SCOMM

101A:31

| Text of Proposed Law | This - 213 | Argument in Favor |

Analysis of Proposition 213

by the Legislative Analyst

PROPOSAL

This measure would limit the ability of certain people to sue to recover losses suffered in accidents.

Limits on Uninsured Motorists and Drunk Drivers

Under existing law, someone who has suffered an injury in a car accident may sue the person, business, or government at fault for the injury in order to recover related losses. These losses can include both *economic* losses (such as lost wages, medical expenses, and property damage) and *noneconomic* losses (such as pain and suffering).

This measure would prohibit the recovery of *noneconomic* losses in certain car accidents. Specifically, an uninsured driver or a driver subsequently convicted of driving under the influence of alcohol or drugs ("drunk drivers") at the time of an accident could not sue someone at fault for the accident for noneconomic losses. (These drivers could still sue for economic losses.) If, however, an uninsured motorist is injured by a drunk driver in an accident, the uninsured motorist could still sue to recover noneconomic losses from the drunk driver.

Limits on Convicted Felons

Currently, in certain cases a person who is injured while breaking the law may sue on the basis of another person's negligence to recover any losses resulting from the injury. For example, a person convicted of a robbery who was injured because he or she slipped and fell while fleeing the scene of the crime can sue to recover losses resulting from the injury.

This measure prohibits a person convicted of a felony from suing to recover any losses suffered while committing the crime or fleeing from the crime scene *if* these losses resulted from another person's negligence. Convicted felons, however, would still be able to sue to recover losses for some injuries suffered while committing or fleeing a crime--for instance those resulting from the use of "excessive force" during an arrest.

FISCAL EFFECT

Restricting the ability of people to sue for injury losses in the above situations would reduce the number of lawsuits handled by the courts. This would reduce annual court-related costs to state and local governments by an unknown but probably minor amount. These restrictions would also result in fewer lawsuits filed against state and local governments. Thus, there would be an unknown savings to state and local governments as a result of avoiding these lawsuits.

In addition, the restrictions placed on uninsured motorists and drunk drivers could result in somewhat lower costs, or "premiums," for auto insurance. Under current law, insurance companies doing business in California pay a tax of 2.35 percent of "gross premiums." This tax is called the gross premiums tax and its revenues are deposited in the state's General Fund. Any reduction in insurance premiums would also reduce gross premiums tax revenue to the state. We estimate that any revenue loss would probably be less than $5 million annually.

CHART 2

AB 432

Impact of Disallowing Uninsured Motorists from Collecting Pain & Suffering Payments on Auto Liability Policy in the 10 Largest Cities in California

City	Average Premium (all Liability)[1]	AB 432 %Savings [2]	AB 432 $ Savings [3]
Anahiem	641	7.25%	46
Fresno	501	6.54%	33
Long Beach	701	6.45%	45
Los Angeles	1010	8.32%	84
Oakland	624	6.92%	43
Sacramento	511	3.18%	16
San Diego	495	4.72%	23
San Francisco	664	8.34%	55
San Jose	489	4.73%	23
Santa Anna	670	7.82%	52
California	549	6.86%	38

[1] This is an average premium for Bodily Injury, Property Damage, Medical Payment, and Uninsured Motorist Coverages per vehicle insured. Source: Auto Liability Data Base.

[2] This figure reflects percent savings on the combined liability claims (BI, PD, UM, and med Pay).

[3] Actual savings to individual policyholders may vary depending on the risk characteristics, policy limits, garaging area, and company's rate making formula.

Prepared by the CA Dept. of Insurance, Statistical Analysis Bureau

AB 432

Impact of Disallowing Uninsured Motorists from collecting Pain & Suffering Payments on Auto Liability Policy in CALIFORNIA

(1)	Uninsured Vehicles:	0.28
(2)	Insured Vehicles:	0.72
(3)	Probability of a claim involves insured and Uninsured vehicle :	0.4032
(4)	1992 Incurred Losses for Bodily Injury:	2,614,046,463
(5)	Pain & Suffering (31% of Bodily Injury):	810,354,404
(6)	Estimated Pain & Suffering Claimed by Uninsured Motorist:	326,734,890
(7)	Savings on Bodily Injury Coverage* :	12.50%
(8)	1992 Incurred Losses for All Liability Coverages:	4,759,792,277
(9)	Savings on Losses of all Liability Coverages** :	6.86%

* While this figure may indicate savings on Bodily Injury Coverage losses, companies do not sell this coverage alone.

