD crashes	=	25,728,120
		TOTAL COST		$114,633,290

*Injury type A — Visible signs of injury, bleeding wound, distorted member
B — Other visible injury, such as bruises, abrasions, swelling
C — No visible injury, but complaint of pain or momentary unconsciousness

These figures represent an attempt to estimate economic loss; they do not reflect insurable losses or insurance premium costs. Those figures for Minnesota would be much higher.[6]

The Subcommittee believes that an intensive highway safety program can result in long-term control of the cost of automobile accidents as well as further society's humanitarian goals. Unfortunately, the establishment of a comprehensive and detailed safety program requires extensive study and is a task beyond the necessarily limited scope of this Subcommittee's work. The recommendations that follow are intended to indicate the general direction that reform should take and to set forth the areas which seem most appropriate for future study, legislation, or other action.

A. Vehicle Safety

1. The Legislature should continue to promulgate new vehicle safety standards.

The Subcommittee commends recent legislation which requires all vehicles sold in Minnesota after August 1, 1973, to be equipped with bumpers capable of withstanding without damage a five mile per hour front crash and a two and one-half mile per hour rear crash.[7] This legislation should be continually updated as bumpers capable of withstanding crashes at higher speeds are developed.

The Legislature should study all new safety devices currently being designed. As these devices are shown to have real value in preventing crashes or reducing crash damage, legislation requiring them to be installed on all new vehicles sold in the state should be adopted.

3. Ibid., p. 7.
4. Ibid., pp. 7-8.
5. Ibid., p. 1.
6. For statewide premium costs and insurance loss payouts see Supra. p.
7. Minn. Stat., §169.73 (1971).

2. An educational program should be adopted to alert owners to the importance of proper vehicle maintenance.

Even vehicles equipped with the latest safety equipment must be regularly repaired and maintained to avoid the development of hazardous defects. The Legislature should work with the insurance industry, the automobile repair industry, consumer organizations, and organizations of motorists in an effort to educate drivers to the dangers of a poorly maintained automobile.

Through the educational approach owners can be encouraged to use inspection and repair facilities to their full advantage and more of such facilities can be established.

3. Laws forbidding unsafe motor vehicles and equipment should be strictly and uniformly enforced.

Minnesota law makes it a misdemeanor to operate a vehicle with unsafe equipment or a vehicle without the equipment required by law.[8] The law also permits the state highway patrol to engage in spot checks of vehicles in order to discover hazardous defects.[9]

Coordination of effort between various law enforcement agencies and the Legislature is needed to assure that these laws are consistently and uniformly enforced in all jurisdictions, when obvious defects are noted by an officer or defects discovered in a spot check.

Uniform methods to assure that discovered defects are corrected by the owner should also be adopted.

4. Insurance policyholders should be encouraged to engage in vehicle safety inspection prior to policy renewal.

Were each vehicle owner to submit a safety inspection certificate prior to the renewal of his insurance policy each year a widespread and efficient system of vehicle inspection would be effected. The public would benefit from the correction of dangerous defects, as would the drivers and owners of the vehicles in question. Insurers would also benefit, for such a program would enable them to better evaluate their risks.

Insurers could implement such a plan by giving rate advantages to those who undergo inspection, or in some circumstances, by using the sanction of non-renewal. The Legislature should cooperate by passing no laws which would forbid rate discrimination or non-renewal based on compliance or non-compliance with such a program.

B. Passenger Restraints

1. The Legislature should evaluate the statute which makes evidence of the use or non-use of seatbelts inadmissible in automobile accident litigation.

The statute making such evidence inadmissible[10] protects the injured plaintiff from potentially dangerous speculation as to what injuries he might have sustained had contrary to fact circumstances existed at the time of the accident.

However, the statute was enacted in 1963 when seatbelts were a relatively new device. The Legislature should study the statute to determine whether increased medical knowledge regarding seatbelts now makes it possible to determine with accuracy the extent to which failure to wear a belt contributed to or aggravated an injury.

2. Insurers should adopt programs to motivate their policyholders to use passenger restraints.

Insurers should be encouraged to develop imaginative motivational campaigns designed to increase use of passenger restraints. One approach might be to increase medical payments benefits above the policy limits for persons wearing restraints at the time of an accident. The Legislature should cooperate with insurance companies in establishing such programs.

3. The Legislature should act to facilitate the development of appropriate passenger restraints for children.

The passenger restraint systems installed in vehicles by the manufacturers are designed for adults and are inadequate to protect small children in crash situations.

8. Minn. Stat., §169.47 (1971).
9. Minn. Stat., §169.771 (1971).
10. Minn. Stat., §169.685 (1971).

The Legislature should encourage experimentation and study in this area, and when appropriate restraints for children have been developed, should consider legislation which would require the installation of such devices in vehicles sold or used in the state.

This is another area in which insurers can profitably institute a motivational campaign. Policy holders who have installed in their vehicles restraints designed to protect any young children who ride in the vehicle should be rewarded by insurers, possibly by premium reductions.

C. Promulgation of Rules by the Commissioner

Whether certain driving and highway usage practices are inimical to the public safety cannot be determined without a detailed and on-going investigation of various facts and circumstances. Because the Legislature is not the most effective body to engage in such study and make such factual determinations, and because rules and restrictions in these areas are nevertheless desirable, the subcommittee recommends that the Commission of Public Safety be instructed and empowered by the Legislature to promulgate, after holding public hearings, rules and regulations which establish safety standards in certain defined subject areas. After the Commissioner has made a factual determination as to which practices endanger the public safety, one who violates the resulting safety code shall be guity of a misdemeanor.

The Commissioner's authority to make such determinations shall be extended to the following areas:

1. Speed limits for heavy vehicles.

Although the steering, braking, and damage-causing capabilities of large trucks and private passenger vehicles are very different, they are required to abide by the same speed limits.

The Commissioner, with a view to reducing accidents involving heavy vehicles, should study the different characteristics of trucks and automobiles and shall determine a several maximum speed limit at which trucks can safely travel on the state roads and highways.

The Commissioner shall also establish speed zones on state roads and highways especially for such heavy vehicles. He shall determine after appropriate study the maximum speed limits at which such vehicles can safely travel in each area.[11]

2. Campers and recreation vehicles.

In 1971, 6,592 motorized recreational vehicles, and 378,939 trailers were registered in the state of Minnesota.[12] In both categories there has been a dramatic increase in registrations since 1969.[13]

The use of such popular recreational vehicles as motor homes, truck-bed campers, and trailers involve special safety hazards. There is a need for special skills and extra care on the part of those who operate them. Overloading, obstructing the visibility of the drivers, excessive speed, improper spacing of vehicles, and improper hitching are only a few of the safety problems created by misuse of these vehicles.

The Commissioner shall study the problems arising in connection with improper use, and shall determine what special rules for such vehicles with respect to speed, safety equipment, rules of the road, axle weight requirements, and driver licensing are necessary to protect the public safety.

3. Visibility of small vehicles.

Small motorized vehicles such as motorcycles, motor scooters and snowmobiles are involved in a disproportionate number of accidents. In 1971 there were 1,723 crashes involving motorcycles, scooters and other two-wheel motorized vehicles. Forty-one fatalities resulted.[14] Nine snowmobile fatality cases were reported.[15]

The high accident rate may be partially due to the fact that such small vehicles are not easily seen by the automobile driver, especially at night.

The Commissioner shall study the lighting problems of such vehicles and shall provide rules requiring lights and other equipment which may be necessary to improve visibility.

4. School buses.

The importance of safe school buses is self-evident, yet 49 per cent of the slightly more than 5,000 school buses inspected in Minnesota in 1971, were found to have safety-related defects.[16]

11. For Commissioner's authority to establish speed zones, see Minn. Stat., §169.14 (1971).
12. Minnesota Department of Public Safety, Facts on Motor Vehicle Crashes, p.5.
13. Ibid., p. 5.
14. Ibid., p. 17.
15. Ibid., p. 18.
16. Ibid., p. 6.

The Commissioner should study the problems of safety equipment for school buses, and should promulgate rules designed to promote safer bus travel. Special emphasis should be placed on rules regarding seat belt requirements and the use of such restraints.

The Commissioner shall also promulgate rules regarding the number of persons who can safely ride on a bus with a given seating capacity so that a seat shall be available for each rider.

5. Bicycles.

There were 871 bicycle accident injuries and nineteen fatalities in Minnesota in 1971.[17]

Simple equipment adjustments can greatly contribute to bicycle safety. The Commissioner shall study the feasibility of instituting a set of rules requiring bicycles to be adjusted so as to be suitable to the size and ability of the rider. He shall also conduct studies to determine whether safety standards as to seat heights, reflectors and other safety equipment can be effectively established.

This is another area which is well suited to the educational approach. Insurance companies, automobile clubs, the Boy Scouts and various public interest groups should be strongly encouraged to develop bicycle safety campaigns and to create educational programs for bicycle riders of all ages.

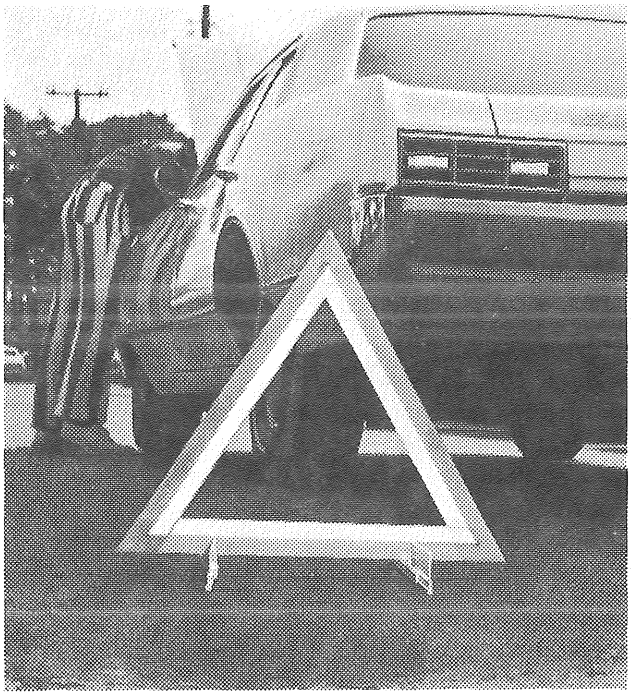
D. Disabled Vehicles

1. All owners should be required to equip their motor vehicles with disabled vehicle warning devices.

Eight persons were struck by other vehicles in 1971 as they were working on their own disabled automobiles in the roadway;[18] five of these people died as a result of their injuries.[19] Forty-three other persons were injured that year while standing in the roadway;[20] some of them while standing near a disabled vehicle. There are no statistics available to show how much property is damaged or how many occupants of other vehicles are injured in collisions between moving automobiles and those making emergency stops on the road.

Such accidents are generally avoidable, for they result from the fact that a stalled vehicle may not be seen at all or may be perceived as moving by other drivers. Simple, inexpensive distress signals are available and could significantly reduce the number of such accidents by making stalled vehicles more easily visible.

An example of such warning signals is the Tri-Vec Safety Triangle now being marketed by Armand Safety Systems. It is best described by the photograph below.



Tri-Vec Safety Triangle [21] (Figure 45)

17. Ibid., p. 28.
18. Ibid., p. 25.
19. Ibid., p. 24.
20. Ibid., p. 25.
21. Photo accompanying 1972 press release from Armand Safety Systems, Inc.

Minnesota law now requires motor vehicles to be equipped with various types of equipment; other types are prohibited by law.[22] The subcommittee recommends that the Legislature require all motor vehicles on the highways of the state to be equipped with such a distress triangle, a battery-operated flashing red light, or any other warning signal recommended or authorized by the Commissioner of Public Safety. Failure to have such a device in one's vehicle at all times would be a misdemeanor.

Although the state's laws generally forbid stopping, parking, or leaving a vehicle on the travelled portion of a road or highway, the present statute makes an exception in cases where the vehicle has become disabled.[23] The subcommittee recommends that this statute be amended to make it legal to stop, park or leave a disabled vehicle on a traveled portion of a road only if an approved distress warning device is displayed.

Since the subcommittee has suggested the use of a triangle as a distress symbol, it should be noted that the present laws restrict the use of this emblem to slow moving vehicles such as farm machinery.[24] That law should be amended so that the emblem may also be used for stalled vehicles.

2. Automobile dealers and insurance companies should assist in the establishment of this warning device program.

The subcommittee recommends that all automobile dealers in the state be required to provide a disabled vehicle warning device with each new automobile sold. Insurance companies should be required to ascertain whether a vehicle has such a device when its owner applies for or seeks to renew his automobile insurance. If the owner does not have one, the insurer should provide the device for its insured prior to issuing a policy.

The benefits of such devices are obvious, and the cost is so minimal that the subcommittee believes that the program will pay for itself if only one life per year is saved by these devices.

E. Suspension and Revocation of Driver's Licenses

1. The vehicle registration plates for any vehicle owned by a person whose license to drive is revoked should be impounded and replaced with distinctive plates.

In 1971 the driver's licenses of 12,974 Minnesotans were revoked; during that same year 4,600 persons were convicted of driving **after** suspension or revocation.[25] It is estimated that the majority of persons whose licenses are revoked continue to drive. Unfortunately, it is very difficult to apprehend such persons unless they commit some other traffic offense in the presence of a police officer and are stopped.[26]

Currently Minnesota law allows, but does not require, the court to impound the license plates of a person who has been convicted of an offense which will result in the revocation of his license. The replacement plates which are issued have a special number series so that they may be identified by police officers.[27]

The subcommittee recommends that the full Commission propose legislation requiring the courts to impound license plates after a conviction which will result in revocation,[28] and requiring that any substitute plates be of a distinctive color or design. These new provisions would aid enforcement of the law against driving after revocation by ensuring that all persons whose licenses have been revoked would have identifying plates on their vehicles and that these plates would be more easily noticed than the current number coded type.

A committee of the Legislature should engage in further study of the ways in which these procedures may be implemented. One method of enforcement that might be practical is to require persons who would be subject to revocation upon conviction to bring their registration plates into court at time of trial. The courts' contempt power could be used to assure compliance.

2. The sanctions currently imposed for driving after suspension or revocation of license should be strengthened.

Driving after suspension or revocation is made a misdemeanor by Minnesota law.[29] Though conviction may result in a fine or jail sentence, it does not prevent the offender from driving at the end of the original

22. Minn. Stat. § 169.47-.75 (1971).
23. Minn. Stat. § 169.32 (1971).
24. Minn. Stat. § 169.522 (1971).
25. Hearings of Minnesota Automobile Liability Study Commission, April 7, 1972, minutes Exhibit C.
26. Testimony of Ken Raschke before Joint Highway Executive Committee, May 19, 1972, Minutes, p. 6.
27. Minn. Stat., §168.041 (1971).
28. See Minn. Stat., §171.17 (1971) for a listing of offenses for which revocation is required.
29. Minn. Stat., §171.24 (1971).

suspension period. The subcommittee believes that driving after suspension is a very serious offense which demonstrates the violator's social irresponsibility and disrespect for the law. The public safety is endangered when such persons are allowed to automatically regain their licenses.

The subcommittee recommends that the current law listing offenses which require revocation of the driver's license[30] be amended to include one conviction of driving after suspension or revocation.[31] The driver should be required to pass a driver's license examination, prior to issuance of a new license. This is now the rule when the license has been revoked for three convictions of reckless driving in one year or one conviction of driving under the influence[32] and should be extended to include the new ground for revocation.

Under the recommended provision, the driver would find it necessary to comply with his suspension and refrain from driving during that period to assure that he would regain his license to drive. Repeated violations of the law against driving after suspension could result in repeated convictions which in turn could result in repeated revocations, disabling the offender from regaining his license for a significant period of time. This should create a powerful incentive to obey the original suspension.

3. The Legislature should provide for strict de-licensing sanctions to be applied to habitual violators of the traffic laws.

The subcommittee believe that it is important to deal separately with persons who continually violate the rules of the roads and endanger the safety of others. Although there are no reliable statistics to regarding the frequency with which such persons cause motor vehicle accidents in Minnesota, according to one national estimate, habitual offenders constitute only two per cent of licensed drivers but cause fifty per cent of the traffic fatalities.[33] Though this seems rather high, and such estimates are of necessity somewhat speculative, the problem is one deserving of legislative attention.

The current laws are not adequate to remove such persons from the highways. Minnesota law allows, but does not require, the Commissioner of Public Safety to suspend the license of a "habitual violator of the traffic laws."[34] The law prohibiting driving under the influence of narcotic drugs or alcoholic beverages includes increased penalties for a second offense within three years, but does not make provisions for subsequent offenses.[35] Driver's license revocation is required for persons convicted of three moving violations in a twelve month period[36] but the revocation may be brief.

In the opinion of the subcommittee these provisions are incomplete; they do not present a comprehensive and integrated approach to the problem of the habitual offender. The subcommittee recommends that the legislature adopt a habitual offender act substantially similar to the "Motor Vehicle Habitual Offenders Act" drafted by the National Association of Insurance Agents, and endorsed by the Minnesota Association of Insurance Agents.[37]

Briefly, it defines a habitual offender as one who has, in a five year period been convicted of ten separate moving violations, or of three violations from a group of more serious offenses enumerated in the statute. The serious offenses are manslaughter, failure of the driver to stop and identify himself at the scene of an accident, driving while under the influence of intoxicating liquor or drugs, driving after suspension or revocation, driving without a license, reckless driving, committing a felony involving the use of a motor vehicle, and making false affidavits about information required by motor vehicle laws.

Upon petition of the state's attorney, a judicial hearing is held to determine if the individual is a habitual offender. If the court so finds, the offender is required to surrender his driver's license, and cannot obtain a new one until five years have passed, until he proves financial responsibility, and until he has permission of the court.

Driving after this removal of license is a misdemeanor punishable by imprisonment for not less than one year nor more than five years. When an individual is convicted of an offense that will render him a habitual offender, in addition to the normal penalty he must be fined not less than $100 and imprisoned for not less than thirty days, nor more than twelve months.

30. Minn. Stat., §171.17 (1971).
31. For the purpose of this law suspension refers to suspension under the provisions of the Driver's License Law, Minn. Stat. §171.18 (1971) and is not intended to alter or repeal the current provisions for enforcement of suspensions pursuant to the provisions of the Safety Responsibility Act, Minn. Stat., C. 170. (1971).
32. Minn. Stat., §171.29 (1971).
33. Estimate provided by Safeco Insurance Co., Time, October 23, 1972, pp. 64-65.
34. Minn. Stat., § 171.18 (1971).
35. Minn. Stat., §169.121 (1971).
36. Minn. Stat., § 171.17 (1971).
37. The bill is set forth in full in Appendix E.

Virginia, Indiana, Maine, Massachusetts, New Hampshire, North Carolina, and Rhode Island have already enacted similar laws. The Virginia experience is most encouraging. During the first three years that their law was in effect the highway death rate dropped from 5.2 to 4.3 per hundred million vehicle miles compared to the national average of 5.4.[38] Since the evidence indicates that such a law could help save lives on Minnesota highways, the subcommittee recommends its adoption.

F. Driving under the Influence of Alcohol, Illegal Drugs, or Other Chemicals.

The connection between alcohol and traffic accidents is well known; the intoxicated driver represents one of the most serious highway safety problems in Minnesota as well as in other states. In Minnesota in 1971, 59.8 percent fatally injured drivers tested for blood alcohol showed positive readings and 81.3 percent of the positive cases were at or above 0.10 percent.[39]

During the same year, 9,687 persons were convicted of driving while intoxicated in the state; 19.8 percent of these individuals had previous convictions, and for one person it was his tenth offense.[40] Four hundred and twenty three drivers lost their licenses under the provisions of the implied consent law when they refused to submit to a blood alcohol test.[41]

Statistics are not available as to the extent to which the use of illegal drugs and other chemicals by drivers contributes to Minnesota accidents, but such abuse represents a sufficient hazard to be included in any program directed toward the drinking driver.

In spite of criminal sanctions and great public concern, the statistics indicate that the rate of involvement in fatal crashes by intoxicated drivers has not been reduced in recent years.[42] The number of DWI arrests and convictions in the state has risen substantially since 1964.[43]

The subcommittee believes that current legal procedures designed to punish the intoxicated driver should be supplemented by educational and rehabilitative programs. The "Phoenix Alcohol Research and Re-Education Project" established in 1966 has been a most encouraging example of the potential effectiveness of such an approach.[44] Persons convicted of driving while intoxicated receive reduced penalties if they attend an Arizona State University extension course designed to educate them as to the dangers of drunken driving and to encourage them to analyze their own drinking and driving behavior. The program has had excellent results; in March, 1972, only ten of the two thousand persons who had completed the course had been re-arrested for driving under the influence.[45]

A similar program has been recently adopted on a modest scale in Minnesota in the cities of Minneapolis, Mankato, Rochester and Austin.