** We estimate that 85% of the insured vehicles are covered with all liability coverages. Therefore the 6.86% may be considered an estimate of the savings which an average auto liability policyholder may realize on their annual premium. Actual savings to individual policyholder may vary depending on the risk characteristics, policy limits, garaging area, and company rate making formula.

(1) & (2): DOI estimates of Uninsured Vehicles.
(3) is (1) X (2) X2
(4) is from 1992 Annual Statements & Auto Liability Data Base
(5) is (4) X 0.31. See "Automobile Claims, A Study of Closed Claims Patterns in California." by Al-Faris, Boushehri, and Gillespie.
(6) is (3) X (5)
(7) is (6)/(4)
(8) is from 1992 Annual Statement, page 14, Line 19.2
(9) is (6)/(8)

Prepared by the CA Dept. of Insurance, Statistical Analysis Bureau

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

First Regular Session

Sixty-first General Assembly

LLS NO. 97-0222.01 EBD HOUSE BILL 97-1197

STATE OF COLORADO

BY REPRESENTATIVES Swenson, Agler, Allen, Dean, Dyer, June, May, Owen, Pfiffner, Schauer, and Schwarz;

also SENATOR Coffman.

TRANSPORTATION & ENERGY

A BILL FOR AN ACT

CONCERNING LIMITATIONS ON RECOVERY OF DAMAGES ARISING OUT OF A MOTOR VEHICLE ACCIDENT, AND, IN CONNECTION THEREWITH, LIMITING RECOVERY OF NONECONOMIC DAMAGES BY CONVICTED FELONS, UNINSURED MOTORISTS, OWNERS OF MOTOR VEHICLES THAT ARE NOT INSURED, PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE AT THE TIME OF AN ACCIDENT, AND PERSONS DRIVING WITH A LICENSE THAT IS UNDER RESTRAINT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

In actions arising out of the operation or use of a motor vehicle bars recovery of noneconomic damages by persons committing or fleeing from the scene of a felony, convicted of driving while under the influence during an accident, uninsured motorists, owners of motor vehicles that are not insured, and persons driving with a license that is under restraint. Specifies that insurers are not liable to the above persons for noneconomic damages. Continues to allow recovery by uninsured motorists who are injured by a person convicted of driving under the influence or injured by a person engaged in the commission of, or flight from, a felony.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 7 of article 4 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-4-712.5. Limitation of recovery to convicted felons, uninsured motorists, persons convicted of driving under the influence, and persons driving with a license under

restraint. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) IN 1973 THE GENERAL ASSEMBLY ADOPTED A SYSTEM OF COMPULSORY AUTOMOBILE INSURANCE CONSISTING OF LIABILITY INSURANCE AND A COMPREHENSIVE PACKAGE OF PERSONAL INJURY PROTECTION BENEFITS PAID ON A NO-FAULT BASIS.

(b) COLORADO LAW PREVENTS INSURED MOTORISTS FROM COLLECTING IN TORT ANY ECONOMIC DAMAGES UNDER THE COLORADO AUTOMOBILE ACCIDENT REPARATIONS ACT, SUCH AS MEDICAL EXPENSES OR LOST WAGES, BECAUSE SUCH DAMAGES ARE PAID UNDER A COMPLYING POLICY AND IF A MOTORIST IS UNINSURED, SUCH MOTORIST IS, IN EFFECT, SELF-INSURED AND THEREFORE PREVENTED FROM COLLECTING IN TORT SUCH ECONOMIC DAMAGES.

(c) THE GENERAL ASSEMBLY RECOGNIZES THAT A SIGNIFICANT NUMBER OF MOTORISTS BREAK THE LAW BY DRIVING UNINSURED, COMMITTING OR FLEEING FROM A FELONY, DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, OR DRIVING UNDER A REVOKED OR SUSPENDED LICENSE AND YET ARE PERMITTED TO RECOVER NONECONOMIC DAMAGES, SUCH AS PAIN AND SUFFERING, UNDER LIABILITY INSURANCE POLICIES.