1. The Subcommittee recommends enactment of legislation requiring the adoption of the following variation of the Phoenix Plan on a statewide basis:

a. All persons convicted of driving under the influence of alcohol, illegal drugs or other chemicals shall be entitled to reduced criminal penalties if they participate in the program. Sentence will be suspended until the driver has completed the educational program.

b. All participating drivers will be required to attend four weekly four-hour sessions of a drinking and driving educational course, to be established by the state of Minnesota. The course could be managed by and administered through the Extension Division of the University of Minnesota. The facilities of local high schools and sheriff's departments could be used to supplement University facilities, particularly in rural areas and small communities. Participants will study the effects of drinking and drug use and the hazards of driving while intoxicated and will be encouraged to assess and interpret their own behavior. Special counseling will be offered for the alcoholic or drug addict. Visual aids should be fully utilized.

c. In addition, each person will be required to spend four four-hour sessions on weekend nights or holidays as an observer in a hospital emergency room under the supervision of the hospital administrator or

38. Statistics provided by Safeco Insurance Co., Time, October 23, 1972, pp. 64-65.
39. Minnesota Department of Public Safety, The Drinking Driver and the Drinking Pedestrian During 1971, p. 4.
40. Ibid., p. 11.
41. Ibid., p. 11.
42. Ibid., p. 4.
43. Ibid., p. 11.
44. See, Guy O. Kornblum and Morton G. Blinder, M.D., "The Alcoholic Driver: A Proposal for Treatment as an Alternative to Punishment," Ins. L. J., March 1972, pp. 133-154 and Edwin McDowell, "How Phoenix Gets Drunks Off the Road," (condensed from Christian Herald, February, 1972), Reader's Digest, February, 1972, pp. 49-54.
45. Ibid., p. 145.

his representatives. These visits shall be scheduled so that the students may discuss their observations in the classroom sessions.

d. After he has attended both of the classroom and hospital sessions, each person must write a paper interpreting the behavior which led to his conviction and discussing his probable future driving behavior. He must incorporate into his paper the information and insights gained from the program and explain what effects the experience will have on his driving habits.

He must reappear before the court that convicted him, present the paper, and be prepared to read it aloud to the court if called upon to do so. The paper should be of sufficient length for an oral presentation of approximately 45 minutes.

If the offender has successfully completed all the classroom and hospital sessions, and his paper, in the discretion of the court, indicates that he has been substantially rehabilitated, the normal fine or jail sentence which would be imposed should be reduced or stayed.

There are various alternatives for financing such a program. Possibly incentives could be developed to stimulate the insurance industry to participate in funding. Another method is to require each "student" participating in the course to pay a small fee to cover expenses and materials. The Phoenix Plan is financed in this manner. The Legislature should further consider such alternatives to develop the most appropriate scheme.

2. The present definition of driving under the influence should be retained.

The subcommittee has studied the law which makes it illegal to drive an automobile if one's blood contains 0.10 per cent of alcohol by weight.[46] There have been suggestions that the limit be lowered still further. However, in the opinion of the subcommittee such suggestions are somewhat premature. Prior to 1971, a blood alcohol level of 0.10 per cent was merely prima facie, and not conclusive evidence of intoxication.[47] The subcommittee believes that more time and more experience are needed to evaluate this change in the law before any further changes can be proposed in an responsible fashion.

G. Conclusion

These recommendations do not represent the ultimate solution to the problems of highway safety; they are not even intended as a comprehensive legislative proposal. Instead, the subcommittee has attempted to draw guidelines for future legislative, industry and community action. The major purpose of this subcommittee report is to search out areas which seem most productive for future study and reform. Particular emphasis is placed on methods which might save lives, but which have not been suggested in most other highway safety programs.

The subcommittee has tried to avoid suggesting reforms which would merely attack short term problems. Certain specific rules might be effective in 1973, but could soon be outdated. Instead Minnesota should establish evolving programs which can be flexible enough to meet changing conditions. Thus the subcommittee has emphasized new approaches to combating death and destruction on the state's highways, approaches which may still be valid ten or twenty years in the future.

46. Minn. Stat. §169.121 (1971).

47. Laws 1971, ch. 893, subd. 1,2.

APPENDIX A

Summary of Minnesota Costing Data on Four Plans

	Charles Hewitt [NAII] [Allstate]	Clyde Graves [AMIA]	AIA	Dale Nelson [State Farm]	Dale Comey [The Hartford]	Robert Brian [Aetna Life and Casualty]
"Commission Plan"	(minimum +26.2% coverage) (medium +14.1% coverage) (full +9.3% coverage)	+25% (average for all coverage)	---- ---- ----	(minimum +41% coverage) (medium +28% coverage) (full +16% coverage)	(minimum +29.7% coverage) (medium +7.1% coverage) (full +4.2% coverage)	---- ---- ----
"O'Neil Proposal"	(minimum +17.1% coverage) (medium +6.6% coverage) (full +4.1% coverage)	----	----	----	----	
"Knutson-Pillsbury Proposal" (UMVARA)	(full +16% coverage)	-2% (full coverage)	-12% (full coverage)	----	----	-7.5% (full coverage)
"Olsen-Kaardal Proposal"	(minimum -5.3% coverage) (medium -13.8% coverage) (full -8.6% coverage)	----	----	----	----	

APPENDIX B

BILL IMPLEMENTING THE "COMMISSION PROPOSAL"

A bill for an act

relating to the compensation of victims of motor vehicle accidents; requiring security by motor vehicle owners; providing for certain mandatory minimum insurance or self-insurance protection benefits payable regardless of fault in cases of personal injury; retaining tort liability; expanding uninsured motorists coverage, providing small claims arbitration and penalties for failure to show proof of security; providing for certain deductibles; providing for subrogation, inter-company arbitration, and offset of benefits paid against judgments; providing an assigned claims plan; amending Minnesota Statutes 1971, Sections 65B.05; 65B.06, Subdivision 2; 65B.14, Subdivision 1; 65B.21, Subdivision 2, and by adding a subdivision; 171.04; 171.12, Subdivision 4; and 171.18; repealing Minnesota Statutes 1971, Sections 65B.22 to 65B.27, and 170.21 to 170.58.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [CITATION.] Sections 1 to 32 may be cited as the "Minnesota Automobile Accident Reparations Act".

Sec. 2. [PURPOSE.] The detrimental impact of automobile accidents on uncompensated injured persons, upon the orderly and efficient administration of justice in this state, and in various other ways requires that this act be adopted to effect the following purposes:

(1) To relieve the severe economic distress of uncompensated victims of automobile accidents within this state by requiring automobile insurerers to offer and automobile owners to maintain automobile liability insurance policies or other pledges of indemnity which will provide prompt payment of specified basic economic loss benefits to victims of automobile accidents without regard to whose fault caused the accident;

(2) To encourage appropriate medical and rehabilitation treatment of the automobile accident victim by assuring prompt payment for such treatment;

(3) To speed the administration of justice, to ease the burden of litigation on the courts of this state, and to create a system of small claims arbitration to decrease the expense of and to simplify litigation, and to create a system of mandatory inter-company arbitration to assure a prompt and proper allocation of the costs of insurance benefits between motor vehicle insurers;

(4) To correct imbalances and abuses in the operation of the automobile accident tort liability system, to provide offsets to avoid duplicate recovery, to require medical examination and disclosure, and to govern the effect of advance payments prior to final settlement of liability.

Sec. 3. [VEHICLES EXCLUDED FROM COVERAGE UNDER THIS ACT.] Subdivision 1. The following vehicles are excluded from the requirements and coverage of this act: any motor vehicle owned by the federal government, the state, or any political subdivision of the state; taxicabs; passenger-carrying buses and other mass transit vehicles by whomever owned or operated; school buses; motor scooters, mini-bikes, go-carts, trail bikes, all-terrain vehicles, bicycles with motor attached; snowmobiles; construction equipment; farm machinery and tractors; and any other motor vehicle designed primarily for use off the road and only incidentally moved or operated on a public roadway.

Subd. 2. Notwithstanding any other provisions of this act to the contrary, the rights of residents of this state to claim damages in tort shall not be dimished when such residents are involved in motor vehicle accidents with motor vehicles not required to be covered by motor vehicle liability insurance pursuant to this act.

Sec. 4. Subdivision 1. [RETENTION OF TORT LIABILITY.] Subject to the provisions of this act, tort liability arising from the ownership, maintenance, or use of a motor vehicle within this state is retained.

Subd. 2. [DRIVER DEEMED AGENT OF OWNER.] Whenever any motor vehicle shall be operated within this state by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof.

Sec. 5. [DEFINITIONS.] Subdivision 1. The following words and phrases, shall, for the purpose of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

Subd. 2. "Motor vehicle" means (a) every vehicle of a kind required to be registered pursuant to Minnesota Statutes 1971, Chapter 168; (b) any vehicle designed to be self-propelled by an engine or motor for use primarily upon public roads, highways or streets in the transportation of persons or property, including (1) a passenger automobile, not used as a public livery or conveyance for passengers, of the sedan, coupe, station wagon or jeep-type; (2) a travel trailer, camper, boat trailer, pickup truck, sedan delivery truck, panel truck or other utility vehicle which is not principally used in the occupation, profession or business, other than farming or ranching, of the insured; (3) boat trailers, utility and semi-trailers when connected to or being towed by a motor vehicle, and (4) motorcycles with or without sidecar attached.

Subd. 3. "Motorcycle" means a two or three-wheeled motor vehicle, with or without sidecar attached, of more than five brake horsepower which has a saddle for the use of the rider.

Subd. 4. "Owner" means a person who holds legal title to a motor vehicle, or in the event that a motor vehicle is the subject of a security agreement or lease with option to purchase and the debtor or lessee is entitled to the immediate use or possession of the vehicle, then the debtor or lessee shall be deemed the owner for the purposes of this act.

Subd. 5. "Insured" means any person entitled to benefits under a policy of first party accident reparation insurance or other reparation plan as provided by this act, including the named insured and the following persons not identified by name as an insured while (a) residing in the same household with the named insured and (b) not identified by name in any other contract of basic reparation insurance complying with this act as an insured:

(1) a spouse,

(2) other relative of a named insured or

(3) a minor in the custody of a named insured or of a relative residing in the same household with a named insured.

A person resides in the same household with the named insured if that person usually makes his home in the same family unit, even though he temporarily lives elsewhere.

Subd. 6. "Income" includes but is not limited to salary, wages, tips, commissions, professional fees, and other earnings from work or tangible things of economic value produced in individually owned businesses, farms, ranches or other work, or the reasonable value of the services necessary to produce them.

Subd. 7. "Loss" means accrued economic detriment consisting only of allowable expense, disability and work loss, replacement services loss and, if the injury causes death, survivor's economic loss and survivor's replacement services loss. Noneconomic detriment is not loss; however, economic detriment is loss although caused by pain and suffering or physical or mental impairment.

Subd. 8. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical treatment and care, rehabilitation including rehabilitative occupational training and therapy, other remedial treatment and care, as well as funeral, burial and cremation expenses.

Subd. 9. "Reparation obligor" means an insurer or self-insurer obligated to provide the basic reparation benefits required by this act, including natural persons, firms, partnerships, associations, corporations, trusts and syndicates.

Subd. 10. "Pedestrian" means any person not on, occupying, getting into, or alighting from any motor vehicle or any other engine or motor-powered vehicle or machine.

Subd. 11. "Commercial motor vehicle" means any vehicle, not excluded under secton 3, which is used in the usual course of trade, business or commerce to transport property or persons.

Subd. 12. "Basic economic loss benefits" means benefits providing reimbursement to the minimum amount of $10,000 per person per accident for net loss suffered through injury, sickness, disease or death arising out of the maintenance or use of a motor vehicle, subject, where applicable, to the deductibles, exclusions, disqualifications, and other conditions provided in this act.

Subd. 13. Except where otherwise indicated, "commissioner" means the commissioner of public safety of the state of Minnesota.

Sec. 6. [BASIC ECONOMIC LOSS BENEFITS.] Basic economic loss benefits shall consist of the following:

(a) [MEDICAL BENEFITS.] All reasonable expenses for necessary medical, surgical, x-ray, optical, dental, chiropractic, and rehabilitative services, including prosthetic devices, prescription drugs, necessary ambulance, hospital, extended care and nursing services. "Extended care facility" means a place where are provided skilled nursing care and related services for patients who require post-hospitalization, in-patient medical, nursing, or therapy services. Hospital room and board benefits may be limited, except for intensive care facilities, to the regular daily semi-private room rates customarily charged by the institution in which the recipient of benefits is confined. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of this state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with his religious beliefs.

(b) [DISABILITY AND WORK LOSS BENEFITS.] One hundred percent of any loss of gross income and loss of present and future earnings per individual from inability to work proximately caused by the injury sustained by the injured person. All disability or income loss benefits payable under this provision shall be paid not less than every two weeks. Compensation for loss of income from work shall be reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work which he was capable of performing but unreasonably failed to undertake.

For the purposes of this section "disability" shall mean disability which continuously prevents the injured person from engaging in any substantial gainful occupation or employment, for wage or profit, for which he is or may by training become reasonably qualified.

(c) [FUNERAL AND BURIAL EXPENSES.] Reasonable funeral and burial expenses, including expenses for cremation or delivery under the Uniform Anatomical Gift Act, Minnesota Statutes 1971, Sections 525.921 to 525.93.

(d) [REPLACEMENT SERVICE AND LOSS.] All expenses reasonably incurred by or on behalf of the injured person in obtaining usual and necessary substitute services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the direct benefit of himself or his household; if the injured person is either a housewife or husband who normally, as a full time responsiblity, provides care and maintenance of a home with or without children, the benefit to be provided under this clause shall be the reasonable value of such care and maintenance or the reasonable expenses incurred in obtaining usual and necessary substitute care and maintenance of the home, whichever is greater; and

(e) [SURVIVORS ECONOMIC LOSS BENEFITS.] (1) In the event of death occurring within one year of the date of the accident, caused by and arising out of injuries received in the accident, a survivor's benefit shall be paid for loss after decedent's death of contributions of money or tangible things of economic value, not including services, that his surviving dependents would have received for their support during their dependency from the decedent had he not suffered the injury causing death.

(2) For the purposes of definition under this

subdivision, the following described persons shall be conclusively presumed to be dependents of a deceased person: (a) a wife is dependent on a husband with whom she lives at the time of his death; (b) a husband is dependent on a wife with whom he lives at the time of her death; (c) any child while under the age of 18 years, or while over said age but physically or mentally incapacitated from earning, is dependent on the parent with whom he is living or from whom he is receiving support regularly at the time of the death of such parent. In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts, as the facts may be at the time of the death.

(3) Payments to the surviving spouse may be terminated in the event such surviving spouse remarries or dies. Payments to a dependent child who is not physically or mentally incapacitated from earning may be terminated in the event he attains majority, marries or becomes otherwise emancipated, or dies.

(4) [SURVIVOR'S REPLACEMENT SERVICES LOSS.] Benefits to surviving dependents shall also be payable to reimburse expenses reasonably incurred by such dependents during their dependency and after the date of the deceased insured's death in obtaining ordinary and necessary services in lieu of those the deceased would have performed for their benefit had he not suffered the injury causing death, minus expenses of the survivors avoided by reason of the decedent's death.

(5) "Basic economic loss benefits" do not include benefits for physical damage done to property or motor vehicles, including their contents.

Sec. 7. [PAYMENT OF BENEFITS.] Subdivision 1. The reparation benefits specified in section 6 shall be payable to any "insured" as defined in section 5, subdivision 5 for injuries incurred in and arising out of a motor vehicle accident while operating, upon, occupying, getting into, or alighting from, any motor vehicle or when struck by a motor vehicle while a pedestrian. The specified benefits shall also be payable to passengers and other persons using the insured motor vehicle with the permission, express or implied, of the named insured or other person authorized to give such permission because of injuries incurred in and arising out of a motor vehicle accident while occupying, operating, getting into, upon, or alighting from the insured motor vehicle, and to pedestrians, except as provided in subdivision 2, when struck within this state by the insured motor vehicle. Provided, however, that in the event such permissible operator, passenger or pedestrian is entitled to reparation benefits under another insurance policy or other plan of reparation security which provides coverage for him even while an operator, passenger, or as a pedestrian when struck by a vehicle other than one owned by him or by a member of his household, the benefits provided under this latter policy shall be primary, and any recovery of benefits under the policy covering a motor vehicle not owned by him or by a member of his household shall be allowed only to the extent that such benefits exceed the benefit limits of such primary coverage.

Subd. 2. [PEDESTRIANS.] Any pedestrian found at the time of being injured by an automobile to be under the influence of alchohol or narcotic or hallucinogenic drugs not prescribed by a licensed physician or taken in amounts exceeding prescribed dosage shall be ineligible to recover economic loss benefits under the security covering the motor vehicle including a commercial motor vehicle which injured him; provided, however, that such injured pedestrian shall remain eligible to recover basic reparation benefits from his own policy of security or, if none, from the assigned claims plan as provided in section 29.

Subd. 3. [PEDESTRIANS STRUCK BY COMMERCIAL MOTOR VEHICLE.] Except as provided by subdivision 2, any pedestrian injured within this state by a commercial motor vehicle shall be entitled to receive at least the minimum economic loss benefits provided under this act from the owner of the commercial motor vehicle or the insurer of such owner. The obligation of such owner or insurer to pay such benefits to the injured pedestrian shall in all instances be primary; the obligation of any other insurer to provide reparation benefits to the injured pedestrian shall be secondary except to the extent that the reparation benefits to be provided by such secondary obligor exceed the limit of benefit coverage provided by the owner or insurer of the commercial motor vehicle.

Sec. 8. [COMPULSORY AUTOMOBILE INSURANCE COVERAGE.] Subdivision 1. Every owner or registrant of a motor vehicle which is required to be registered or licensed or is principally garaged in this state shall provide and maintain, throughout the licensing or registration period, automobile liability insurance or self-insurance security, under provisions approved by the commissioner of insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile. Such coverage shall provide for basic economic loss benefits and residual liability coverage in amounts not less than those specified in section 11, subdivision 2, clauses (a) and (b). The non-resident owner of a motor vehicle which is not required to be registered or licensed, or which is not principally garaged in this state, shall maintain such security in effect continuously throughout the period of the operation, maintenance or use of such motor vehicle within this state with respect to accidents occurring in this state.

Subd. 2. The security required by this act may be provided by a policy of insurance complying with this act which is issued by or on behalf of an insurer authorized to transact business in this state or, if the vehicle is registered in another state, by a policy of insurance issued by or on behalf of an insurer authorized to transact business in either this state or the state in which the vehicle is registered.

Subd. 3. Subject to approval of the commissioner of insurance, the security required by this act may be provided

by self-insurance by filing with the commissioner in satisfactory form: (1) A continuing undertaking by the owner or other appropriate person to pay basic reparation benefits and the liabilities covered by residual liability insurance, and to perform all other obligations imposed by this act; (2) evidence that appropriate provision exists for the prompt and efficient administration of all claims, benefits, and obligations provided by this act; and (3) evidence that reliable financial arrangements, deposits or commitments exist which provide assurance for payment of basic reparation benefits, the liabilities covered by residual liability insurance, and the performance of all other obligations imposed by this act which are substantially equivalent to those afforded by a policy of insurance that would comply with this act. A person who provides security under this subdivision is a self-insurer in the event that claim is made against his undertaking of self-insurance, and he shall have all of the rights, privileges and obligations of an insurer.

Sec. 9. [PENALTIES FOR FAILURE TO PROVIDE SECURITY FOR BASIC REPARATION BENEFITS.] Subdivision 1. Every owner, registrant or operator of a motor vehicle for which security has not been provided as required by section 8, subdivision 1 shall be liable in tort without limitation.

Subd. 2. Any owner or registrant of a motor vehicle with respect to which security is required under this act who operates such motor vehicle or permits it to be operated upon a public highway, street or road in this state without having in full force and effect security complying with the terms of section 8, is guilty of a misdemeanor.

Subd. 3. Any other person who operates such motor vehicle upon a public highway, street or road in this state with the knowledge that the owner or registrant does not have such security in full force and effect is guilty of a misdemeanor.

Subd. 4. Any operator of a motor vehicle who is convicted of a misdemeanor under the terms of this section shall have his operators license revoked for not less than six months or more than 12 months. If such operator is also an owner or registrant of the motor vehicle, his motor vehicle registration shall also be revoked for not less than six months or more than 12 months. And, in either case, the violator of this act shall also be fined not less than $100 nor more than $300 or shall be imprisoned for not more than 90 days, or both.

Sec. 10. [EVIDENCE OF COVERAGE.] Subdivision 1. Every owner or registrant of a motor vehicle with respect to which security is required under this act shall on or before the effective date of this act and at subsequent times of applying for registration or licensing of such motor vehicle in this state, submit evidence to the commissioner of public safety or his duly authorized agent that the security required under section 8 has been provided and is in effect. Evidence of compliance with this act may be furnished by filing with the commissioner or his duly authorized agent either of the following:

(a) The written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy of the required minimum coverage issued to or otherwise covering the person required to furnish proof. Such certificate shall give the effective and termination dates of such motor vehicle liability policy and shall clearly indicate the effective minimum limits of reparation and residual liability coverage, shall designate the applicant for registration or license as an insured under the policy, and shall by explicit description or appropriate reference designate all motor vehicles covered thereby; or

(b) A bond of surety or fidelity of such form and content as may be required by the commissioner, guaranteeing the payment of reparation and liability benefits required by this act.