(d) BY ENACTMENT OF THIS STATUTE, THE GENERAL ASSEMBLY INTENDS TO STATE THAT THE PUBLIC POLICY OF COLORADO IS TO NO LONGER TOLERATE THE ABUSE OF THE PRESENT LIABILITY INSURANCE SYSTEM BY THOSE WHO FAIL TO HAVE IN EFFECT A COMPLYING POLICY AS REQUIRED UNDER SECTION 10-4-705 OR 10-4-706 OR BY THOSE WHO BREAK THE LAW AS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1).

(e) THE GENERAL ASSEMBLY, BY PASSING THIS SECTION, DOES NOT ALTER THE RIGHT OF ANY PERSON TO RECOVER ECONOMIC LOSSES IN A TORT ACTION AS CURRENTLY ALLOWED BY LAW.

(2) EXCEPT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, IN ANY ACTION, BASED ON NEGLIGENCE, TO RECOVER DAMAGES RELATED TO THE OPERATION OR USE OF A MOTOR VEHICLE, AN INJURED PERSON SHALL NOT RECOVER NONECONOMIC DAMAGES TO COMPENSATE FOR

THE INFLUENCE AT THE TIME OF THE ACCIDENT IN VIOLATION OF SECTION 42-4-1301, C.R.S.;

(c) SUCH INJURED PERSON WAS THE OPERATOR OF, OR A PASSENGER IN, AND WAS THE OWNER OF A MOTOR VEHICLE INVOLVED IN THE ACCIDENT AND SUCH MOTOR VEHICLE WAS NOT INSURED AS REQUIRED BY SECTION 10-4-705 OR 10-4-716;

(d) SUCH INJURED PERSON WAS A NONOWNER OPERATOR OF A MOTOR VEHICLE INVOLVED IN THE ACCIDENT AND CANNOT ESTABLISH HIS OR HER FINANCIAL RESPONSIBILITY AS REQUIRED PURSUANT TO SECTION 10-4-705 OR 10-4-716; OR

(e) SUCH INJURED PERSON WAS OPERATING A MOTOR VEHICLE WHILE SUCH PERSON'S LICENSE WAS UNDER RESTRAINT IN VIOLATION OF SECTION 42-2-138, C.R.S.

(3) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN INSURER SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, UNDER A POLICY OF LIABILITY OR UNINSURED OR UNDERINSURED MOTORIST INSURANCE TO INDEMNIFY FOR NONECONOMIC DAMAGES OF A PERSON INJURED AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

(4) SUBSECTION (2) OF THIS SECTION SHALL NOT APPLY IN THE EVENT A PERSON DESCRIBED IN PARAGRAPH (c) OR (d) OF SUBSECTION (2) OF THIS SECTION SUSTAINED INJURIES CAUSED BY A PERSON WHO, AT THE TIME OF THE ACCIDENT, WAS OPERATING HIS OR HER MOTOR VEHICLE WHILE UNDER THE INFLUENCE IN VIOLATION OF SECTION 42-4-1301, C.R.S., AND WAS CONVICTED OF THAT OFFENSE, OR IF THE INJURIES WERE IN ANY WAY CAUSED BY A MOTOR VEHICLE ACCIDENT IN WHICH THE NEGLIGENT DRIVER WAS ENGAGED IN THE COMMISSION OF, OR FLIGHT FROM, A FELONY.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to causes of action filed, and insurance policies issued or renewed, on or after the effective date of this act.

JUN 2 0 1995

Research Brief

RAND ⁘ Institute for Civil Justice

MAY 1995

15TH Anniversary Year

How Big Is the Price Tag for Excess Auto Injury Claims?

Although the nationwide accident rate has been falling steadily, the cost of personal injury automobile insurance has grown at a breathtaking rate over the last two decades, leaving the average driver with a bill for basic coverage in 1990 that was two and a half times higher than the bill for the same coverage in 1980. Because every state requires some form of personal injury insurance, these stiff increases are burdensome for everyone, and especially so for low-income populations. The high costs of coverage also probably swell the ranks of those who drive without coverage.