Subd. 2. [OBLIGOR'S NOTIFICATION OF LAPSE, CANCELLATION, OR FAILURE TO RENEW POLICY OF COVERAGE.] (1) If for any reason the required motor vehicle liability insurance policy of an owner or named insured shall lapse, be cancelled, be refused renewal, or otherwise be voided by a reparation obligor, and notification of such fact is given to the insured as required by this act, a duplicate copy of such notice shall concurrently be sent to the commissioner of public safety. If, on or before the date specified by the reparation obligor for the termination of its insurance coverage of the insured, the insured owner or registrant of a motor vehicle has not presented the commissioner or his authorized agent with evidence of required reparation and liability security which shall take effect immediately upon the termination of such previous coverage, or if the insured owner or registrant has not instituted an objection to his obligor's cancellation or other termination of coverage under Minnesota Statutes, Chapter 65B, the commissioner shall upon the date that such previous coverage terminates (a) suspend the license of those motor vehicles covered by the previous insurance policy or undertaking, and (b) confiscate the motor vehicle license plates issued for those vehicles by ordering the immediate surrender of those license plates at such specific place and during such reasonable hours as the commissioner may direct. The commissioner shall take similar actions if notified of the lapse, cancellation, or other termination of an undertaking or surety or fidelity bond by or in the behalf of the named insured owner or registrant of a motor vehicle.

(2) If within ten days of such suspension the named insured owner or registrant presents the commissioner or his authorized agent with satisfactory evidence of the reparation and liability insurance or self-insurance security required by this act, the commissioner shall without delay or charge renew the license and reissue to the owner or registrant the license plates of those motor vehicles affected by such suspension. However, if the owner or registrant does not within ten days of such suspension provide satisfactory proof of required security or otherwise fails to remove the commissioner's suspension of license,

the registration certificate and license plates of an affected motor vehicle shall be deemed revoked. Any party affected by such revocation, in order to renew the registration and licensing of such motor vehicle, must take all the steps appropriate to new registration and new licensing, including paying appropriate fees for such registration and licensing.

Sec. 11. [INSURERS.] Subdivision 1. [MANDATORY OFFER OF INSURANCE BENEFITS.] On and after the effective date of this act, no policy of motor vehicle liability insurance insuring against loss resulting from liability imposed by law for bodily injury, death and property damage suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued, renewed, continued, delivered, issued for delivery, or executed in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, under provisions approved by the commissioner of insurance, requiring the insurer to pay, regardless of the fault of the insured, the accident reparation benefits arising out of injury sustained during the operation of the motor vehicle as provided in subdivision 2.

Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and limits of liability, and shall contain an agreement or endorsement that insurance is provided thereunder in accordance with coverage defined in this act as respects reparation benefits, bodily injury, and death or property damage, and is subject to all the provisions of this act.

Subd. 2. (a) [BASIC REPARATION BENEFITS.] Each such insurance policy shall include personal injury protection providing for payment of basic economic loss benefits to any insured, operator of the insured motor vehicle, passenger in such motor vehicle and other person struck by such motor vehicle and suffering bodily injury while not an occupant of a motor vehicle, to a minimum limit of $10,000 per person per accident for loss sustained by any such person as a result of bodily injury, sickness, disease, bodily malfunction, aggravation of such sickness, disease or malfunction, or death arising out of the ownership, maintenance or use of a motor vehicle, subject where applicable, to the deductibles, exclusions, disqualifications and other conditions in this act.

(b) [RESIDUAL LIABILITY INSURANCE.] (1) Each such insurance policy described in subdivision 1 shall also contain stated limits of liability, exclusive of interest and costs, with respect to each vehicle for which coverage is thereby granted, of not less than $25,000 because of bodily injury to, or death of, one person in any one accident and, subject to said limit for one person, of not less than $50,000 because of bodily injury to, or death of, two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, of not less than $10,000 because of such injury to or destruction of property of others in any one accident.

(2) Under residual liability insurance the insurer shall be liable to pay, on behalf of the owner or other persons insured, sums which the owner or insured is legally obligated to pay as damages because of bodily injury and property damage arising out of the ownership, maintenance or use of a private passenger motor vehicle as a motor vehicle if the injury or damage occurs within this state, the United States of America, its territories or possessions, or Canada.

(3) Every motor vehicle residual liability policy shall be subject to the following provisions which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this clause shall become absolute whenever injury or damage covered by said motor vehicle residual liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(c) The insurance carrier shall have the right to settle any claim covered by the residual liability insurance policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2, clause (b) for the accident out of which such claim arose.

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this act shall constitute the entire contract between the parties.

Subd. 3. Nothing in this act shall be construed as preventing the insurer from offering other benefits or limits in addition to those required to be offered under this section.

Sec. 12. [INSURERS' CERTIFICATION OF BASIC COVERAGE.] Subdivision 1. Every insurer licensed to write motor vehicle accident reparation and liability insurance in this state shall, on or before the effective date of this act or as a condition to such licensing, file with the commissioner and thereafter maintain a written certification that any person insured by the insurer who suffers accidental bodily injury in this state arising from the ownership, operation, maintenance or use of a motor vehicle, including motor vehicles of out-of-state residents who are insured under the insurer's motor vehicle liability insurance policies, shall be afforded at least the minimum coverage required by section 11.

Subd. 2. Any nonadmitted insurer may voluntarily file the certification described in subdivision 1.

Sec. 13. [POLICY COVERAGE CANCELLATION, NON-RENEWAL; NOTICE; HEARING; APPEAL; OTHER REMEDIES.] Subdivision 1. An application for a policy of insurance described in this act may not be rejected by an insurer nor shall the policy of insurance or other security once issued be cancelled or refused renewal by an obligor except in accordance with the provisions of Minnesota Statutes, Sections 65B.14 to 65B.19.

Subd. 2. The rights, protections and obligations of an insured, an insurer or other reparation obligor, and the commissioner of insurance provided under Minnesota Statutes, Sections 65B.20 and 65B.21, shall also be in effect under this act.

Subd. 3. In addition to the remedies provided by this section and the remedies available under the policy or under any contract, a reparation obligor shall be liable in tort for all damages suffered by a person aggrieved by the insurer's negligent or wilful failure to conform to this act.

Sec. 14. [APPLICATION FOR BENEFITS UNDER INSURANCE POLICY.] Subdivision 1. The basic economic loss coverage described in section 11, subdivision 2, clause (a) may prescribe a period of not less than six months after the date of accident within which an insured or any other person who sustained injury, or anyone acting on their behalf, must notify the reparation obligor, its agent, or other authorized representative of the accident and the possibility of a claim for economic loss benefits in order to be eligible for such benefits. Such notice may be given in any reasonable fashion.

Subd. 2. The basic economic loss coverage described in section 11, subdivision 2, clause (a) may provide that in any instance where a lapse occurs in the period of disability or in the medical treatment of an injured person who has received benefits under such coverage or coverages, and such person subsequently claims additional benefits based upon an alleged recurrence of the injury for which the original claim for benefits was made, the insurer may require reasonable medical proof of such alleged recurrence; provided, that in no event shall the aggregate benefits payable to any person exceed the maximum limits specified in the insurance policy, and provided further that such coverages may contain a provision terminating eligibility for benefits after a prescribed period of lapse of disability and medical treatment, which period shall not be less than one year.

Sec. 15. [COOPERATION OF PERSON CLAIMING BENEFITS.] Subdivision 1. [MEDICAL EXAMINATIONS AND DISCOVERY OF CONDITION OF CLAIMANT.] Any person injured in an automobile accident who claims damages therefor from another party or benefits therefor under an insurance policy or guaranty bond shall, upon request of the party or obligor from whom recovery is sought, submit to a physical examination by a physician or physicians selected by such party or obligor as may reasonably be required.

The costs of any examinations requested by the obligor or another party shall be borne entirely by the requesting obligor or party. Such examinations shall be conducted within the city, town, village or borough of residence of the claimant. If there is no qualified physician to conduct the examination within the city, town, village or borough of residence of the claimant, then such examination shall be conducted at another place of the closest proximity to the claimant's residence. Insurers are authorized to include reasonable provisions in policies for mental and physical examination of those claiming security benefits.

If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out in detail the findings and conclusions of such examining physician.

A claimant shall also do all things reasonably necessary to enable such party or obligor to obtain medical reports and other needed information to assist in determining the nature and extent of the claimant's injuries and loss, and the medical treatment received by him. If the claimant refuses to cooperate in responding to requests for examination and information as authorized by this section, evidence of such non-cooperation shall be admissible in any suit or arbitration filed by the claimant for damages for such personal injuries or for the benefits provided by this act.

Subd. 2. [CLAIMANT'S PARTICIPATION IN ARBITRATION BETWEEN OBLIGORS.] Any person receiving benefits under this act shall participate and cooperate, as reasonably required under the coverage, in any and all arbitration proceedings as provided in section 23 by or on behalf of the obligor paying the benefits, and the obligor may require in the furnishing of proof of loss the claimant's statement that he shall so participate and cooperate as consideration for the payment of such benefits. However, no claimant may be required by any obligor which has paid or is obligated to pay benefits as herein provided to personally attend an arbitration proceeding which shall take place more than 50 miles from the usual residence of the claimant; and provided that in no event shall the claimant have to attend such an arbitration proceeding if, at the time scheduled for that meeting, travel thereto by the claimant is not recommended by a physician treating the claimant for his injuries.

Sec. 16. [PROMPT PAYMENT OF BENEFITS.] Subdivision 1. Payment under the coverages provided by this act must be made periodically on a monthly basis as expenses are incurred, except that benefits payable for wage loss shall be payable not less often than every two weeks. Economic loss benefits for any period are overdue if not paid within 30 days after the reparation obligor has received notification of injury and claim, reasonable proof of the fact of injury or loss, evidence of the amount of expenses incurred during that period and, if requested, the claimant's statement of the necessity and propriety of expenses incurred. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable

proof is overdue if not paid within 30 days after such proof is received by the reparation obligor. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within 30 days after such proof is received.

In the event that the reparation obligor fails to pay such benefits when due, the person entitled to such benefits may, depending upon the amount in dispute, either bring an action at law on the reparation contract or apply for arbitration as provided by section 24 to recover the benefits. In the event the reparation obligor is required by either action to pay any overdue benefits, the obligor shall, in addition to the benefits recovered, be required to pay the reasonable attorney's fees and court costs incurred by the other party. Overdue benefit payments shall bear interest at the highest lawful rate of interest provided under the laws of this state.

Subd. 2. The existence of a potential cause of action in tort by any person entitled to the benefits specified in this act shall not affect the duty of the reparation obligor to pay such benefits promptly as provided in this section.

Sec. 17. [REPARATION BENEFITS; EXEMPTIONS FROM LEGAL ATTACHMENT.] All reparation benefits provided by this act, whether paid or payable to any injured person shall not be subject to garnishment, sequestration, attachment or execution, or any other legal process which would deny their receipt and use by that person; provided, however, that this section shall not apply to any person who has provided treatment or services, as described in section 6, clause (a), to the victim of a motor vehicle accident.

Sec. 18. [PERSONS EXCLUDED FROM BENEFITS.] Subdivision 1. No reparation obligor shall be required to pay basic economic loss benefits to any injured person otherwise covered under this act, where such person's conduct contributed to that injury in any of the following ways:

(a) By intentionally causing or attempting to cause injury to himself, another person, or the property of another person;

(b) While operating or riding in a vehicle known to him to be stolen or used without the owner's consent; or

(c) Operating a motor vehicle while his driver's license is under final suspension, revocation, or denial;

(d) While seeking to elude lawful apprehension or arrest by a police officer, if convicted thereof;

(e) While in the commission of a felony, if convicted thereof.

Subd. 2. For purposes of subdivision 1, clause (a), a person intentionally causes or attempts to cause injury if he acts or fails to act for the purpose of causing injury or with knowledge that injury is substantially certain to follow. A person does not intentionally cause or attempt to cause injury (1) merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or (2) if the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person.

Subd. 3. The provisions of subdivision 1 shall not diminish the obligation of a reparation obligor to provide survivor's benefits as described in section 6, clause (e).

Sec. 19. [DUPLICATE PAYMENTS; REPARATION OBLIGOR'S RIGHTS OF DEDUCTION, REIMBURSEMENT AND INDEMNITY.] Subdivision 1. [DEDUCTION.] If, prior to payment by the reparation obligor of the benefits provided by this act, payment in whole or in part is received from or on the behalf of a person who is or may be liable in tort for such loss, either by way of advance payment or settlement of the potential liability of such person, the recipient shall disclose such fact to his reparation obligor, and shall not collect benefits from such obligor to the extent that such benefits would produce a duplication of payment or reimbursement of the same loss.

Subd. 2. [SUBTRACTION; REIMBURSEMENT.] No subtraction from personal injury protection benefits shall be made by a reparation obligor because of the estimated value of a claim in tort based on the same bodily injury, but after recovery is realized upon any such tort claim, a subtraction from the limits of coverage shall be made to the extent of the recovery, exclusive of reasonable attorney's fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurer or insurers. If personal injury protection benefits have already been received, the injured recipient shall repay to his reparation obligor out of any such recovery a sum equal to any such benefits received, but not more than the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, and only to the extent that the injured person has recovered duplicate benefits from the tortfeasor or his insurer or insurers. In cases of the subtraction or repayment provided in this subdivision, attorney's fees and costs, if any, shall be assessed against the reparation obligor and the claimant in the proportion each benefits from the tort recovery.

Subd. 3. [LIMITATION ON RIGHT OF SUBTRACTION.] No recovery in a tort action by an injured person or his estate for loss suffered by him shall be subtracted by a reparation obligor in calculating reparation benefits due a dependent after such person's death, except where payment to the dependent by the reparation obligor would result in duplicate payment of the reparation benefits provided by this act.

Subd. 4. [OBLIGOR'S RIGHT OF INDEMNITY.] Any reparation obligor having a right of reimbursement under this section, if suffering loss from inability to collect such reimbursement out of a payment received by a claimant upon a tort claim, is entitled to indemnity from one who, with notice of the obligor's interest, made such payment to the claimant without making the claimant and the obligor joint payees, as their interests may appear, or without obtaining the consent of the reparation obligor to a different method of payment.

Sec. 20. [CLAIMS AGAINST WRONG INSUPER.] If timely action for reparation benefits is commenced against a reparation obligor and benefits are denied because of a determination that the obligor's coverage is not applicable to the claimant under the provisions of section 7 on the priority of applicability of reparation insurance policies, a claim against a proper obligor or assigned claims plan may be made not later than 90 days after such determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

Sec. 21. [COMPUTATION OF TOTAL ECONOMIC LOSS BENEFITS; DEDUCTION OF PUBLIC BENEFITS.] Benefits recoverable under the workmen's compensation laws, medicare, medicaid, social security, or any other benefits, the consideration for which has been wholly provided by any state or the federal government, shall be primary in the reimbursement for economic loss under this act. However, no reparation obligor shall be entitled to any credit or offset of such benefits in the calculation of the amount of minimum or additional benefits payable by that obligor to any claimant. The treatment here given to such publicly funded loss-recovery benefits is intended only to prevent duplicate payment of benefits to a claimant, and is not intended to allow a reparation obligor to avoid the payment to a claimant of the full dollar amount of benefits agreed to be paid by an obligor. Where deductibles as described in section 22 are in effect under any insurance policy or other plan of reparation security, the primary application of publicly supported benefits against the economic losses of an insured shall be made only in the amount which such public benefits exceed the deductible designated under such policy or plan of security.

Sec. 22. [DEDUCTIBLES.] Subdivision 1. At the election of the owner of a motor vehicle, a reparation obligor providing security for basic economic loss as required by this act to such owner may issue a policy endorsement, subject to such reasonable regulations regarding the endorsement as the commissioner of insurance may hereafter provide, which endorsement shall provide that there shall be deducted from the basic economic loss benefits that would otherwise be or become due to the named insured policyholder alone or to the named insured policyholder and other insureds under that policy an amount up to $1,000, which amount shall be permissibly deducted from the amounts otherwise due each person subject to the deduction.

Subd. 2. A deductible permitted in subdivision 1 shall not be applied to claims for benefits made by the following persons if injured by the motor vehicle of the named insured policyholder:

(a) a pedestrian, or

(b) another person, while upon, occupying, getting into, or alighting from the motor vehicle; provided, however, that any injured pedestrian or other person making claim under his own coverage shall be bound by any deductible under his own coverage which he has elected or is otherwise subject.

Subd. 3. [PEDESTRIANS INJURED BY COMMERCIAL MOTOR VEHICLES.] No deductible applicable to the reparation security of any commercial vehicle shall be applied against a claim for benefits by any pedestrian injured by that commercial vehicle and permitted to recover against the owner or any insurer of that vehicle under section 7, subdivision 3.

Subd. 4. [MOTORCYCLES; MANDATORY OFFER OF DEDUCTIBLE.] At the election of the owner of a motorcycle, each reparation obligor providing security for basic economic loss to any such owner shall issue a policy endorsement, subject to such reasonable regulations regarding the endorsement as the commissioner of insurance may hereafter provide, which endorsement shall provide that there shall be deducted from the basic economic loss benefits otherwise due to named insured motorcycle owner alone or to the named insured motorcycle owner and policyholder, other insureds under that policy, and passengers an amount of up to $1,000, which amount shall be permissibly deducted from the reparation amounts otherwise due to each person subject to the deductible amount. The endorsement may further provide that the deductible of $1,000 shall apply to any economic loss suffered by the named insured motorcycle owner and relatives residing in his household as the result of an accident arising from the operation, maintenance or use of any motorcycle within this state, anywhere within the United States and its possessions, and Canada.

Sec. 23. [SUBROGATION AND ARBITRATION BETWEEN OBLIGORS.] Subdivision 1. Except as otherwise provided in this section, where a reparation obligor has paid benefits provided under this act to an injured person, the obligor paying such benefits is, to the extent of such payments, subrogated to any right of action for damages by the injured person against the alleged wrongdoer. However, where such wrongdoer is covered by a policy of liability insurance or other plan of security underwritten by another reparation obligor, the right of the subrogated obligor shall be exercisable only as provided in subdivision 2.

Subd. 2. Every company licensed to write insurance in this state is deemed to have agreed, as a condition of doing business in the state or maintaining its license after the effective date of this act, that (a) where its insured is or would be held legally liable for damages or injuries sustained by any person to whom basic economic loss benefits have been paid by another obligor or person, it will reimburse such other obligor or person to the extent of such benefits, but not in excess of the amount of damages so recoverable for the types of loss covered by such benefits, or in excess of the limits of its liability under its contract of insurance, or other plan of reparation security; (b) where its insured is or would be held legally liable for property damage or destruction sustained by any claimant to whom payment has been made by another person, it will reimburse such other person to the extent of such payment, but not in excess of the amount of damages so recoverable

for the types of loss covered by such reparation security or insurance or in excess of the limits of its liability under its contract of insurance or plan of reparation security; and (c) that the issue of liability for such reimbursement and the amount thereof must be decided by mandatory, good faith, and binding inter-obligor arbitration procedures approved by the commissioner of insurance. Such procedures shall utilize determinations of the comparative negligence of those insureds represented by a reparation obligor at the arbitration proceeding.

Subd. 3. Any evidence or decision in the arbitration proceedings is privileged and is not admissible in any action at law or in equity by any party.

Subd. 4. If any reparation obligor in such an arbitration proceeding also has provided coverage to the same policyholder for collision or upset arising out of the same occurrence, such obligor shall also submit the issue of recovery of any payments thereunder to the same mandatory and binding arbitration proceedings as herein provided.

Subd. 5. Arbitration proceedings need not await final payment of benefits, and the award, if any, shall include provision for reimbursement of subsequent benefits, but no question of fact decided by a prior award shall be reconsidered in any such subsequent arbitration hearing.

Sec. 24. [MANDATORY ARBITRATION OF CERTAIN CLAIMS; SUPREME COURT TO PROMULGATE RULES OF PROCEDURE.] Subdivision 1. The supreme court and the several courts of general trial jurisdiction of this state may, on or before the effective date of this act, by rules of court or other constitutionally permissible device, provide for the mandatory submission to arbitration of all cases at issue where a claim in an amount of $5,000 or less is made by a motor vehicle accident victim, whether in a tort action to collect special or general damages for the allegedly negligent operation, maintenance, or use of a motor vehicle within this state, or against any reparation obligor for benefits as provided in this act. In the promulgation of such arbitration provisions, the courts may evaluate, adopt, or adapt for the purposes of this act procedures employed by the American Arbitration Association.

Subd. 2. The determination of whether the amount in controversy is $5,000 or less shall be based upon a statement made in good faith and filed with the district court by the attorney for the plaintiff or by the plaintiff himself.