Many believe that excess claims are a major contributor to rising insurance costs, but to date there has been no comprehensive evidence to support or refute this view. A recent Institute for Civil Justice study, *The Costs of Excess Medical Claims for Automobile Personal Injuries*, takes the first rigorous look at the pattern and cost of excess automobile medical claiming across the states. Authors Steve Carroll, Allan Abrahamse, and Mary Vaiana found that about one-third of the automobile injury medical costs submitted to insurers appear to be excess.

ACCESS TO GENERAL DAMAGES PROVIDES INCENTIVE TO EXCESS CLAIMING

In the study, the term *excess medical claiming* includes claims based on staged or nonexistent accidents, claims by people involved in real accidents for nonexistent injuries, and buildup of claims for real injuries. To develop an estimate of how much excess claiming occurs nationwide—in contrast to individual instances of fraud identified in a sting operation—the researchers take an indirect approach.

First, they analyze the incentives to submit inflated or invented claims for various types of injuries provided by different insurance systems:

- Under the tort liability system—the set of legal rules governing compensation for automobile injuries in about three-quarters of the states—an injured individual may seek compensation for both the economic loss incurred as a result of that injury (e.g., medical costs) and for noneconomic losses or general damages—hurts such as "pain and suffering" not directly measured in dollars.
- In 1988, when the data used in this study were collected, eleven states had adopted dollar threshold no-fault insurance systems, under which an automobile accident victim is allowed to seek compensation for general damages only if his or her medical costs exceed a specified amount.
- Florida, Michigan, and New York had adopted verbal no-fault systems. In these states the law contains an explicit list of injuries—usually quite serious—for

RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as RAND DB-139-ICJ, The Costs of Excess Medical Claims for Automobile Personal Injuries, *by Stephen Carroll, Allan Abrahamse, and Mary Vaiana, 25 pp., $6.00, which is available from National Book Network, Telephone: 800-462-6420; FAX: 301-459-2118; or from RAND on the Internet:* order@rand.org. *RAND is a nonprofit institution that helps improve public policy through research and analysis. RAND's publications do not necessarily reflect the opinions or policies of its research sponsors.*

which an accident victim is allowed to seek general damages.

The availability of general damages and the fact that they are usually calculated as some multiple of economic losses provide the incentive to submit claims for nonexistent injuries and to build medical costs.

CHARACTERISTICS OF INJURIES ALSO AFFECT ABILITY TO EXAGGERATE CLAIMS

The opportunity for exaggeration is also influenced by the nature of the injuries themselves. The researchers distinguish soft injuries, such as sprains and strains, from hard or objectively verifiable injuries, such as fractures and loss of limbs. Examining the incentives embedded in the insurance systems and the ease or difficulty of exaggerating injuries, they predicted what patterns of excess claiming for injuries might occur.

TESTING ANALYTIC PREDICTIONS

The authors draw on a large database of individual closed claims developed in previous ICJ research to test these analytical predictions. Their results support the predictions about the extent of excess claiming that will occur in certain insurance environments.

Figure 1 illustrates their findings. It shows the number of soft injury claims per hard injury claim in every state. The horizontal black line indicates the average value for Michigan and New York, which is used as a baseline in the study. (Certain features of Florida's verbal no-fault system precluded its inclusion in the baseline.)

Claims for nonexistent soft injuries in the verbal threshold no-fault states should be rare because this insurance system provides no access to general damages unless the injury is one of those explicitly specified by the law. In addition, the economic barriers to an accident victim's access to medical care in these states are as low as, or lower than, in any other. Michigan and New York offer first-party auto insurance with no deductible or coinsurance, very high benefit levels, and prohibitions on rate increases based on claiming. Thus, more than in other insurance environments, accident victims are likely to claim whatever medical care they need. Assuming that hard claims are almost always valid, the ratio of soft to hard claims in Michigan and New York suggests the relative frequency of these injuries in automobile accidents.

Soft injury claimants will obtain general damages in dollar no-fault states if the medical claim can be pushed over the threshold; thus the possibility of general damages offers an incentive to claim nonexistent soft injuries in these states. The eleven dollar no-fault states in Figure 1 are scattered, and ten have ratios above the baseline. But all cluster toward the lower end of the distribution.

Because general damages can be obtained for even a small medical claim in the tort states, the study predicted that comparatively more claims for nonexistent soft injuries would occur in these states. The result: Only one of the 36 tort states falls below the baseline. And the 35 tort states that have comparatively high ratios of soft to hard injury claims tend to cluster toward the high end of the distribution. All of the highest 18 states in Figure 1 are tort states.