Subd. 3. The rules of court may provide that cases which are not at issue and whether or not suit has been filed may be referred to arbitration by agreement of reference signed by counsel for both sides, or by the parties themselves. Such agreement of reference shall define the issues involved for determination by arbitration and, when agreeable, shall also contain stipulations with respect to facts submitted or agreed or defenses waived. In such cases, the agreement of reference shall take the place of the pleadings in the case and be filed of record.

Sec. 25. [TORT ACTIONS PRESERVED.] The provision of section 24 for the mandatory arbitration of claims shall not apply where the amount of a controverted claim is more than $5,000, however, nothing contained in this act is intended to discourage the voluntary submission to arbitration by the parties to an action in tort for negligence or upon a contract or other agreement for reparation benefits in which the claimed amount exceeds $5,000.

Sec. 26. [OFFSET IN ACTION AGAINST REPARATION INSURER.] If any person receiving or entitled to receive economic loss benefits under this act files an action against a reparation obligor paying or obligated to pay those benefits, such benefits must be disclosed to the court, or in the event of arbitration of such action, to the arbitrators, and the value of such benefits must be deducted from any award recovered by such person in such proceeding prior to the entry of a verdict or award and may not be considered a part of the verdict, award or recovery obtained by such person.

Sec. 27. [OFFSET IN ACTION AGAINST TORTFEASER.] Subdivision 1. In any negligence action in which the defendant, his reparation obligor or any other person has made an advance payment to or on behalf of any claimant prior to trial or arbitration, any evidence of or concerning the advance payment shall be inadmissible in evidence or as an admission of liability in any action brought by the claimant, his survivors or personal representatives to recover damages in tort for personal injuries or for the wrongful death of another or for property damage or destruction.

Subd. 2. [DEDUCTION OF ADVANCE PAYMENTS.] In the event, however, that such action results in a verdict or award in favor of the claimant, in excess of advance payments made by on or behalf of the defendant, the defendant shall be allowed to introduce evidence of such payments after the verdict, or award has been rendered, and the court or arbitrators shall then reduce the amount awarded to the claimant by the amount of payments made prior to trial.

Subd. 3. [ADVANCE PAYMENT: DEFINED.] For the purpose of subdivision 1 of this section, "advance payment" shall be construed to include, but not limited to, the following: Any partial payment, loan or settlement made by any person or obligor of such person, to another, which payment, loan or settlement is predicated upon possible tort liability.

Subd. 4. [ACTIONS COVERED.] This section shall be applicable to any action commenced in this state, regardless of the situs of the accident, location of the property or residence of the parties.

Subd. 5. [STATUTE OF LIMITATIONS.] The making of an advance payment shall not interrupt the running of the statute of limitations if the person, including any insurer, who makes such advance payment shall, at the time of the first payment, clearly and unambiguously notify the recipient thereof in writing of the date the applicable statute of limitations will expire and of the fact that the making of the advance payment in no way affects his right to

seek damages through an action in a court of law prior to the expiration of the statute of limitations.

Sec. 28. [UNINSURED OR HIT-AND-RUN MOTOR VEHICLE COVERAGE.] Subdivision 1. On and after the effective date of this act, no policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle may be renewed, delivered or issued for delivery, or executed in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in the amounts of $25,000 because of bodily injury to or the death of one person in any accident, and subject to the said limit for one person, $50,000 because of bodily injury to or the death of two or more persons in any one accident, and $10,000 for injury to or the destruction of property, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness, disease, bodily malfunction, aggravation of such sickness, disease or malfunction, or death, resulting therefrom.

Subd. 2. Every owner or registrant of a motor vehicle registered or principally garaged in this state shall maintain uninsured motor vehicle coverage as provided in subdivision 1.

Subd. 3. "Uninsured motor vehicle" means any motor vehicle for which a motor vehicle accident liability insurance policy or other plan of security meeting the requirements of this act is not in effect.

Subd. 4. Amounts paid by any reparation obligor under the uninsured motor vehicle provisions of this section may be offset against the economic loss benefits paid or payable as the result of an accident to an insured claimant by that obligor.

Sec. 29. [ASSIGNED CLAIMS PLAN.] Subdivision 1. Reparation obligors providing basic reparation insurance in this state may organize and maintain, subject to approval and regulation by the commissioner of insurance, an assigned claims bureau and an assigned claims plan, and adopt rules for their operation and for the assessment of costs on a fair and equitable basis consistent with this act. If such obligors do not organize and continuously maintain an assigned claims bureau and an assigned claims plan in a manner considered by the commissioner of insurance to be consistent with this act, he shall organize and maintain an assigned claims bureau and an assigned claims plan. Each reparation obligor providing basic reparation insurance in this state shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors.

Subd. 2. The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee-obligor of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he had issued a policy of basic reparation insurance complying with this act applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

Sec. 30. [PERSONS ENTITLED TO PARTICIPATE IN ASSIGNED CLAIMS PLAN.] Subdivision 1. A person entitled to basic reparation benefits because of injury covered by this act and occurring in this state may obtain basic economic loss benefits through the assigned claims plan or bureau established pursuant to section 29 and in accordance with the provisions for making assigned claims provided in this act, if:

(a) Basic reparation benefits are not applicable to the injury for some reason other than those specified in section 18;

(b) Basic reparation insurance or self-insurance applicable to the injury cannot be identified; or

(c) A claim for basic reparation benefits is rejected by an insurer or self-insurer on some ground other than the person is not entitled to basic reparation benefits under this act.

Subd. 2. If a claim qualifies for assignment under subdivision 1 of this section, the assigned claims bureau or any reparation obligor to whom the claim is assigned shall be, as provided in section 23, subrogated to all of the rights of the claimant against any person, including another obligor, who is legally obligated to provide reparation benefits to the claimant, for reparation benefits provided by the obligor to whom the claim was assigned.

Subd. 3. A person shall not be entitled to basic reparation benefits through the assigned claims plan with respect to injury which he has sustained if at the time of such injury he was the owner of a private passenger motor vehicle for which security is required under this act and he failed to have such security in effect.

Sec. 31. [NOTIFICATION TO ASSIGNED CLAIMS BUREAU.] A person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within one year of the date on which he receives written authorization to participate in such plan. If timely action for basic reparation benefits is commenced against an insurer or self-insurer who is unable to fulfill his obligations under this act, a claim through the assigned claims plan may be made within a reasonable time after discovery of such inability.

Sec. 32. [SERVICE OF PROCESS; RESIDENTS; NONRESIDENTS; COMMISSIONER OF PUBLIC SAFETY AS AGENT.] Subdivision 1. The use and operation by a resident of this state or his agent, or by a nonresident or his agent of a motor vehicle within the state of Minnesota, shall be deemed an irrevocable appointment by such resident when he has been absent from this state continuously for six months or more following an

accident, or by such nonresident at any time, of the commissioner of public safety to be his true and lawful attorney upon whom may be served all legal process in any action or proceeding against him or his executor, administrator, or personal representative growing out of such use and operation of a motor vehicle within this state, resulting in damages or loss to person or property, whether the damage or loss occurs on a highway or on abutting public or private property. Such appointment is binding upon the nonresident's executor, administrator, or personal representative. Such use or operation of a motor vehicle by such resident or nonresident is a signification of his agreement that any such process in any action against him or his executor, administrator, or personal representative which is so served, shall be of the same legal force and validity as if served upon him personally or on his executor, administrator, or personal representative. Service of such process shall be made by serving a copy thereof upon the commissioner or by filing such copy in his office, together with payment of a fee of $2, and such service shall be sufficient service upon the absent resident or the nonresident or his executor, administrator, or personal representative; provided that notice of such service and a copy of the process are within ten days thereafter sent by mail by the plaintiff to the defendant at his last known address and that the plaintiff's affidavit of compliance with the provisions of this chapter is attached to the summons.

Subd. 2. The court in which the action is pending may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend any such action, not exceeding 90 days from the date of filing of the action in such court. The fee of $2 paid by the plaintiff to the commissioner at the time of service of such proceedings shall be taxed in his cost if he prevails in the suit. The said commissioner shall keep a record of all such processes so served which shall show the day and hour of such service.

Sec. 33. Minnesota Statutes 1971, Section 65B.05, is amended to read:

65B.05 [POWER OF FACILITY, GOVERNING COMMITTEE.] The governing committee shall have the power to direct the operation of the facility in all pursuits consistent with the purposes and terms of Laws 1971, Chapter 813, including but not limited to the following:

(1) To sue and be sued in the name of the facility and to assess each participating member in accord with its participation ratio to pay any judgment against the facility as an entity, provided, however, that no judgment against the facility shall create any liabilities in one or more participating members disproportionate to their participation ratio or an individual representing participating members on the governing committee.

(2) To delegate ministerial duties, to hire a manager and to contract for goods and services from others.

(3) To assess participating members on the basis of participation ratios to cover anticipated costs of operation and administration of the facility.

(4) To impose limitations on cancellation or non-renewal by participating members of insureds covered pursuant to placement through the facility in addition to the limitations imposed by chapter 72A and sections 65B.13 to ~~65B.27~~ 65B.21.

Sec. 34. Minnesota Statutes 1971, Section 65B.06, Subdivision 2, is amended to read:

Subd. 2. With respect to private passenger, non-fleet automobiles, the facility shall provide for the issuance of policies of automobile insurance by participating members with coverage as follows:

(1) The participating members must provide bodily injury liability and property damage liability coverage in the minimum amounts specified in ~~chapter 170~~ the Minnesota automobile accident reparations act ; and

(2) The participating members must provide uninsured motorists coverage as ~~required by section 65B.22~~ follows: if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than $25,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, of not less than $50,000 because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, of not less than $10,000 because of injury to or destruction of property of others in any one accident;

(3) The participating members must make available to all qualified applicants a reasonable selection of additional limits of liability coverage up to fifty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, up to one hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident ~~, and up to ten thousand dollars because of injury to or destruction of property of others in any one accident, and corresponding higher limits of uninsured motorists coverage as required by section 65B.22~~ ; and

~~(4) The participating members must make available to all qualified applicants medical payments coverage with a reasonable selection of limits, in accordance with section 65B.26(c); and~~

~~(5)~~ (4) The participating members must make available to all qualified applicants automobile physical damage coverage, including coverage of loss by collision, subject to optional deductibles.

~~Provided that no coverage available under (5) of this subdivision (physical damage) shall be provided by a carrier that has been licensed to provide the coverage made available under (1), (2) and (3) of this subdivision, unless the qualified applicant has requested coverage pursuant to (1), (2) and (3) as well as physical damage coverage. If a qualified applicant requests only physical damage coverage, such coverage shall be provided by an insurer not licensed to provide the coverage specified in clauses (1), (2) and (3) of this subdivision.~~

Sec. 35. Minnesota Statutes 1971, Section 65B.14, Subdivision 1, is amended to read:

65B.14 [CANCELLATION OR NON-RENEWAL OF AUTOMOBILE POLICIES; DEFINITIONS.] Subdivision 1. "Policy of automobile liability insurance" means a policy delivered or issued for delivery in this state ~~, insuring a natural person as named insured, and any relative of relative 5 of the named insured who is a resident of the same household covering automobiles owned by the insured of (a) the private passenger type, including a private passenger, station wagon or jeep type automobile not used as a public or livery conveyance for passengers, nor rented to others, or (b) the utility automobile type which shall mean any other four wheel vehicle whether having a pick up, sedan delivery, or panel truck type body not used primarily in the occupation, profession or business of the insured other than farming or ranching, provided, however, that sections 65B.14 to 65B.21 shall not apply to any policy of automobile liability insurance: (1) issued under the Minnesota automobile insurance plan, (2) insuring more than four automobiles, or (3) covering garage, automobiles sales agency, repair shop, service station or public parking place operation hazards, and, provided further, that sections 65B.14 to 65B.21 shall apply only to that portion of an automobile liability policy insuring against bodily injury and property damage liability and to the provisions therein, if any, relating to medical payments, uninsured motorists coverage, accidental death, and disability coverages~~ which provides an insured with the coverage required by sections 1 to 32 of the Minnesota automobile accident reparations act .

Sec. 36. Minnesota Statutes 1971, Section 65B.21, Subdivision 2, is amended to read:

Subd. 2. Upon receipt of a filing fee and a written objection pursuant to the provisions herein, the commissioner shall notify the insurer of receipt of such objection and of the right of the insurer to file a written response thereto within ten days of receipt of such notification. The commissioner in his discretion may also order an investigation of the objection or complaint, the submission of additional information by the insured or the insurer about the action by the insurer or the objections of the insured, or such other procedure as he deems appropriate or necessary. Within 23 days of receipt of such written objection by an insured the commissioner shall approve or disapprove the insurer's action and shall notify the insured and insurer of his final decision. If the commissioner finds that the insurer has failed to conform to this section, he shall order the insurer to issue a policy of insurance which shall be deemed to have been in force and in effect during the period of time which such insurance application was rejected or during which such policy was canceled or was not renewed. If the insurer refuses to comply with the order, the commissioner of insurance shall suspend the insurer from conducting its business operations in this state and shall prohibit it from selling, directly or indirectly, any and all kinds of insurance in this state. If the commissioner enters the order, the insurer shall pay the reasonable attorney's fee incurred by person filing the complaint. Either party may institute proceedings for judicial review of the commissioner's decision by writ of certiorari to the district court for Ramsey county ; provided, however, that the commissioner's final decision shall be binding pending judicial review.

Sec. 37. Minnesota Statutes 1971, Section 65B.21, is amended by adding a subdivision.

Subd. 3. If the insured person filing the complaint before the commissioner of insurance shall prevail upon the appeal, the insurer shall pay the reasonable attorney fees incurred by that person in conjunction with the appeal. If the insurer shall prevail on the appeal, the party filing the complaint shall be deemed not to have been insured as of the date of such rejection, cancellation or refusal to renew or the date upon which the judgment is filed by the court hearing the appeal, whichever is later.

Sec. 38. Minnesota Statutes 1971, Section 171.04, is amended to read:

171.04 [PERSONS NOT ELIGIBLE FOR DRIVER'S LICENSES.] The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of 16 years; to any person under 18 years unless such person shall have successfully completed a course in driver education, including both classroom and behind-the-wheel instruction, approved by the department of public safety or, in the case of a course offered by a private, commercial driver education school or institute employing driver education instructors, by the department of public safety, except when such person has completed a course of driver education in another state or has a previously issued valid license from another state or country; nor to any person under 18 years unless the application of license is approved by either parent when both reside in the same household as the minor applicant, otherwise the parent having custody or with whom the minor is living in the event there is no court order for custody, or guardian having the custody of such minor, or in the event a person under the age of 18 has no living father, mother or guardian, the license shall not be issued to such person unless his application therefor is approved by his employer. Behind-the-wheel driver education courses offered in any public school shall be open for enrollment to persons between the ages of 15 and 18 years residing in the school district or attending school therein. Any public school offering behind-the-wheel driver education courses may charge an enrollment fee for the behind-the-wheel driver education course which shall not exceed the actual cost thereof to the public school and the school district. The approval required herein shall contain a verification of the age of the applicant;

(2) To any person whose license has been suspended during the period of suspension except that a suspended license may be reinstated during the period of suspension upon the licensee furnishing proof of ~~financial responsibility~~ automobile insurance coverage in the same

manner as provided in the ~~safety responsibility~~ automobile accident reparations act;

(3) To any person whose license has been revoked except upon furnishing proof of ~~financial responsibility~~ automobile insurance coverage in the same manner as provided in the ~~safety responsibility~~ automobile accident reparations act and if otherwise qualified;

(4) To any person who is an habitual drunkard as determined by competent authority or is addicted to the use of narcotic drugs;

(5) To any person who has been adjudged legally incompetent by reason of mental illness, mental deficiency, or inebriation, and has not been restored to capacity, unless the department is satisfied that such person is competent to operate a motor vehicle with safety to persons or property;

(6) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(7) To any person who is required under the provisions of the ~~safety responsibility laws of this state~~ automobile accident reparations act to deposit proof of ~~financial responsibility~~ automobile insurance coverage and who has not deposited such proof;

(8) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare;

(9) To any person when, in the opinion of the commissioner, such person is afflicted with or suffering from such physical or mental disability or disease as will affect such person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways; nor to a person who is unable to read and understand official signs regulating, warning, and directing traffic.

Sec. 39. Minnesota Statutes 1971, Section 171.12, Subdivision 4, is amended to read:

Subd. 4. [FINANCIAL RESPONSIBILITY SUSPENSIONS, DESTRUCTION OF RECORDS.] Notwithstanding the provisions of subdivision 3, the department may cause the record of ~~financial responsibility~~ suspensions and revocations resulting solely from the cancelation of a policy of insurance ~~pursuant to section 170.41~~ as provided in sections 1 to 32 of the Minnesota automobile accident reparations act to be destroyed when the need for such record has passed.

Sec. 40. Minnesota Statutes 1971, Section 171.18, is amended to read:

171.18 [SUSPENSION.] The commissioner shall have authority to and may suspend the license of any driver without preliminary hearing upon a showing by department records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of license is required upon conviction; or

(2) Has been convicted by a court of competent jurisdiction for violation of a provision of the highway traffic regulation act or an ordinance regulating traffic and where it appears from department records that the violation for which he was convicted contributed in causing an accident resulting in the death or personal injury of another, or serious property damage; or

(3) Is an habitually reckless or negligent driver of a motor vehicle; or

(4) Is an habitual violator of the traffic laws; or

(5) Is incompetent to drive a motor vehicle as determined and adjudged in a judicial proceeding; or

(6) Has permitted an unlawful or fraudulent use of such license; or

(7) Has committed an offense in another state which, if committed in this state, would be grounds for suspension.

(8) Has wilfully failed, refused or neglected to make report of a traffic accident as required by the laws of this state, and this provision shall also apply to the operating privilege of any nonresident of this state.

Provided, however, that any action taken by the commissioner under subparagraphs (2) and (5) shall conform to the recommendation of the court when made in connection with the prosecution of the licensee.

Upon suspending the license of any person, as hereinbefore in this section authorized, the department shall immediately notify the licensee, in writing, by depositing in the United States post office a notice addressed to the licensee at his last known address, with postage prepaid thereon, and the licensee's written request shall afford him an opportunity for a hearing within not to exceed 20 days after receipt of such request in the county wherein the licensee resides, unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner, or his duly authorized agent, may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon such hearing the department shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license. The department shall not suspend a license for a period of more than one year.

Sec. 41. [SUPERCESSION BY THIS ACT; INSTRUCTIONS TO REVISOR OF STATUTES.] Subdivision 1. The definition of "qualified applicant" under Minnesota Statutes, Section 65B.02, Subdivision 2, Clause (2) shall, upon the repeal of chapter 170 and the enactment of this act, include a person required to prove automobile insurance coverage as required by this act.

Subd. 2. The actions permitted a metropolitan airport commission corporation under Minnesota Statutes 1971, Section 360.105, Subdivision 6 shall, upon the repeal of chapter 170 and the enactment of this act, include acts necessary to bring the corporation, its commissioner and agents within the provisions of this act.

Subd. 3. The actions permitted a county board under

Minnesota Statutes, Section 375.32, Subdivision 2, shall, upon the repeal of chapter 170 and the enactment of this act, include acts necessary to bring the county, its officers and employees within the provisions of this act.

Subd. 4. In the next and subsequent editions of Minnesota Statutes, wherever Minnesota Statutes, Chapter 170 has been referred to in a section, the revisor of statutes shall replace such references with references to this act.

Sec. 42. [REPEALS.] Minnesota Statutes 1971, Sections: 65B.22; 65B.23; 65B.24; 65B.25; 65B.26; 65B.27; 170.21; 170.22; 170.23; 170.231; 170.24; 170.25; 170.26; 170.27; 170.28; 170.29; 170.30; 170.31; 170.32; 170.33; 170.34; 170.35; 170.36; 170.37; 170.38; 170.39; 170.40; 170.41; 170.42; 170.43; 170.44; 170.45; 170.46; 170.47; 170.48; 170.49; 170.50; 170.51; 170.52; 170.53; 170.54; 170.55; 170.56; 170.57; 170.58 are repealed.

Sec. 43. [SEVERABILITY.] If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this act which can be given effect without the invalid application or provision, and to this end the provisions of this act are expressly declared to be severable.

APPENDIX C

UNIFORM MOTOR VEHICLE ACCIDENT REPARATIONS ACT

A bill for an act

relating to motor vehicle insurance; providing for basic reparation insurance benefits, regardless of fault, in cases of accident and for the partial abolition of tort liability; requiring no-fault reparation insurance and liability insurance; providing for the administration of a no-fault reparation insurance system and providing penalties; repealing Minnesota Statutes 1971, Sections 65B.01 to 65B.27, and 170.21 to 170.58.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [DEFINITIONS.] Subdivision 1. For the purposes of sections 1 to 47, the terms defined in this section shall have the meanings given them.

Subd. 2. "Added reparation benefits" mean benefits provided by optional added reparation insurance.

Subd. 3. "Basic reparation benefits" mean benefits providing reimbursement for net loss suffered through injury arising out of the maintenance or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications, and other conditions provided in this act.