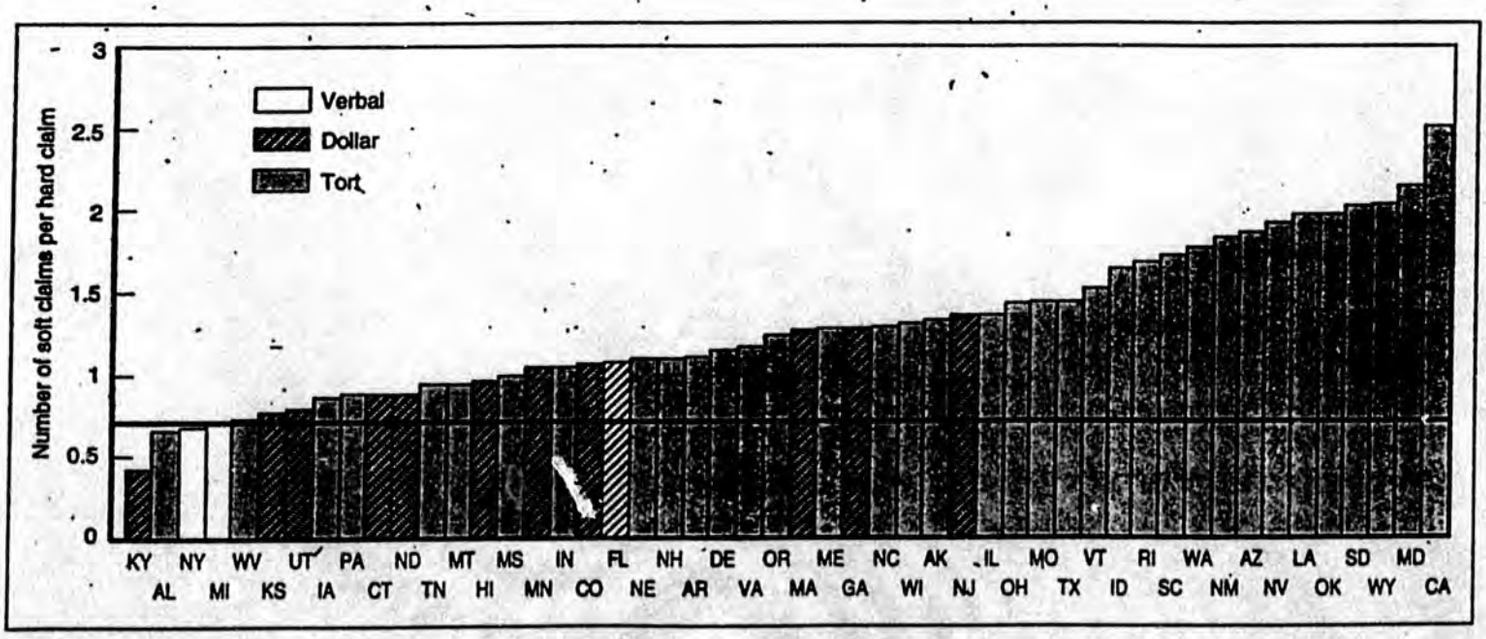


Figure 1—Claims Above Michigan/New York Baseline Suggest Extent of Claims for Nonexistent Soft Injuries

The study uses the extent to which the ratio of soft claims to hard claims in each state exceeds the corresponding ratio for Michigan and New York as the measure of the degree to which claims are being submitted for nonexistent soft injuries in that state.

The study goes on to analyze the amount of medical costs claimed on either soft or hard claims, using methods similar to those described above to estimate the degree to which accident victims are building costs on real injury claims to leverage larger insurance settlements.

Figure 2 provides an example of the analysis. It shows the distributions of medical costs for soft injury claims in Hawaii, a dollar threshold state, and New York. Dollar threshold states provide strong incentives to build costs on soft injury claims because pushing the claim over the threshold allows access to general damages. The vertical line in the figure shows Hawaii's threshold. The average cost of a soft injury claim in each state is adjusted for interstate differences in medical costs and treatment patterns. The horizontal axis in the figure is a logarithmic scale so that equal intervals show equal percentage differences.