Subd. 4. "Basic reparation insured" means:

(1) a person identified by name as an insured in a contract of basic reparation insurance complying with this act; and

(2) while residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of basic reparation insurance complying with this act: a spouse or other relative of a named insured; and a minor in the custody of a named insured or of a relative residing in the same household with a named insured. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

Subd. 5. "Injury" and "injury to person" mean bodily harm, sickness, disease, or death.

Subd. 6. "Loss" means accrued economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, survivor's economic loss and survivor's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.

(1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of $500 for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required.

(2) "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.

(3) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(4) "Survivor's economic loss" means loss after decedent's death of contributions of things of economic value to his survivors, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of decedent's death.

(5) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.

Subd. 7. "Maintenance or use of a motor vehicle" means maintenance or use of a motor vehicle as a vehicle, including, incident to its maintenance or use as a vehicle, occupying, entering into, and alighting from it. Maintenance or use of a motor vehicle does not include (1) conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises, or (2) conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it.

Subd. 8. "Motor vehicle" means:

(1) a vehicle of a kind required to be registered under the laws of this state relating to motor vehicles; or

(2) a vehicle, including a trailer, designed for operation upon a public roadway by other than muscular power, except a vehicle used exclusively upon stationary rails or tracks. "Public roadway" means a way open to the use of the public for purposes of automobile travel.

Subd. 9. "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss.

Subd. 10. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage recoverable under the tort law of this state. The term does not include punitive or exemplary damages.

Subd. 11. "Owner" means a person, other than a lienholder or secured party, who owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another

person. The term does not include a lessee under a lease not intended as security.

Subd. 12. "Reparation obligor" means an insurer, self-insurer, or obligated government providing basic or added reparation benefits under this act.

Subd. 13. "Survivor" means a person identified in Minnesota Statutes 1971, Section 573.02, Subdivision 1, as one entitled to receive benefits by reason of the death of another person.

Subd. 14. Other definitions appearing in this act and the sections in which they appear are:

(1) Basic reparation insurance -- section 8(9).

(2) Obligated government -- section 8(7).

(3) Secured vehicle -- section 8(8).

(4) Security covering the vehicle -- section 8(8).

(5) Self-insurer -- section 8(7).

Sec. 2. [RIGHT TO BASIC REPARATION BENEFITS.] Subdivision 1. If the accident causing injury occurs in this state, every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits.

Subd. 2. If the accident causing injury occurs outside this state, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits:

(1) basic reparation insureds; and

(2) the driver and other occupants of a secured vehicle, other than (a) a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under commmon ownership, or (b) a vehicle owned by an obligated government other than this state, its political subdivisions, municipal corporations, or public agencies.

Sec. 3. [OBLIGATION TO PAY BASIC REPARATION BENEFITS.] Subdivision 1. Basic reparation benefits shall be paid without regard to fault.

Subd. 2. Basic reperation obligors and the assigned claims plan shall pay basic reparation benefits, under the terms and conditions stated in this act, for loss from injury arising out of maintenance or use of a motor vehicle. This obligation exists without regard to immunity from liability or suit which might otherwise be applicable.

Sec. 4. [PRIORITY OF APPLICABILITY OF SECURITY FOR PAYMENT OF BASIC REPARATION BENEFITS.] Subdivision 1. In case of injury to the driver or other occupant of a motor vehicle, if the accident causing the injury occurs while the vehicle is being used in the business of transporting persons or property, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

Subd. 2. In case of injury to an employee, or to his spouse or other relative residing in the same household, if the accident causing the injury occurs while the injured person is driving or occupying a motor vehicle furnished by the employer, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

Subd. 3. In all other cases, the following priorities apply.

(1) The security for payment of basic reparation benefits applicable to injury to a basic reparation insured is the security under which the injured person is a basic reparation insured.

(2) The security for payment of basic reparation benefits applicable to injury to the driver or other occupant of an involved motor vehicle who is not a basic reparation insured is the security covering that vehicle.

(3) The security for payment of basic reparation benefits applicable to injury to a person not otherwise covered who is not the driver or other occupant of an involved motor vehicle is the security covering any involved motor vehicle. An unoccupied parked vehicle is not an involved motor vehicle unless it was parked so as to cause unreasonable risk of injury.

Subd. 4. If two or more obligations to pay basic reparation benefits are applicable to an injury under the priorities set out in this section, benefits are payable only once and the reparation obligor against whom a claim is asserted shall process and pay the claim as if wholly responsible, but he is thereafter entitled to recover contribution pro rata for the basic reparation benefits paid and the costs of processing the claim. Where contribution is sought among reparation obligors responsible under clause (3) of subdivision 3, proration shall be based on the number of involved motor vehicles.

Sec. 5. [PARTIAL ABOLITION OF TORT LIABILITY.] Subdivision 1. Tort liability with respect to accidents occurring in this state and arising from the ownership, maintenance, or use of a motor vehicle is abolished except as to:

(1) liability of the owner of a motor vehicle involved in an accident if security covering the vehicle was not provided at the time of the accident;

(2) liability of a person in the business of repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act of omission in repair, servicing, or other maintenance of a vehicle in the course of his business;

(3) liability of a person for intentionally caused harm to person or property;

(4) liability of a person for harm to property other than a motor vehicle and its contents;

(5) liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents;

(6) damages for any work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, not recoverable as basic reparaton benefits by reason of the limitation contained in the provisions on

standard weekly limit on benefits for those losses, that occur after the injured person is disabled by the injury for more than six months or after his death caused by the injury; and

(7) damages for noneconomic detriment in excess of $5,000, but only if the accident causes death, significant permanent injury, serious permanent disfigurement, or more than six months of complete inability of the injured person to work in an occupation. "Complete inability of an injured person to work in an occupation" means inability to perform, on even a part-time basis, even some of the duties required by his occupation or, if unemployed at the time of injury, by any occupation for which the injured person was qualified.

Subd. 2. For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of harm.

Sec. 6. [REPARATION OBLIGOR'S RIGHTS OF REIMBURSEMENT, SUBROGATION, AND INDEMNITY.] Subdivision 1. A reparation obligor does not have and may not directly or indirectly contract for a right of reimbursement from or subrogation to the proceeds of a claim for relief or cause of action for noneconomic detriment of a recipient of basic or added reparation benefits.

Subd. 2. Except as provided in subdivision 1, whenever a person who receives or is entitled to receive basic or added reparation benefits for an injury has a claim or cause of action against any other person for breach of an obligation or duty causing the injury, the reparation obligor is subrogated to the rights of the claimant, and has a claim for relief or cause of action, separate from that of the claimant, to the extent that (1) elements of damage compensated for by basic or added reparation insurance are recoverable and (2) the reparation obligor has paid or become obligated to pay accrued or future basic or added reparation benefits.

Subd. 3. A reparation obligor has a right of indemnity against a person who has converted a motor vehicle involved in an accident, or a person who has intentionally caused injury to person or harm to property, for basic and added reparation benefits paid to other persons for the injury or harm caused by the conduct of that person, for the cost of processing claims for those benefits, and for reasonable attorney's fees and other expenses of enforcing the right of indemnity. For purposes of this subdivision, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

Sec. 7. [SECURITY COVERING MOTOR VEHICLE.] Subdivision 1. This state, its political subdivisions, municipal corporations, and public agencies shall continuously provide pursuant to subdivision 4 security for the payment of basic reparation benefits in accordance with this act for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.

Subd. 2. The United States and its public agencies and any other state, its political subdivisions, municipal corporations, and public agencies may provide pursuant to subdivision 4 security for the payment of basic reparation benefits in accordance with this act for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.

Subd. 3. Except for entities described in subdivisions 1 and 2, every owner of a motor vehicle registered in this state, or operated in this state by him or with his permission, shall continuously provide with respect to the motor vehicle while it is either present or registered in this state, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this act and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle.

Subd. 4. Security may be provided by a contract of insurance or by qualifying as a self-insurer or obligated government in compliance with this act.

Subd. 5. Self-insurance, subject to approval of the commissioner of insurance of the state of Minnesota, is effected by filing with the commissioner in satisfactory form:

(1) a continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, and to perform all other obligations imposed by this act;

(2) evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided by this act; and

(3) evidence that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a policy of insurance complying with this act, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this act.

Subd. 6. An entity described in subdivision 1 or 2 may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this act.

Subd. 7. A person providing security pursuant to subdivision 5 is a "self-insurer." An entity described in subdivision 1 or 2 that has provided security pursuant to subdivision 4 is an "obligated government."

Subd. 8. "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."

Subd. 9. "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.

Sec. 8. [OBLIGATIONS UPON TERMINATION OF SECURITY.] Subdivision 1. An owner of a motor vehicle registered in this state who ceases to maintain security as required by the provisions on security may not operate or permit

operation of the vehicle in this state until security has again been provided as required by this act.

Subd. 2. An insurer who has issued a contract of insurance and knows or has reason to believe the contract is for the purpose of providing security shall immediately give notice to the registrar of motor vehicles of the termination of the insurance.

Subd. 3. If the commissioner of insurance withdraws approval of security provided by a self-insurer or knows that the conditions for self-insurance have ceased to exist, he shall immediately give notice thereof to the registrar of motor vehicles.

Subd. 4. The requirements of subdivisions 2 and 3 may be waived or modified by rule of the registrar of motor vehicles.

Sec. 9. [INCLUDED COVERAGES.] Subdivision 1. An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this act.

Subd. 2. Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverages, includes basic reparation benefit coverages and minimum security for tort liabilities required by this act, while the vehicle is in this state, and qualifies as security covering the vehicle.

Subd. 3. An insurer authorized to transact or transacting business in this state may not exclude, in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle, except a contract providing coverage only for liability in excess of required minimum tort liability coverage, the basic reparation benefit coverages and required minimum security for tort liabilities required by this act, while the vehicle is in this state.

Sec. 10. [REQUIRED MINIMUM TORT LIABILITY INSURANCE AND TERRITORIAL COVERAGE.] Subdivision 1. The requirement of security for payment of tort liabilities is fulfilled by providing:

(1) liability coverage of not less than $25,000 for all damages arising out of bodily injury sustained by any one person as a result of any one accident applicable to each person sustaining injury caused by accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle;

(2) liability coverage of not less than $10,000 for all damages arising out of injury to or destruction of property, including the loss of use thereof, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle; and

(3) that the liability coverages apply to accidents during the contract period in a territorial area not less than the United States of America, its territories and possessions, and Canada.

Subd. 2. Subject to the provisions on approval of terms and forms, the requirement of security for payment of tort liabilities may be met by a contract the coverage of which is secondary or excess to other applicable valid and collectible liability insurance. To the extent the secondary or excess coverage applies to liability within the minimum security required by this act, it must be subject to conditions consistent with the system of compulsory liability insurance established by this act.

Sec. 11. [CALCULATION OF NET LOSS.] Subdivision 1. All benefits or advantages a person receives or is entitled to receive because of the injury from social security, workmen's compensation, and any state-required temporary, nonoccupational disability insurance are subtracted in calculating net loss.

Subd. 2. If a benefit or advantage received to compensate for loss of income because of injury, whether from basic reparation benefits or from any source of benefits or advantages subtracted under subdivision 1, is not taxable income, the income tax saving that is attributable to his loss of income because of injury is subtracted in calculating net loss. Subtraction may not exceed 15 percent of the loss of income and shall be in a lesser amount if the claimant furnishes to the insurer reasonable proof of a lower value of the income tax advantage.

Sec. 12. [STANDARD REPLACEMENT SERVICES LOSS EXCLUSION.] All replacement services loss sustained on the date of injury and the first seven days thereafter is excluded in calculating basic reparation benefits.

Sec. 13. [STANDARD WEEKLY LIMIT ON BENEFITS FOR CERTAIN LOSSES.] Basic reparation benefits payable for work loss, survivor's economic loss, replacement services loss, and survivor's replacement services loss arising from injury to one person and attributable to the calendar week during which the accident causing injury occurs and to each calendar week thereafter may not exceed $200. If the injured person's earnings or work is seasonal or irregular, the weekly limit shall be equitably adjusted or apportioned on an annual basis.

Sec. 14. [OPTIONAL DEDUCTIBLES AND EXCLUSIONS.] Subdivision 1. At appropriately reduced premium rates, basic reparation insurers shall offer each of the following deductibles and exclusions, applicable only to claims of basic reparation insureds and, in case of death of a basic reparation insured, of his survivors:

(1) deductibles in the amounts of $100, $300, and $500 from all basic reparation benefits otherwise payable, except that if two or more basic reparation insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them;

(2) an exclusion, in calculation of net loss, of ten percent of work loss and survivor's economic loss;

(3) an exclusion, in calculation of net loss, of all replacement services loss and survivor's replacement services loss; and

(4) a deductible, in the amount of $1000 per accident from all basic reparation benefits otherwise payable for injury to a person which occurs while he is operating or is a passenger on a two-wheeled motor vehicle.

Subd. 2. Subject to the provisions on approval of terms and forms, basic reparation insurers may offer the following additional exclusions, applicable only to claims of some or all basic reparation insureds and, in case of death of a basic reparation insured, of his survivors:

(1) exclusions, in calculation of net loss, of a part of replacement services loss and survivor's replacement services loss; and

(2) exclusions, in calculation of net loss, of any of those amounts and kinds of loss otherwise compensated by benefits or advantages a person receives or is unconditionally entitled to receive from any other specified source, if the other source has been approved specifically or as to type of source by the commissioner of insurance by rule or order adopted upon a determination by the commissioner (1) that the other source or type of source is reliable and that approval of it is consonant with the purposes of this act, and (2) if the other source is a contract of insurance, that it provides benefits for accidental injuries generally and in amounts at least as great for other injuries as for injuries resulting from motor vehicle accidents.

Sec. 15. [PROPERTY DAMAGE EXCLUSION.] Basic reparation benefits do not include benefits for harm to property.

Sec. 16. [BENEFITS PROVIDED BY OPTIONAL ADDED REPARATION INSURANCE.] Subdivision 1. Basic reparation insurers may offer optional added reparation coverages providing other benefits as compensation for injury or harm arising from ownership, maintenance, or use of a motor vehicle, including benefits for loss excluded by limits on hospital charges and funeral, cremation, and burial expenses, loss excluded by limits on work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, harm to property, loss of use of motor vehicles, and noneconomic detriment. The commissioner of insurance may adopt rules requiring that specified optional added reparation coverages be offered by insurers writing basic reparation insurance.

Subd. 2. Basic reparation insurers shall offer the following optional added reparation coverages for physical damage to motor vehicles:

(1) a coverage for all collision and upset damage, subject to a deductible of $100;

(2) a coverage for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles; and

(3) the same coverge as in clause (2), but subject to a deductible of $100;

Subd. 3. Subject to the provision on approval of terms and forms, basic reparation insurers may offer other optional added reparation coverages for harm to motor vehicles or their contents, or both, or other like coverages subject to different deductibles or without deductibles.

Subd. 4. An insurer of the insured's choice may write separately coverages for harm to motor vehicles.

Subd. 5. All added reparation coverages offered apply to injuries or harm arising out of accidents and occurrences during the contract period in a territorial area not less than the United States, its territories and possessions, and Canada.

Sec. 17. [APPROVAL OF TERMS AND FORMS.] Terms and conditions of contracts and certificates or other evidence of insurance coverage sold or issued in this state providing motor vehicle tort liability, basic reparation, and added reparation insurance coverages, and of forms used by insurers offering these coverages, are subject to approval and regulation by the commissioner of insurance. The commissioner shall approve only terms and conditions consistent with the purposes of this act and fair and equitable to all persons whose interests may be affected. The commissioner may limit by rule the variety of coverages available in order to give insurance purchasers reasonable opportunity to compare the cost of insuring with various insurers.

Sec. 18. [ASSIGNED CLAIMS.] Subdivision 1. A person entitled to basic reparation benefits because of injury covered by this act may obtain them through the assigned claims plan established pursuant to the provisions relating thereto and in accordance with the provisions on time for presenting claims under the assigned claims plan if:

(1) basic reparation insurance is not applicable to the injury for a reason other than those specified in the provisions on converted vehicles and intentional injuries;

(2) basic reparation insurance is not applicable to the injury because the injured person converted a motor vehicle and if the conversion occurred while he was under 15 years of age;

(3) basic reparation insurance applicable to the injury cannot be identified;

(4) basic reparation insurance applicable to the injury is inadequate to provide the contracted-for benefits because of financial inability of a reparation obligor to fulfill its obligation; or

(5) a claim for basic reparation benefits is rejected by a reparation obligor for a reason other than that the person is not entitled under this act to the basic reparation benefits claimed.

Subd. 2. If a claim qualifies for assignment under clauses (3), (4), or (5) of subdivision 1, the assigned claims bureau or any reparation obligor to whom the claim is assigned is subrogated to all rights of the claimant against

any reparation obligor, its successor in interest or substitute, legally obligated to provide basic reparation benefits to the claimant, for basic reparation benefits provided by the assignee.

Subd. 3. Except in case of a claim assigned under subdivision 1(4), if a person receives basic reparation benefits through the assigned claims plan, all benefits or advantages he receives or is entitled to receive as a result of the injury, other than by way of succession at death, death benefits from life insurance, or in discharge of familial obligations of support, are subtracted in calculating net loss.

Subd. 4. An assigned claim of a person who does not comply with the requirement of providing security for the payment of basic reparation benefits, or of a person as to whom the security is invalidated because of his fraud or willful misconduct, is subject to (1) all the optional deductibles and exclusions to the maximum required to be offered under this act and (2) a deduction in the amount of $500 for each year or part thereof of the period of his continuous failure to provide security, applicable to any benefits otherwise payable.

Sec. 19. [ASSIGNED CLAIMS PLAN.] Subdivision 1. Reparation obligors providing basic reparation insurance in this state may organize and maintain, subject to approval and regulation by the commissioner of insurance, an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for assessment of costs on a fair and equitable basis consistent with this act. If they do not organize and continuously maintain an assigned claims bureau and an assigned claims plan in a manner considered by the commissioner of insurance to be consistent with this act, he shall organize and maintain an assigned claims bureau and an assigned claims plan. Each reparation obligor providing basic reparation insurance in this state shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors.

Subd. 2. The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he had issued a policy of basic reparation insurance complying with this act applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

Sec. 20. [TIME FOR PRESENTING CLAIMS UNDER ASSIGNED CLAIMS PLAN.] Subdivision 1. Except as provided in subdivision 2, a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within the time that would have been allowed for commencing an action for those benefits if there had been identifiable coverage in effect and applicable to the claim.

Subd. 2. If timely action for basic reparation benefits is commenced against a reparation obligor who is unable to fulfill his obligations because of financial inability, a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within six months after discovery of the financial inability.

Sec. 21. [CONVERTED MOTOR VEHICLES.] Except as provided for assigned claims, a person who converts a motor vehicle is disqualified from basic or added reparation benefits, including benefits otherwise due him as a survivor, from any source other than an insurance contract under which the converter is a basic or added reparation insured, for injuries arising from maintenance or use of the converted vehicle. If the converter dies from the injuries, his survivors are not entitled to basic or added reparation benefits from any source other than an insurance contract under which the converter is a basic reparation insured. For the purpose of this section, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

Sec. 22. [INTENTIONAL INJURIES.] A person intentionally causing or attempting to cause injury to himself or another person is disqualified from basic or added reparation benefits for injury arising from his acts, including benefits otherwise due him as a survivor. If a person dies as a result of intentionally causing or attempting to cause injury to himself, his survivors are not entitled to basic or added reparation benefits for loss arising from his death. A person intentionally causes or attempts to cause injury if he acts or fails to act for the purpose of causing injury or with knowledge that injury is substantially certain to follow. A person does not intentionally cause or attempt to cause injury (1) merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or (2) if the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person.

Sec. 23. [REPARATION OBLIGOR'S DUTY TO RESPOND TO CLAIMS.] Subdivision 1. Basic and added reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, survivor's economic loss, survivor's replacement services loss, or allowable expense is incurred. Benefits are overdue if not paid within 30 days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding 31 days and pays them within 15 days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, and the part totals $100 or more, the part is overdue if not paid within the time provided by this section. Allowable expense benefits may be paid by the reparation obligor directly to persons supplying products, services, or

accommodations to the claimant.

Subd. 2. Overdue payments bear interest at the rate of 10 percent per annum.

Subd. 3. A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss, and to the exclusions authorized under section 15(2)(2), if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make the payments or from the claimant who actually receives the payments.

Subd. 4. A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of allowable expense. The action may be brought only against the person providing the item of allowable expense, unless the insured has intentionally misrepresented the facts or knew of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this subdivision against any basic or added reparation benefits otherwise due.

Subd. 5. A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

Sec. 24. [FEES OF CLAIMANT'S ATTORNEY.] Subdivision 1. If overdue benefits are recovered in an action against the reparation obligor or paid by the reparation obligor after receipt of notice of the attorney's representation, a reasonable attorney's fee for advising and representing a claimant on a claim or in an action for basic reparation benefits shall be paid by the reparation obligor to the attorney. No part of the fee for representing the claimant in connection with these benefits is a charge against benefits otherwise due the claimant. All or part of the fee may be deducted from the benefits otherwise due the claimant if any significant part of his claim for benefits was fraudulent or so excessive as to have no reasonable foundation.

Subd. 2. In any action brought against the insured by the reparation obligor, the court may award the insured's attorney a reasonable attorney's fee for defending the action.

Sec. 25. [FEES OF REPARATION OBLIGOR'S ATTORNEY.] A reparation obligor shall be allowed a reasonable attorney's fee for defending a claim for benefits that is fraudulent or so excessive as to have no reasonable foundation. The fee may be treated as an offset to benefits due or which thereafter accrue. The reparation obligor may recover from the claimant any part of the fee not offset or otherwise paid.

Sec. 26. [LUMP SUM AND INSTALLMENT SETTLEMENTS.] Subdivision 1. If the reasonably anticipated net loss subject to the settlement does not exceed $2,500, a claim of an individual for basic or added reparation benefits arising from injury, including a claim for future loss other than allowable expense, may be discharged by a settlement for an agreed amount payable in installments, or in a lump sum. If the reasonably anticipated net loss subject to the settlement exceeds $2,500, the settlement may be made with approval of the district court upon a finding by the court that the settlement is in the best interest of the claimant. Upon approval of the settlement, the court may make appropriate orders concerning the safeguarding and disposing of the proceeds of the settlement. A settlement agreement may also provide that the reparation obligor shall pay the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the future.

Subd. 2. A settlement agreement for an amount payable in installments may be modified as to amounts to be paid in the future, if it is shown that a material and substantial change of circumstances has occurred or that there is newly-discovered evidence concerning the claimant's physical condition, loss, or rehabilitation, which could not have been known previously or discovered in the exercise of reasonable diligence.

Subd. 3. A settlement agreement may be set aside if it is procured by fraud or its terms are unconscionable.

Sec. 27. [JUDGMENTS FOR FUTURE BENEFITS.] Subdivision 1. In an action by a claimant, a lump sum or installment judgment may be entered for basic or added reparation benefits, other than allowable expense, that would accrue after the date of the award. A judgment for benefits for allowable expense that would accrue after the date of the award may not be entered. In an action for reparation benefits or to enforce rights under this act, however, the court may enter a judgment declaring that the reparation obligor is liable for the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the future if it is ascertainable or foreseeable that treatment will be required as a result of the injury for which the claim is made.

Subd. 2. At the instance of the claimant, a court may commute future losses, other than allowable expense, to a fixed sum, but only upon a finding of one or more of the following:

(1) that the award will promote the health and contribute to the rehabilitation of the injured person;

(2) that the present value of all benefits other than allowable expense to accrue thereafter does not exceed $1,000; or

(3) that the parties consent and the award is in the best interest of the claimant.

Subd. 3. An installment judgment for benefits, other

than allowable expense, that will accrue thereafter may be entered only for a period as to which the court can reasonably determine future net loss. An installment judgment may be modified as to amounts to be paid in the future upon a finding that a material and substantial change of circumstances has occurred, or that there is newly-discovered evidence concerning the claimant's physical condition, loss, or rehabilitation, which could not have been known previously or discovered in the exercise of reasonable diligence.

Subd. 4. The court may make appropriate orders concerning the safeguarding and disposing of funds collected under the judgment.

Subd. 5. Appeals from a judgment for basic or added reparation benefits may be taken in accordance with the laws or rules of civil procedure of this state.

Sec. 28. [LIMITATION OF ACTIONS.] Subdivision 1. If no basic or added reparation benefits have been paid for loss arising otherwise than from death, an action therefor may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivor's benefits, by either the same or another claimant, may be commenced not later than two years after the last payment of benefits.

Subd. 2. If no basic or added reparation benefits have been paid to the decedent or his survivors, an action for survivor's benefits may be commenced not later than one year after the death or four years after the accident from which death results, whichever is earlier. If survivor's benefits have been paid to any survivor, an action for further survivor's benefits by either the same or another claimant may be commenced not later than two years after the last payment of benefits. If basic or added reparation benefits have been paid for loss suffered by an injured person before his death resulting from the injury, an action for survivor's benefits may be commenced not later than one year after the death or four years after the last payment of benefits, whichever is earlier.

Subd. 3. If timely action for basic reparation benefits is commenced against a reparation obligor and benefits are denied because of a determination that the reparation obligor's coverage is not applicable to the claimant under the provisions on priority of applicability of basic reparation security, an action against the applicable reparation obligor or the assigned claims bureau may be commenced not later than 60 days after the determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

Subd. 4. Except as subdivisions 1, 2, or 3 prescribe a longer period, an action by a claimant on an assigned claim which has been timely presented may be commenced not later than 60 days after the claimant receives written notice of rejection of the claim by the reparation obligor to which it was assigned.

Subd. 5. A calendar month during which a person does not suffer loss for which he is entitled to basic or added reparation benefits is not a part of the time limited for commencing an action, except that the months excluded for this reason may not exceed 120.

Subd. 6. If a person entitled to basic or added reparation benefits is under legal disability as described in Minnesota Statutes 1971, Section 541.15, the period of his disability is not a part of the time limited for commencement of the action.

Sec. 29. [ASSIGNMENT OF BENEFITS.] An assignment of or agreement to assign any right to benefits under this act for loss accruing in the future is unenforceable except as to benefits for:

(1) work loss to secure payment of alimony, maintenance, or child support; or

(2) allowable expense to the extent the benefits are for the cost of products, services, or accommodations provided or to be provided by the assignee.

Sec. 30. [DEDUCTION AND SET-OFF.] Except as otherwise provided in this act, basic reparation benefits shall be paid without deduction or set-off.

Sec. 31. [EXEMPTION OF BENEFITS.] Subdivision 1. Basic or added reparation benefits for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim, except upon a claim of a creditor who has provided products, services, or accommodations to the extent benefits are for allowable expense for those products, services, or accommodations.

Subd. 2. Basic reparation benefits other than those for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt under any applicable law exempting wages or earnings from process or claims.

Sec. 32. [MENTAL OR PHYSICAL EXAMINATIONS.] Subdivision 1. If the mental or physical condition of a person is material to a claim for past or future basic or added reparation benefits, the reparation obligor may petition the district court for an order directing the person to submit to a mental or physical examination by a physician. Upon notice to the person to be examined and all persons having an interest, the court may make the order for good cause shown. The order shall specify the time, place, manner, conditions, scope of the examination, and the physician by whom it is to be made.

Subd. 2. If requested by the person examined, the reparation obligor causing a mental or physical examination to be made shall deliver to the person examined a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses, and conclusions, and reports of earlier

examinations of the same condition. By requesting and obtaining a report of the examination ordered or by taking the deposition of the physician, the person examined waives any privilege he may have, in relation to the claim for basic or added reparation benefits, regarding the testimony of every other person who has examined or may thereafter examine him respecting the same condition. This subdivision does not preclude discovery of a report of an examining physician, taking a deposition of the physician, or other discovery procedures in accordance with any rule of court or other provision of law. This subdivision applies to examinations made by agreement of the person examined and the reparation obligor, unless the agreement provides otherwise.

Subd. 3. If any person refuses to comply with an order entered under this section the court may make any just order as to the refusal, but may not find a person in contempt for failure to submit to a mental or physical examination.

Sec. 33. [DISCLOSURE OF FACTS ABOUT INJURED PERSON.] Subdivision 1. Upon request of a basic or added reparation claimant or reparation obligor, information relevant to a claim for basic or added reparation benefits shall be disclosed as follows:

(1) An employer shall furnish a statement of the work record and earnings of an employee upon whose injury the claim is based. The statement shall cover the period specified by the claimant or reparation obligor making the request and may include a reasonable period before, and the entire period after, the injury.

(2) The claimant shall deliver to the reparation obligor a copy of every written report, previously or thereafter made, relevant to the claim, and available to him, concerning any medical treatment or examination of a person upon whose injury the claim is based, and the names and addresses of physicians and medical care facilities rendering diagnoses or treatment in regard to the injury or to a relevant past injury, and the claimant shall authorize the reparation obligor to inspect and copy relevant records of physicians and of hospitals, clinics, and other medical facilities.

(3) A physician or hospital, clinic, or other medical facility furnishing examinations, services, or accommodations to an injured person in connection with a condition alleged to be connected with an injury upon which a claim is based, upon authorization of the claimant, shall furnish a written report of the history, condition, diagnoses, medical tests, treatment, and dates and cost of treatment of the injured person, and permit inspection and copying of all records and reports as to the history, condition, treatment, and dates and cost of treatment.

Subd. 2. Any person other than the claimant providing information under this section may charge the person requesting the information for the reasonable cost of providing it.

Subd. 3. In case of dispute as to the right of a claimant or reparation obligor to discover information required to be disclosed, the claimant or reparation obligor may petition the district court for an order for discovery including the right to take written or oral depositions. Upon notice to all persons having an interest, the order may be made for good cause shown. It shall specify the time, place, manner, conditions, and scope of the discovery. To protect against annoyance, embarrassment, or oppression, the court may enter an order refusing discovery or specifying conditions of discovery and directing payment of costs and expenses of the proceeding, including reasonable attorney's fees.

Sec. 34. [REHABILITATION TREATMENT AND OCCUPATIONAL TRAINING.] Subdivision 1. A basic reparation obligor is responsible for the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to rehabilitation, even though it will not enhance the injured person's earning capacity.

Subd. 2. An injured person who has undertaken a procedure or treatment for rehabilitation or a course of rehabilitative occupational training, other than medical rehabilitation procedure or treatment, shall notify the basic reparation obligor that he has undertaken the procedure, treatment, or training within 60 days after an allowable expense exceeding $1,000 has been incurred for the procedure, treatment, or training, unless the basic reparation obligor knows or has reason to know of the undertaking. If the injured person does not give the required notice within the prescribed time, the basic reparation obligor is responsible only for $1,000 or the expense incurred after the notice is given and within the 60 days before the notice, whichever is greater, unless failure to give timely notice is the result of excusable neglect.

Subd. 3. If the injured person notifies the reparation obligor of a proposed specified procedure or treatment for rehabilitation, or a proposed specified course of rehabilitative occupational training, and the reparation obligor does not promptly thereafter accept responsibility for its cost, the injured person may move the court in an action to adjudicate his claim, or, if no action is pending, bring an action in the district court, for a determination that the reparation obligor is responsible for its cost. A reparation obligor may move the court in an action to adjudicate the injured person's claim, or, if no action is pending, bring an action in the district court, for a determination that it is not responsible for the cost of a procedure, treatment, or course of training which the injured person has undertaken or proposes to undertake. A determination by the court that the reparation obligor is not responsible for the cost of a procedure, treatment, or course of training is not res judicata as to the propriety of any other proposal or the injured person's right to other benefits. This subdivision does not preclude an action by

the basic reparation obligor or the injured person for declaratory relief under any other law of this state, nor an action by the injured person to recover basic reparation benefits.

Subd. 4. If an injured person unreasonably refuses to accept a rehabilitative procedure, treatment, or course of occupational training, a basic reparation obligor may move the court, in an action to adjudicate the injured person's claim, or if no action is pending, may bring an action in the district court, for a determination that future benefits will be reduced or terminated to limit recovery of benefits to an amount equal to benefits that in reasonable probability would be due if the injured person had submitted to the procedure, treatment, or training, and for other reasonable orders. In determining whether an injured person has reasonable ground for refusal to undertake the procedure, treatment, or training, the court shall consider all relevant factors, including the risks to the injured person, the extent of the probable benefit, the place where the procedure, treatment, or training is offered, the extent to which the procedure, treatment, or training is recognized as standard and customary, and whether the imposition of sanctions because of the person's refusal would abridge his right to the free exercise of his religion.

Sec. 35. [AVAILABILITY OF INSURANCE.] Subdivision 1. The commissioner of insurance shall establish and implement or approve and supervise a plan assuring that liability and basic and added reparation insurance for motor vehicles will be conveniently and expeditiously afforded, subject only to payment or provision for payment of the premium, to all applicants for insurance required by this act to provide security for payment of tort liabilities and basic reparation benefits and who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to applicants under the plan. The plan may be by assignment of applicants among insurers, pooling, other joint insuring or reinsuring arrangement, or any other method that will reasonably accomplish the purposes of this section, including any arrangement or undertaking by insurers that results in all applicants being conveniently afforded the insurance coverages on reasonable and not unfairly discriminatory terms through ordinary markets.

Subd. 2. The plan shall make available optional added reparation and tort liability coverages and other contract provisions the commissioner of insurance determines are reasonably needed by applicants and are commonly afforded in voluntary markets. The plan shall provide for the availability of financing or installment payments of premiums on reasonable and customary terms and conditions.

Subd. 3. All insurers authorized in this state to write motor vehicle liability, basic reparation, or optional added reparation coverages which the commissioner requires to be offered under subdivision 2, shall participate in the plan. The plan shall provide for equitable apportionment, among all participating insurers writing any insurance coverage required under the plan, of the financial burdens of insurance provided to applicants under the plan and costs of operation of the plan.

Subd. 4. Subject to supervision and approval of the commissioner of insurance, 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. Rates and rate modifications adopted or charged for insurance coverages provided under the plan shall be first adopted or approved by the commissioner of insurance and be reasonable and not unfairly discriminatory among applicants for insurance under the plan.

Subd. 5. To carry out the objectives of this section the commissioner of insurance may adopt rules, make orders, enter into agreements with other governmental and private entities and persons, and form and operate or authorize the formation and operation of bureaus and other legal entities.

Sec. 36. [TERMINATION OR MODIFICATION OF INSURANCE BY INSURER.] Subdivision 1. This section applies only to contracts of insurance providing security under this act for a motor vehicle which is registered in this state and is not one of five or more motor vehicles under common ownership insured under a single insuring agreement.

Subd. 2. Except as permitted in subdivision 3, any termination of insurance by an insurer, including any refusal by the insurer to renew the insurance at the expiration of its term and any modification by the insurer of the terms and conditions of the insurance unfavorable to the insured, is ineffective, unless

(1) written notice of intention to modify, not to renew, or otherwise to terminate the insurance has been mailed or delivered to the insured at least 20 days before the effective date of the modification, expiration, or other termination of the insurance, and

(2) the insurer has expressly stipulated in the insuring agreement either that (a) the insurance is for a stated term of at least one year after the inception of coverage and may not be modified or terminated during the term or, (b) if there is no stated term or the insurance is for a term of less than one year, the insurance may be modified, not renewed, or otherwise terminated by the insurer only at specified dates or intervals which may not be less than one year after the inception of coverage or thereafter less than one year apart.

Subd. 3. If otherwise lawfully entitled to do so and written notice of termination is mailed or delivered to the insured at least 15 days before the effective date of the termination, an insurer may terminate insurance as follows:

(1) by cancellation or refusal to renew at any time within 75 days after the inception of coverage, or

(2) for nonpayment of premium when due.

Subd. 4. An insurer who has canceled, refused to renew, or otherwise terminated insurance shall mail or deliver to the insured, within ten days after receipt of a written request, a statement of the reasons for the

cancellation, refusal to renew, or other termination of the insurance coverage.

Subd. 5. For purposes of this section only:

(1) "nonpayment of premium when due" includes the nonpayment when due of any installment of premium or of any financial obligation to any person who has financed the payment of the premium under any premium finance plan, agreement, or arrangement; and

(2) a cancellation or refusal to renew by or at the direction of any person acting pursuant to any power or authority under any premium finance plan, agreement, or arrangement, whether or not with power of attorney or assignment from the insured, constitutes a cancellation or refusal to renew by the insurer.

Subd. 6. Except as otherwise stated in subdivision 5, this section does not limit or apply to any termination, modification, or cancellation of the insurance, or to any suspension of insurance coverage, by or at the request of the insured.

Subd. 7. This section does not affect any right an insurer has under other law to rescind or otherwise terminate insurance because of fraud or other willful misconduct of the insured at the inception of the insuring transaction or the right of either party to reform the contract on the basis of mutual mistake of fact.

Subd. 8. An insurer, his authorized agents and employees, and any other person furnishing information upon which he has relied, are not liable for any statement made in good faith pursuant to subdivision 4.

Sec. 37. [PENALTIES.] An owner of a motor vehicle who operates the vehicle or permits it to be operated in this state when he knows or should know that he has failed to comply with the requirement that he provide security covering the vehicle is guilty of a misdemeanor and upon conviction may be fined not more than $300 or imprisoned for not more than 90 days, or both.

Sec. 38. [EQUITABLE ALLOCATION OF BURDENS AMONG INSURERS.] Subdivision 1. Reparation obligors paying basic or added reparation benefits and owners of motor vehicles suffering uninsured physical damage to the vehicles are entitled to proportionate reimbursement from other reparation obligors to assure that the allocation of the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injury to persons or physical damage to vehicles because the vehicles are of different weight or have different devices for the protection of occupants, other different characteristics, or different regular uses. Reparation obligors paying basic or added reparation benefits for loss arising from injury to persons, and self-insurers who are natural persons bearing equivalent losses arising from their own injuries, are entitled to proportionate reimbursement from basic reparation obligors of other involved vehicles. Insurers paying added reparation benefits for physical damage to vehicles and owners of motor vehicles suffering uninsured physical damage to vehicles are entitled to proportionate reimbursement from reparation obligors who provide property damage liability coverage on other involved vehicles.

Subd. 2. Reparation obligors shall maintain in accordance with rules of the commissioner of insurance statistical records from which can be determined the propensities of different vehicles to affect probability and severity of injury to persons and physical damage to vehicles.

Subd. 3. When the commissioner of insurance determines that adequate supporting information is available he may establish by rule and maintain a system under which rights of reimbursement are determined through pooling, reinsurance, or other form of reallocation procedure in lieu of case-by-case reimbursement. The system may apply to (1) all reparation obligors or (2) all reparation obligors except those who are parties to an agreement entered into under this subdivision and approved by the commissioner of insurance. Two or more reparation obligors, with approval of the commissioner of insurance, may enter into an agreement for settlement of their rights of proportionate reimbursement through a system of pooling, reinsurance, or other reallocation procedure in lieu of case-by-case reimbursement.

Subd. 4. The commissioner of insurance may not approve or establish case-by-case proportionate reimbursement on the basis of fault in cases involving only privately owned passenger motor vehicles designed to carry ten or fewer passengers.

Subd. 5. All claims for case-by-case proportionate reimbursement between insurers, if not settled by agreement, shall be submitted to binding arbitration in accordance with Minnesota Statutes 1971, Chapter 572.

Sec. 39. [ALLOCATION OF BURDENS UNTIL SYSTEM ESTABLISHED.] If, in a particular case, there is no applicable system of proportionate reimbursement as authorized by the provisions on equitable allocation of burdens among insurers and the commissioner of insurance has not adopted by rule other criteria for proportionate reimbursement consistent with those provisions, the following standards for case-by-case proportionate reimbursement apply:

(1) In accidents involving motor vehicles in different weight classes, burdens of losses shall be adjusted among reparation obligors and owners of the vehicles in accordance with this section. Adjustments apply to burdens of losses of basic and added reparation benefits and to burdens of losses of physical damage to the vehicles.

(2) The commissioner of insurance shall adopt rules classifying motor vehicles into a number of classes according to weight, including cargo capacity. All passenger vehicles weighing less than 5000 pounds and other vehicles weighing less than 4000 pounds apart from cargo capacity shall be included in a single class. For the purposes of this section, a vehicle in this class is a "low-weight vehicle." The commissioner shall assign by rule

to each class, except the low-weight class, a number of percentages determined as hereinafter provided. The highest percentage for a class applies to accidents between vehicles in that class and low-weight vehicles. Other percentages apply to accidents between vehicles of each lighter weight class and vehicles of the class to which the percentage is assigned.

(3) In an accident involving a vehicle of a lighter class and a vehicle of a heavier class, a proportion of costs which would otherwise fall on the owner of the lighter vehicle or the reparation obligors paying or obligated to pay added reparation benefits for physical damage to the lighter vehicle or basic or added reparation benefits for injury to the owner, driver, or other occupant of the lighter vehicle is imposed upon the reparation obligor of the heavier vehicle. The proportion of costs to be transferred is the percentage assigned under clause (2).

(4) Percentages assigned under clause (2) shall be based on evidence of the average increase in severity of occupant injury and vehicle damage sustained by vehicles of the various lighter classes in accidents involving the class of heavier vehicles to which the percentage is assigned. percentages shall be set to provide that reparation obligors and owners of vehicles shall bear, on the average, the costs which would result from accidents involving other vehicles of the same class and that reparation obligors and owners of vehicles in each heavier class shall have transferred to them the percentages of costs which on the average arise from the greater weight of vehicles of their class.

(5) Until the commissioner of insurance, in accordance with clause (2), has adopted rules classifying motor vehicles into classes according to weight and assigning percentages to each class, the percentage presumptively applying between a low-weight vehicle and a vehicle not a low-weight vehicle, or between two vehicles not low-weight vehicles, shall be determined by subtracting the weight of the lighter vehicle from the weight of the heavier vehicle, including cargo capacity, dividing the difference by the combined weight of the vehicles, and multiplying by 100 to convert to percentage. However, another percentage applies if a party claiming or defending against a claim for reimbursement under this clause proves that the other percentage is more consistent with allocating the financial burden of losses according to the propensities of vehicles of the different classes to affect probability and severity of injury to persons or physical damage to vehicles.

(6) In accidents involving more than two vehicles each lighter vehicle shall have transferred from it to reparation obligors of the heavier vehicles involved the percentage of cost designated for transfer to the heaviest of those vehicles. Reparation obligors of the heavier vehicles shall contribute to the transferred cost in proportion to the respective percentages designated for them in accidents with vehicles of the class of the lighter vehicle from which the cost is transferred.

Sec. 40. [RATES.] Rate making and regulation of rates for basic and added reparation insurance are governed by Minnesota Statutes 1971, Chapter 70A.

Sec. 41. [RULES.] The commissioner of insurance may adopt rules to provide effective administration of this act which are consistent with the purposes of this act and fair and equitable to all persons whose interests may be affected.

Sec. 42. [RULES OF REGISTRAR OF MOTOR VEHICLES.] The registrar of motor vehicles may adopt rules to implement and provide effective administration of the provisions on evidence of security and termination of security.

Sec. 43. [UNIFORMITY OF APPLICATION AND CONSTRUCTION.] This act shall be so applied and construed as to effectuate its general purpose and to make uniform the law with respect to the subject of this act among those states which enact it.

Sec. 44. [SEVERABILITY.] Subdivision 1. Except as provided in subdivision 2, if any provision of this act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the involved provision or application, and to this end the provisions of this act are severable.

Subd. 2. If any restriction on the retained tort liability in clause (6) or clause (7) of subdivision 1 of section 5, or application thereof to any person or circumstance, is held invalid, this act shall be interpreted as if the clause containing the invalid restriction had not been enacted.

Sec. 45. [SHORT TITLE.] Sections 1 to 45 may be cited as the "Uniform Motor Vehicle Accident Reparations Act."

Sec. 46. [REFUSALS TO RENEW; RESTRICTIONS.] No insurer shall fail to renew an automobile liability policy solely because of the age of the insured. No insurer shall refuse to renew an automobile insurance policy as provided by this act for reasons which are arbitrary or capricious.

No insurer shall take any action in regard to an automobile insurance policy as provided by this act on the statements or charges of any person made to the insurer concerning alleged unsafe driving habits of an insured unless the insurer shall concurrently disclose to the insured the name and address of the person from which the insurer received the information.

Sec. 47. [PROOF OF MAILING OF NOTICE.] Proof of mailing of notice of cancellation, reduction in the limits of liability of coverage, or nonrenewal of a policy and, if required herein, the reason or reasons therefor to the named insured at the address shown in the policy, shall be sufficient proof that notice required herein has been given. A certificate of mailing on United States Postal Form 3817, as defined in Part 165 of the United States Postal Manual as now existing or hereafter changed by the United States Postal Department, shall constitute proof of mailing.

Sec. 48. [NOTICE OF RIGHT TO COMPLAIN.] When the insurer notifies the policyholder of non-renewal, cancellation or reduction in the limits of liability of

coverage under section 36 of the uniform motor vehicle accident reparations act, the insurer shall also notify the named insured of his right to complain within 14 days of his receipt of notice of non-renewal, cancellation or reduction in the limits of liability to the commissioner of such action and of the nature of and his possible eligibility for insurance under the plan established in section 35 of that act.

Sec. 49. [OBJECTIONS; INVESTIGATION; DETERMINATION.] Subdivision 1. Any individual who believes the nonrenewal, cancellation or reduction in the limits of liability of coverage of his policy under section 36 of the uniform motor vehicle accident reparations act is arbitrary, capricious or otherwise in violation of law, or who believes such notice of nonrenewal and the reason or reasons therefor were not given as provided in that act, may, within 14 days after receipt of notice thereof, file in writing an objection to such action with the commissioner upon payment to the commissioner of a $5 filing fee.

Subd. 2. Upon receipt of a filing fee and a written objection pursuant to the provisions herein, the commissioner shall notify the insurer of receipt of such objection and of the right of the insurer to file a written response thereto within ten days of receipt of such notification. The commissioner in his discretion may also order an investigation of the objection or complaint, the submission of additional information by the insured or the insurer about the action by the insurer or the objections of the insured, or such other procedure as he deems appropriate or necessary. Within 23 days of receipt of such written objection by an insured the commissioner shall approve or disapprove the insurer's action and shall notify the insured and insurer of his final decision. Either party may institute proceedings for judicial review of the commissioner's decision; provided, however, that the commissioner's final decision shall be binding pending judicial review.

Sec. 50. [AUTOMOBILE INSURANCE EXCLUSIONS FORBIDDEN.] Subdivision 1. (a) No policy of automobile liability insurance as defined in the uniform motor vehicle accident reparations act, written or renewed after the effective date of that act, shall contain an exclusion of liability for damages for bodily injury solely because the injured person is a resident or member of an insured's household or related to the insured by blood or marriage.

(b) No policy of automobile liability insurance as defined in the uniform motor vehicle accident reparations act, written or renewed after the effective date of that act, shall contain an exclusion of liability for damages for bodily injury sustained by any person who is a named insured, except where such injury is sustained by a named insured who is driving the insured automobile at the time such injury is sustained. Nothing contained in this subdivision shall prohibit an insurer from issuing a named driver exclusionary endorsement voiding the policy wherein the insured automobile is being driven by the excluded driver.

Subd. 2. Adoption of this section shall not be relevant in any judicial determination of the validity of a family or household exclusion in a policy issued or renewed prior to the effective date of the uniform motor vehicle accident reparations act.

Sec 51. Every motor residual vehicle liability policy as provided in the uniform motor vehicle accident reparations act shall be subject to the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required therein shall become absolute whenever injury or damage covered by said motor vehicle residual liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in such insurance policy for the accident out of which such claim arose.

Sec. 52. [DRIVER DEEMED AGENT OF OWNER.] Whenever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof.

Sec. 53. [SERVICE OF PROCESS; RESIDENTS; NONRESIDENTS; COMMISSIONER OF PUBLIC SAFETY AS AGENT.] Subdivision 1. The use and operation by a resident of this state or his agent, or by a nonresident or his agent of a motor vehicle within the state of Minnesota, shall be deemed an irrevocable appointment by such resident when he has been absent from this state continuously for six months or more following an accident, or by such nonresident at any time, of the commissioner of public safety to be his true and lawful attorney upon whom may be served all legal process in any action or proceeding against him or his executor, administrator, or personal representative growing out of such use and operation of a motor vehicle within this state, resulting in damages or loss to person or property, whether the damage or loss occurs on a highway or on abutting public or private property. Such appointment is binding upon the nonresident's executor, administrator, or personal representative. Such use or operation of a motor vehicle by such resident or nonresident is a signification of his agreement that any such process in any action against him or his executor, administrator, or personal representative

which is so served, shall be of the same legal force and validity as if served upon him personally or on his executor, administrator, or personal representative. Service of such process shall be made by serving a copy thereof upon the commissioner or by filing such copy in his office, together with payment of a fee of $2, and such service shall be sufficient service upon the absent resident or the nonresident or his executor, administrator, or personal representative; provided that notice of such service and a copy of the process are within ten days thereafter sent by mail by the plaintiff to the defendant at his last known address and that the plaintiff's affidavit of compliance with the provisions of this chapter is attached to the summons.

Subd. 2. The court in which the action is pending may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend any such action, not exceeding 90 days from the date of filing of the action in such court. The fee of $2 paid by the plaintiff to the commissioner at the time of service of such proceedings shall be taxed in his cost if he prevails in the suit. The said commissioner shall keep a record of all such processes so served which shall show the day and hour of such service.

Sec. 54. [REPEALS.] Minnesota Statutes 1971, Sections 65B.01, 65B.02, 65B.03, 65B.04, 65B.05, 65B.06, 65B.07, 65B.08, 65B.09, 65B.10, 65B.11, 65B.12, 65B.13, 65B.14, 65B.15, 65B.16, 65B.17, 65B.18, 65B.19, 65B.20, 65B.21, 65B.22, 65B.23, 65B.24, 65B.25, 65B.26, 65B.27, 170.21, 170.22, 170.23, 170.231, 170.24, 170.25, 170.26, 170.27, 170.28, 170.29, 170.30, 170.31, 170.32, 170.33, 170.34, 170.35, 170.36, 170.37, 170.38, 170.39, 170.40, 170.41, 170.42, 170.43, 170.44, 170.45, 170.46, 170.47, 170.48, 170.49, 170.50, 170.51, 170.52, 170.53, 170.54, 170.55, 170.56, 170.57, and 170.58 are repealed.

Sec. 55. [TIME OF TAKING EFFECT.] This act shall take effect July 1, 1973. Accidents occurring before this date are not covered by or subject to this act. The commissioner of insurance and the registrar of motor vehicles shall exercise, prior to the effective date of this act, the authority vested in them under this act to do all things necessary to implement the act on the effective date.

APPENDIX D

BILL IMPLEMENTING "OLSON-KAARDAL PROPOSAL"

A bill for an act

Relating to the compensation of victims of motor vehicle accidents, establishing a system of insurance benefits payable regardless of fault, providing certain limitations on the right to recover in tort for motor vehicle accidents and defining damages for loss of earnings, providing for inter-company arbitration and offset of benefits paid against judgments, regulating evidence and procedure, providing for court supervision of attorneys' contingent fees, criminal penalties for fraudulent claims, the effect of advance payments made without release of liability, small claims arbitration, conferring powers and imposing duties upon the Commissioner of Insurance and making repeals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE I

Section 1. (General Definitions.)

Subd. 1. The following words, terms or phrases shall have the meanings defined in this section when used in this Act.

Subd. 2. "Required vehicle" means a motor vehicle other than a motorcycle with side car attached, motor driven bicycle or tricycle, snowmobile, tractor, a piece of construction machinery or farm machinery or other machinery not intended primarily to transport people or goods, an all terrain vehicle, or a vehicle designed primarily for use off the road or on rails.

Subd. 3. "Motor vehicle" means any vehicle designed to be propelled by an engine or motor except one designed primarily for use off the road or on rails, and includes a trailer or semi-trailer while connected to or being towed by a motor vehicle.

Subd. 4. The term "income" includes but is not limited to salary, wages, tips, commissions, professional fees, and other earnings from work or tangible things of economic value produced in individually-owned businesses or farms or other work or the reasonable value of the services necessary to produce them.

Subd. 5. "Income loss" means loss of income from work the injured person would have performed had he not been injured, reduced by any income from work actually performed after the injury.

Subd. 6. "Occupying" means being in or upon a vehicle as a passenger or operator, or engaged in the immediate acts of entering, boarding or alighting from a vehicle.

Subd. 7. "Pedestrian" includes any person not occupying a motor vehicle or machine designed to be operated by a motor or engine.

Subd. 8. "Extended care facility" means an institution primarily engaged in providing skilled nursing care and related services for patients who require post hospitalization, in-patient medical, nursing or therapy services.

Section 2. (Basic Economic Loss Coverage.)

Subd. 1. All policies insuring a required vehicle licensed, principally garaged or operated in this state against loss resulting from liability imposed by law for bodily injury or death arising out of the ownership, maintenance or use thereof shall, on or after the effective date of this Act, afford the benefits specified in this section; provided, that if the vehicle insured is not licensed or principally garaged in this state, the benefits need not apply to accidents occurring outside of this state. The specified benefits shall be payable to the named insured and members of his family residing in his household because of injuries incurred in and arising out of a motor vehicle accident while occupying a required vehicle or when struck by a motor vehicle while a pedestrian. The specified benefits shall be payable to guest passengers and persons using the insured required vehicle with permission, express or implied, of the named insured, because of injuries incurred in and arising out of a motor vehicle accident while occupying the insured required vehicle, and to pedestrians when struck within the state by the insured required vehicle.

Subd. 2. Every owner of any required vehicle operated in this state is required to have in force insurance providing the Basic Economic Loss Coverage specified in this section. An owner who permits or suffers his vehicle to be operated on the public ways of this state without insurance providing the no-fault benefits required and specified by this Act shall be absolutely liable at law, without any of the customary defenses to an action in negligence or trespass, for such specified benefits to any person entitled to such benefits who is injured by contact with his vehicle. If such injured party is eligible to claim against an insurer under any section of this Act, the insurer subject to the claim shall have full right of subrogation against such owner.

Subd. 3. The specified benefits shall be called Basic Economic Loss Benefits, and shall consist of:

(1) Medical and Hospital Benefits as follows:

Payment of all reasonable expenses incurred for treatment received within one year from the date of the accident for necessary medical, surgical, x-ray, optical, dental, and medical and vocational rehabilitation services, including prosthetic devices and prescription drugs, and necessary ambulance, hospital, extended care facilities, professional nursing and funeral services, up to an aggregate limit of $2,000 per person for any one accident. Hospital room and board benefits may be limited, except for intensive care facilities, to the regular daily semi-private room rates customarily charged by the institution in which the recipient of benefits is confined.

(2) Disability Benefits as follows:

(a) Payment of benefits equivalent to 85% of income loss, subject to a maximum of $100 per week per person. Insurers may provide for an excluded period of not exceeding two weeks.

(b) Payment of all reasonable expenses incurred, not exceeding $10 per day, in obtaining essential substitute services in lieu of those that, had he not been injured, the injured person would have performed, not for income but for the benefit of himself or his family.

Disability benefits specified in this section shall accrue during the life of the injured person and shall be subject to an aggregate limit per accident of $2,600 payable to any one person for income loss

and $1,800 payable to any one person for expenses for essential substitute services.

Subd. 4. The existence of a potential cause of action in tort by any person entitled to the benefits specified in this section shall not affect the insurer's obligation to pay such benefits promptly; provided, that if prior to payment by the insurer of such benefits, payment of loss in whole or in part is received from or on behalf of a person who is or may be liable in tort for such loss, either as an advance payment or as a settlement, the recipient shall disclose such fact, and shall not collect benefits hereunder to the extent that such benefits would produce a duplication of payment or reimbursement of the same loss.

Section 3. (Catastrophe Economic Loss Coverage.)

Subd. 1. Every insurer providing Basic Economic Loss Benefits, as specified in section 2 of this Article shall, as regards required vehicles licensed or principally garaged in this state, also make available upon request of the named insured and offer upon solicitation or issuance of a new or first renewal policy after the effective date of this Article, optional Catastrophe Economic Loss Coverage affording benefits payable to the named insured and members of his family residing in his household, because of injuries incurred in and arising out of a motor vehicle accident while occupying a required vehicle or when struck by a motor vehicle while a pedestrian, in excess of the Basic Economic Loss Benefits specified in section 2, which coverage shall pay medical, hospital, disability, death and survivor's loss benefits commencing upon the exhaustion of such respective medical and hospital benefits or disability benefits and, as regards survivor's benefits, upon death.

Subd. 2. Such benefits shall be called Catastrophe Economic Loss Benefits, and shall consist of:

(1) Medical and Hospital Benefits as follows:

Payment of all reasonable expenses for necessary medical, surgical, x-ray, optical, dental, and medical and vocational rehabilitation services, including prosthetic devices and prescription drugs, and necessary ambulance, hospital, extended care facilities, professional nursing and funeral services; provided, however, that the benefits payable for funeral services including those under Basic Economic Loss Benefits shall not exceed $2,000. Hospital room and board benefits may be limited, except for intensive care facilities, to the regular daily semi-private room rates customarily charged by the institution in which the recipient of benefits is confined.

(2) Disability benefits as follows:

(a) Payment of benefits equivalent to 85% of income loss subject to a maximum limit of $750 per month; provided that for the purposes of this section disability shall mean d ability which continuously prevents the injured person from engaging in any substantial, gainful occupation or employment for wage or profit for which he is or may by training become reasonably qualified.

(b) Payment of all reasonable expenses incurred, not exceeding $10 per day, in obtaining essential services in lieu of those that, had he not been injured, the injured person would have performed, not for income but for the benefit of himself or his family.

(3) Survivor's Benefits as follows:

In the event of death occurring within one year of the date of the accident, caused by and arising out of injuries received in the accident, a survivor's benefit shall be paid to a surviving spouse or children of the deceased, as follows:

(a) Where the survivors were dependent for income upon the deceased, then if there is one surviving dependent, the benefit shall be 50% of the average monthly income the deceased would have earned had he survived; if there are two or more dependents, the benefit shall be 75% of such average monthly income.

(b) If the deceased was a parent of a minor or incompetent child or children upon whom such child or children were not dependent for financial support, survivor's benefits shall be payable to compensate for essential services obtained in lieu of those the decedent would have performed for their benefit had he survived, provided that such services are not such as could reasonably be expected to be performed for the child or children by a surviving parent or another person residing in the child's or children's household.

(c) The benefits provided in subparagraphs (3)(a) and (3)(b) of this subdivision payable in total to all beneficiaries shall be subject to a maximum limit of $750 per month, and to an aggregate maximum limit of $25,000 for any one accident. Payments to the surviving spouse may be terminated in the event such surviving spouse remaries or dies. Payments to a dependent child who is not incompetent may be terminated in the event he attains majority, marries or becomes otherwise emancipated, or dies.

(4) Death Benefits as follows:

A minimum of $5,000 payable to a named beneficiary due to the death of insured named in the policy as a result of the accident. If no valid designation of beneficiary is in effect, the benefit shall be payable to the named insured's estate.

Subd. 3. All benefits set forth in this section 3 may be made subject to an aggregate limit of not less than $100,000 payable on account of injury to or death of any one person as a result of any accident.

Section 4. (Payment of Benefits as Between Applicable Policies - Avoidance of Duplication - Excess Coverage.)

Subd. 1. As between applicable policies, Basic Economic Loss Benefits shall be payable as follows:

(1) As to any person injured while occupying a required vehicle insured for such benefits, or injured as a pedestrian by such a required vehicle, the benefits shall be payable by the insurer of the vehicle.

(2) As to any person insured under a policy providing such benefits who is injured while occupying a required vehicle not insured for such benefits, or while being struck as a pedestrian by a motor vehicle not insured for such benefits, the benefits shall be payable by the insurer affording the benefits to the injured person; provided, however, that such benefits shall be reduced to the extent of any automobile medical or disability benefits coverage available to him under a motor vehicle insurance policy applicable to the motor vehicle involved in the accident.

Subd. 2. No person shall recover benefits under coverage provided pursuant to this Act from more than one person or automobile policy on a duplicative basis nor on a supplemental basis except as provided in Subdivision 1 of this section; provided further, that the supplemental benefits provided pursuant to section 3 or section 8 of this Article may be recovered from an applicable policy first applicable provides only the benefits specified in section 2 of this Article.

Section 5. (Correlation with Uninsured Motorist Coverage, Workmen's Compensation Benefits and Other Benefit Sources.)

Subd. 1. Except as otherwise provided herein,Basic Economic Loss Benefits shall be paid regardless of existing or potential alternate benefit sources. Disability benefits, including wage or salary continuation under a definitive plan, or under any arrangement in which the benefit is not taxable gross income shall be considered alternate benefit sources. Coverage afforded pursuant to sections of this Article other than section 2, may be written on like conditions or may provide for the coverage to be excess over other medical or disability benefits.

Subd. 2. Benefits recoverable under coverage provided pursuant to this Act shall be deducted from any recovery by the same person under coverage which substitutes the insurer of the claimant for a financially irresponsible tort feasor.

Subd. 3. Benefits recoverable under the Workmen's Compensation laws of any state or the Federal government shall be deducted from the benefits recoverable under coverages afforded pursuant to this Act.

Subd. 4. The obligation to pay benefits under coverage afforded pursuant to this Act shall not apply to any direct or indirect loss or interest of, or for

services or benefits provided or furnished by the United States of America or any of its agencies coincident to a contract of employment or because of military enlistment, duty or service.

Section 6. (Periodic Payment of Benefits.)

All payments of benefits under coverage provided pursuant to this Act shall be made periodically as the claims therefor arise and as promptly as satisfactory proof thereof is received by the insurance company, subject to the time limitation on original proof of loss and recurrences contained in section 9 of this Article.

Section 7. (Exclusions.)

The coverages provided pursuant to this Act may exclude from benefits thereunder any person otherwise insured under the policy who (1) intentionally causes the accident resulting in the injury, or (2) is injured while wilfully operating or riding in a vehicle known by him to be stolen, or (3) is injured in the commission of a felony other than a felony based solely upon the criminal operation of the vehicle, or while seeking to elude lawful apprehension or arrest by a police officer, or (4) is occupying a required vehicle not insured for the benefits specified under section 2 of this Article, owned by the insured or a member of his family residing in the same household, or (5) is injured while operating or riding in or when struck by a vehicle being used in and officiated, conducted racing or speed contest or in practice or preparation therefor, or (6) is injured while occupying any vehicle while being used as a temporary or permanent residence, living quarters, office or premises.

Section 8. (Other Optional Coverage.)

Subd. 1. Nothing in this Act shall be construed as preventing insurers from offering on an optional basis coverages specified in this Act in connection with policies on motor vehicles other than automobiles as defined in section 1 of this Article.

Subd. 2. Nothing in this Act shall be construed as preventing insurers from offering other benefits or limits in addition to those required to be offered under section 3 of this Article.

Section 9. (Additional Limitations.)

Subd. 1. The coverages afforded pursuant to this Act may require prompt notice of accident and may prescribe a period of not less than six months after the date of accident within which the original proof of loss with respect to a claim for Basic Economic Loss Benefits must be presented to the insurer as a condition of eligibility for benefits or for benefits afforded pursuant to section 3 or section 8 of this Article.

Subd. 2. The coverages afforded pursuant to section 2, section 3 and section 8 of this Article may provide that in any instance where a lapse occurs in the period of total disability or in the medical treatment of an injured person who has received benefits under such coverage or coverages, and such person subsequently claims additional benefits based upon an alleged recurrence of the injury for which the original claim for benefits was made, the insurer may require reasonable medical proof of such alleged recurrence; provided, that in no event shall the aggregate benefits payable to any person exceed the maximum limits specified in the policy, and provided further that such coverages written pursuant to section 3 and 8 of this Article may contain a provision terminating eligibility for benefits after a prescribed period of lapse of disability and medical treatment, which period shall not be less than one year.

Subd. 3. Additional reasonable limitations may be made applicable to specific benefits provided under sections 2, 3, and 8 of this Article subject to the approval of the commissioner of insurance.

Section 10. (Inter-company Arbitration.)

Subd. 1. Every insurer licensed to write insurance in this state shall be deemed to have agreed, as a condition to maintaining such license after the effective date of this Act, (1) that where its insured is or would be held legally liable for damages for injuries sustained by any person to whom benefits specified in section 2 of this Article have been paid by another insurer, it will reimburse such other insurer to the extent of such benefits, but not in excess of the amount of damages so recoverable for the types of loss covered by such benefits or in excess of the limits of its liability under its policy, and (2) that the issue of liability for such reimbursement and the amount thereof shall be decided by mandatory, binding inter-company arbitration procedures approved by the commissioner of insurance. If either insurer in such an arbitration proceeding also has provided coverage to the same policyholder for collision or upset arising out of the same occurence, such insurer shall also submit the issue of recovery of any payments thereunder to the same mandatory and binding arbitration proceedings as herein provided.

Subd. 2. The commissioner of insurance shall also approve procedures for arbitration of the issue of liability for and reimbursement of benefits paid under the coverage written pursuant to section 3 and 8 of the Article, which procedures shall be applicable to disputes between insurers agreeing to join in such procedures. Such agreements shall be renewable annually and shall apply to accidents occuring during the calendar year.

Subd. 3. Notwithstanding any statute of limitations to the contrary, any demand for initial arbitration proceedings shall be brought within one year of the first payment of Basic Economic Loss Benefits by the insurer claiming for reimbursement. Arbitration proceedings need not await final payment of benefits, and the award, if any, shall include provision for reimbursement of subsequently accruing benefits. Proceedings may be reopened to question the propriety of subsequent payments, but no question of fact decided by a prior award shall be reconsidered in any such subsequent arbitration hearing.

Section 11. (Subrogation and Release.)

Persons paying the benefits specified in section 2 of this Article shall be subrogated to the rights of action of persons to whom they pay such benefits, and an insurer may provide that it be subrogated to the rights of action of persons recovering benefits pursuant to any other provision of such policies, except as to such benefits which have been or may be subject to binding arbitration under this Article. A release of liability given by a person who is or may be entitled to receive benefits specified under section 2 of this Article shall be void and unenforceable, with respect to such benefits, against a subrogee who has not joined in the execution of the release.

Section 12. (Disclosure and Offset of Benefits.)

Any person who has received or may be entitled to benefits under the coverage afforded pursuant to this Act shall disclose the identity of the person providing such benefits to any person who may have legal liability for his injuries, and to the insurer of such person. If any such person who has received or may be entitled to such benefits with respect to injuries received in a motor vehicle accident files any action in this state for damages for injury or death arising out of the same accident, such benefits must be disclosed to the judge but shall not be made known to the jury. The amount of such benefits recovered or which will become recoverable and subject to binding inter-company arbitration, as determined by the court, shall be deducted by the court from any amount awarded to such person in such proceedings. In the event collision loss of a party to the action is subject to binding inter-company arbitration, such collision loss paid or payable to the party by his insurer shall not be awarded to such party in any action for damages. The amount of any such benefits or collision loss by which any verdict or judgment is reduced shall not be included in computing attorneys' fees. The existence or result of arbitration proceedings shall not otherwise be admissible in evidence in any action for death or damages to persons or property arising out of the accident.

Section 13. (Cooperation of Beneficiaries.)

Any person receiving benefits under coverage provided pursuant to this Act shall participate and cooperate, as required under the coverage, in any and all arbitration proceedings and legal actions instituted by or on behalf of the insurer paying the benefits, and the insurer may require in the furnishing of proof of loss that such person shall so participate and cooperate as

consideration for the payment of such benefits.

Section 14. (Authority of the Commissioner of Insurance.)

The Commissioner of Insurance shall have the authority to issue and promulgate all necessary rules, regulations, definitions and minimum provisions for forms not inconsistent with the provisions of this Act. He shall also have the authority, after notice and hearing thereon, to approve schedules of reasonable maximum benefit payments for specified medical services which insurers may incorporate into their policies of basic or supplemental coverages afforded pursuant to this Act.

ARTICLE II

Section 1. (Damages for Pain, Suffering, Mental Anguish and Inconvenience.)

Subd. 1. In any action in tort for damages, caused by accident occurring on or after the effective date of this Act, arising out of the operation, ownership, maintenance or use of a motor vehicle within this state, brought by a person who is an insured as respects the occurrence out of which the action arose for the Basic Economic Loss Benefits specified in Article I, section 2 of this Act, or for benefits substantially equal or greater under the provisions of a motor vehicle liability insurance policy, against a person who is likewise such an insured, no damages shall be recoverable for pain, suffering, mental anguish, inconvenience and other non-pecuniary injury unless the reasonable medical treatment services required by the claimant exceed one thousand dollars in cost value. Medical treatment services for this purpose are defined as necessary medical, hospital, dental, surgical, ambulance and professional nursing services and prosthetic devices, but excluding diagnostic x-ray services. The actual charge for such services shall be evidence but not conclusive evidence of the cost value of such services. The fact that services have or have not been supplied shall be evidence but not conclusive evidence that they were or were not required.

Subd. 2. The limitations prescribed in Subd. 1. of this section shall not apply in cases of death, dismemberment, permanent total or significant permanent partial disability, or permanent serious disfigurement.

Subd. 3. The court on its own motion or the motion of either party may designate an impartial medical panel of not more than three licensed physicians, to examine the claimant and testify on the issue of the cost value of required medical services, or any other issue hereunder to which such expert testimony would be relevant.

Subd. 4. The court shall require special verdicts as may be advisable to insure that damages for pain, suffering, mental anguish, inconvenience and other nonpecuniary loss are not awarded unless the standards of this section are met.

Section 2. (Loss of Earnings.)

In any action in tort brought as a result of bodily injury, sickness, or disease, caused by accident occurring on or after the effective date of this Act arising out of the operation, ownership, maintenance or use of a motor vehicle within this state, damages awarded for loss of past earnings and reasonably anticipated future earnings due to disability sustained by the plaintiff as a result of the injuries giving rise to the action shall be computed net of any income taxes which would have been payable on such past earnings and net of a reasonable setoff for income taxes prospectively payable on such future earnings. After verdict the court shall determine the amount of the award attributable to such loss of earnings according to the evidence, and shall compute the setoff based on the standard deduction and exemptions available to the claimant and current tax rate tables; provided that the claimant may prove additional deductions which will be allowed if not emanating from income producing activities; and also provided that if claimant shall supply applicable tax rate tables for past years, they shall be used in computing applicable taxes for those years.

ARTICLE III

Section 1. (General.)

Any person who, in connection with any claim arising out of a motor vehicle accident, (1) obtains or attempts to obtain, from any other person or any insurer in this state, any money or other thing of value by falsely or fraudulently representing that said person is injured or has sustained an injury or damage to property for which money may be paid by way of compensation for medical expenses incurred, or wage loss sustained, or (2) makes any statement, produces any document or writing or in any other way presents evidence falsely and fraudulently representing any injury, or any damage to property, or exaggerating the nature and extent of said injury or damage, or (3) cooperates, conspires or otherwise acts in concert with any person in seeking to falsely and fraudulently represent an injury or damage to property, or to exaggerate the nature and extent of said injury or damage shall, if such sum so obtained or attempted to be obtained is less than one hundred dollars, be fined not more than five hundred dollars or imprisoned not more than one year, or both, and shall, if the sum so obtained or attempted to be obtained is one hundred dollars or more, or in the event of a second or successive conviction hereunder regardless of the sum obtained or attempted to be obtained, be fined not less than five hundred dollars or imprisoned not more than ten years or both.

Section 2. (Evidence)

In order to establish that there exists an intent to falsely and fraudulently represent an injury or damage to property, or the extent thereof, a history of similar false or fraudulent representations by the accused person or persons shall be admissible in evidence; but such evidence shall not be essential to sustain a verdict of guilty.

ARTICLE IV

Section 1. (General.)

Any person injured in a motor vehicle accident who claims damages therefor from another party or benefits therefor under an insurance policy shall, upon request of the party or insurer, submit to physical examination by a physician or physicians selected by such party or insurer as may reasonably be required, and shall do all things reasonably necessary to enable such party or insurer to obtain medical reports and other needed information to assist in determining the nature and extent of the claimant's injuries and the medical treatment received by him. If the claimant refuses to cooperate in responding to requests for examination and information as authorized by this section, evidence of such non-cooperation shall be admissible in any suit filed by the claimant for damages for such personal injuries or for benefits under any insurance policy, and the court, in its discretion, may instruct the jury to consider such refusal to cooperate in weighing the credibility of the injuries claimed, and may order such other sanctions as may be appropriate.

ARTICLE V

Section 1. (General.)

In any action in which a person, or an insurer on behalf of its insured, has made any payments to or on behalf of any plaintiff or counter-claimant prior to trial, said payments shall not be construed as an admission of liability by such person, or such insurer or its insured, in any action brought to recover for personal injuries, for the wrongful death of another, or for property damage or destruction.

Section 2. (Offset Against Damage Awards.)

In the event, however, that such action results in a verdict in favor of the plaintiff or counter-claimant, the defendant shall be allowed to introduce evidence of such payments, and the court shall then reduce the amount awarded to the plaintiff or counter-claimant by the amount of payments made prior to trial.

Section 3. (Effect on Insurer's Liability.)

No such payment shall be construed to be in lieu of or in addition to the liability of an insurer under any policy of insurance, but such sums paid in advance shall be deemed to have been made pursuant to the limits of the pertinent policy and shall be credited to the insurer's obligation to the insured arising from such policy.

ARTICLE VI

Section 1. (Benefits if No Insurer Identified.)

If any resident of this state is entitled to the benefits specified in Art. I, sec. 2 of this Act, and if no insurer liable for such benefits can be identified, the claimant may make timely application to the Automobile Insurance Plan, which shall designate an insurer to provide the coverage for such benefits.

Section 2. (Dispute Over Benefits)

In case of dispute over a claim under section 1 of this Article, benefits payable shall be determined by arbitration under procedures specified by the commissioner of insurance, which shall be similar to those in use for uninsured motorist coverage.

Section 3. (Apportionment of Costs.)

The Automobile Insurance Plan shall give appropriate credits to insurers assigned cases under this section. In lieu of distribution of the costs by case assignment, the Automobile Insurance Plan may equitably apportion the costs incurred in providing the services required by this Article under a plan approved by the commissioner of insurance.

Section 4. (Persons Not Entitled.)

No person shall be entitled to benefits under this Article who would be excluded from coverage under the standard exclusions or conditions, approved by the Commissioner of Insurance, of the policy of the company to which he is assigned under section 2 of this Article, nor shall any person be entitled to such benefits who fails to comply with reasonable rules of the Automobile Insurance Plan, approved by the commissioner of insurance, for the receipt and handling of claims under this Article.

Section 5. (Subrogation.)

The rights of subrogation and inter-company arbitration accruing to insurers under this Act shall accrue to the assigned insurer under this Article.

ARTICLE VII

Section 1. (Constitutionality.)

If any provision of this Act, other than those in Article II, or the application thereof to any person or circumstance is held unconstitutional, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this Act without such invalid or unconstitutional provision. However, Article II is expressly declared non-severable.

Section 2. (Effective Date -- Transition -- General Repealer.)

Subd. 1. This Act shall become effective on and after one year from the date of approval. In consideration of retention of its license to write insurance in this state, each insurer shall be deemed to have agreed to comply with all provisions and requirements of this Act, and particularly (a) to provide the benefits specified in Article I, section 2 on policies outstanding on the effective date of this Act which are required to contain such coverage, and (b) to comply with the system of inter-company arbitration created pursuant to Article I, section 10, and (c) to consider any outstanding policy reformed on the date of this Act to comply herewith, whether or not specifically endorsed.

Subd. 2. In consideration of the additional insurance afforded, any automobile medical payments coverage or automobile disability income coverage already in effect upon the effective date of the law shall become excess for the remainder of the policy term over the coverage afforded pursuant to this Act.

Subd. 3. All other acts and parts of acts inconsistent with this Act are hereby repealed insofar as they are inconsistent with this Act.

APPENDIX E

MOTOR VEHICLE HABITUAL OFFENDERS ACT

§1. **Declaration of Policy.** It is hereby declared to be the policy of this State.

(a) To provide maximum safety for all persons who travel or otherwise use the public highways of this State; and

(b) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this State, the orders of its courts, and the statutorily required acts of its administrative agencies; and

(c) To discourage repetition of criminal acts by individuals against the peace and dignity of this State and her political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of the traffic laws.

§2. **Definition.** An habitual offender shall be any persons, resident or nonresident, whose record, as maintained in the office of the Department of Motor Vehicles* shows that such person has accumulated the convictions for separate and distinct offenses described either in subsection (a) or subsection (b), as further defined in subsection (c) committed during a 5-year period, provided that where more than one included offense shall be committed within a 1-day period such multiple offenses shall be treated for the purposes of this chapter as one offense:

(a) **Three or more convictions.** Three or more convictions, singularly or in combination of any of the following separate and distinct offenses arising out of separate acts:

(1) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(2) Operating or attempting to operate while under the influence of intoxicating liquor or drugs, operating or attempting to operate while impaired by the use of intoxicating liquor or drugs or operating or attempting to operate while intoxicated by the use of intoxicating liquor or drugs;

(3) Driving or operating a motor vehicle in a reckless manner;

(4) Driving a motor vehicle while his license, permit or privilege to drive a motor vehicle has been suspended or revoked;

(5) Willfully operating a motor vehicle without a license to do so;

(6) Knowingly making any false affidavit or swearing or affirming falsely to any manner or thing required by the motor vehicle laws or as to information required in the administration of such laws;

(7) Any offense punishable as a felony under the motor vehicle laws of this State or any felony in the commission of which a motor vehicle is used;

(8) Failure of the driver of a motor vehicle involved in any accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identity;

(9) Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended or unattended vehicle or other property in excess of $100 to stop close to the scene of such accident and report his identity or otherwise report such accident in violation of law.

(b) **Ten or more convictions.** Ten or more convictions of separate and distinct offenses involving moving violations singularly or in combination, in the operation of a motor vehicle which are required to be reported to the Department of Motor Vehicles* and the commission whereof authorizes the Department or authorizes a court to suspend or revoke the privilege to operate motor vehicles on the highways of this State for a period of 30 days or more for each offense and such convictions shall include those offenses enumerated in subsection (a) when taken with and added to those offenses described.

(c) **Inclusions.** The offenses included in subsections (a) and (b) shall be deemed to include offenses under any federal law, any law of another state or any valid town, city or county ordinance of another state substantially conforming to the aforesaid state statutory provision.

(d) **Conviction.** For the purpose of this article, the term "conviction" shall mean a final conviction. Also for the purpose of this article a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

§3. **Department to certify record to court.**** The Department of Motor Vehicles* shall certify the conviction record as maintained in his office of any person whose record brings him within the definition of a habitual offender, as defined above, to the state's attorney of the judicial district in which such person resides

according to the records of the Department of Motor Vehicles* or to the state's attorney for the county of _____ if such person is not a resident of this State. Such abstract may be admitted as evidence. Such abstract shall be competent evidence that the peson named therein was duly convicted by the court wherein such conviction or holding was made by each offense shown by such abstract.

§4. **State's Attorney to initiate court proceeding, petition.** The state's attorney, upon receiving the aforesaid abstract from the Department, shall forthwith file a petition against the person named therein in the court for the county wherein such person resides or, in the case of a nonresident, in the Court of_____ County. The petition shall request the court to determine whether or not the person named therein is an habitual offender.

§5. **Service of petition, order to show cause.*** ** Upon the filing of the petition, any court judge having jurisdiction over criminal cases within the county shall enter an order incorporating by attachment the aforesaid abstract and directed to the person named therein to appear at the next criminal session of the court and show cause why he should not be barred from operating a motor vehicle on the highways of this State. A copy of the petition, the show cause order and the abstract shall be served upon the person named therein in the manner prescribed by law for the service of process. Service thereof on any nonresident of this State may be made in the same manner as in any action or proceeding arising out of a collision on the highways in this State which procedure is hereby made applicable to these proceedings except that any fee for such service shall be taxed against the person named in the petition as a part of the cost of such proceeding.

§6. **Hearing, procedure.** The matter shall be heard at the criminal session of the court by the judge without a jury. If such person denies that he was convicted of any offense shown in the abstract and necessary for a holding that he is an habitual offender, and if the court cannot, on the evidence available to it, determine the issue, the court may require of the Department of Motor Vehicles* certified copies of such records respecting the matter as it may have in its possession. If, upon an examination of such records, the court is still unable to make such determination it shall certify the decision of such issue to the court in which such conviction was reportedly made. The court to which such certification is made shall forthwith conduct a hearing to determine such issue and send a certified copy of its final order determining such issue to the court in which the petition was filed. The court in its discretion, may rely on certified copies of convictions adjudged by courts outside of this State, or federal courts, or may request such a court to make a determination.

§7. **Court's findings, judgment.** If the court finds that such person is not the same person named in the aforesaid abstract, or that he is not an habitual offender under this article, the proceeding shall be dismissed, but if the court finds that such person is the same person named in the abstrct and that such person is an habitual offender, the court shall so find and by appropriate judgment shall direct that such person not operate a motor vehicle on the highways of this State and to surrender to the court all licenses or permit to operate a motor vehicle upon the highways of this State. The clerk of the court shall forthwith transmit a copy of such judgment together with any licenses or permits surrendered to the Department of Motor Vehicles*.

§8. **Appeals.** An appeal may be taken from any final action or judgment entered under the provisions of this article in the same manner and form as appeals in civil action.

§9. **Prohibition.** No license to operate motor vehicles in this State shall be issued to an habitual offender, nor shall a non-resident habitual offender operate a motor vehicle in this State;

(a) For a period of five years from the date of the order of the court finding such person to be an habitual offender; and

(b) Until such time as financial responsibility requirements are met; and

(c) Until upon petition, and for good cause shown, such court may, in its discretion, restore to such person the privilege to operate a motor vehicle in this State upon such terms and conditions as the court may prescribe, subject to other provisions of law relating to the issuance of operators' licenses.

§10. **Driving after judgment prohibited.** It shall be unlawful for any person to operate any motor vehicle in this State while the judgment of the court prohibiting the operation remains in effect. Any person found to be an habitual offender under the provisions of this article who is thereafter convicted of operating a motor vehicle in

this State while the judgment of the court prohibiting such operation is in effect, shall be guilty of a misdemeanor and imprisoned for not less than one year nor more than five years.

For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his license, permit or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing such charges shall require the state's attorney to determine whether such person has been adjudged an habitual offender and by reason of such judgment is barred from operating a motor vehicle on the highways of this State. If the state's attorney determines that the accused has been so held, he shall cause the appropriate criminal charges to be lodged against the accused.

§11. **No existing law modified.** Nothing in this article shall be construed as amending, modifying or repealing any existing law of this State or any existing ordinance of any political subdivision relating to the operation of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof; or shall be construed so as to preclude the exercise of the regulatory powers of any division, agency, department or political subdivision of this State having the statutory authority to regulate such operation and licensing.

§12. **Computation of number of convictions.** In computing the number of convictions all convictions must result from offenses occurring subsequent to the effective date of this article.

§13. **Additional penalty when convicted of an offense which would render an individual an habitual offender.** If any person shall be convicted in this State of an offense which would render that individual an habitual offender as defined in this article, he shall in addition to the penalty otherwise prescribed by law for such offense, be fined not less than one hundred dollars nor more than one thousand dollars and confined in jail not less than 30 days nor more than twelve months. Provided that, no such sentence shall be executed until the individual is actually finally adjudged an habitual offender.

Notes:

* Insert appropriate State Agency which maintains drivers' records.

** Designation of the appropriate court and prosecutor should be changed to conform to State law.

*** Procedures should be changed to conform to State law.

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