The distribution of medical costs in New York rises quickly, peaks, and then drops off sharply to the right. The large majority of soft injury claims are for relatively small medical costs. New York has very few soft injury claims for medical costs that exceed Hawaii's threshold.

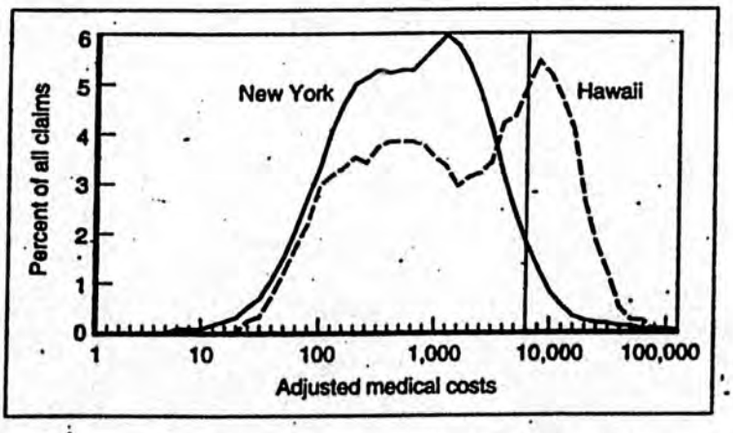


Figure 2—Hawaii's Distribution of Medical Costs for Soft Injury Claims Peaks Just Past Dollar Threshold

Hawaii's distribution also rises sharply, then flattens out. It begins to decline at a relatively low level of medical costs, then turns up again and rises sharply through the threshold. The Hawaii distribution peaks above the threshold, and finally falls off.

A substantial fraction of Hawaii's soft injury claims are for medical costs above the threshold. Compared with New York, the distribution of adjusted medical costs in Hawaii is shifted substantially to the right, as one would predict given the incentives built into the state's insurance system.

THE PRICE TAG FOR EXCESS CLAIMING

The researchers use their empirical analysis of the extent of excess claiming to estimate that between 35 and 42 percent of the automobile injury medical costs submitted to insurers appear to be excess. In 1993, these questionable medical claims would have added roughly $13 to $18 billion to the nation's total automobile insurance bill, or about $100 to $130, on average, per policy. These excess claims also stimulated $4 billion in excess health care consumption.

POLICY DIRECTION

There are no easy solutions to the problem of excess claiming, but the study suggests one possible policy direction: Break the connection between medical costs and general damages. Ways to accomplish this include

- Modifying our insurance systems. (Verbal no-fault systems appear to eliminate the incentives that drive excess claiming for soft injuries, while dollar no-fault systems appear to exacerbate them.)
- Establishing a schedule for general damages based on the nature of the injury, as in disability policies.
- Changing the rule governing admissibility of medical cost information in courts. Modifying this rule could reduce the incentive to inflate that figure.

DB-139-ICJ

The Costs of Excess Medical Claims for Automobile Personal Injuries

Stephen Carroll, Allan Abrahamse, Mary Vaiana

The Institute for Civil Justice

RAND

THE INSTITUTE FOR CIVIL JUSTICE

The mission of the Institute for Civil Justice is to help make the civil justice system more efficient and more equitable by supplying policymakers and the public with the results of objective, empirically based, analytic research. The ICJ facilitates change in the civil justice system by analyzing trends and outcomes, identifying and evaluating policy options, and bringing together representatives of different interests to debate alternative solutions to policy problems. The Institute builds on a long tradition of RAND research characterized by an interdisciplinary, empirical approach to public policy issues and rigorous standards of quality, objectivity, and independence.

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PREFACE

Escalating auto insurance premiums have become an issue in many states. It is often suggested that excess claims are contributing to these increases. This study is the first systematic attempt to estimate the costs of excess claiming. It focuses on a single aspect of this phenomenon—excess claims for medical care. The results have implications reaching far beyond auto insurance systems to the national consumption of health care resources.

The Institute for Civil Justice has been conducting research on auto insurance issues since its inception in 1979. This study will be of interest to policymakers in each state concerned with insurance matters, to insurers, and to consumers.

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The Costs of Excess Medical Claims for Automobile Personal Injuries

Stephen Carroll
Allan Abrahamse
Mary Vaiana

March 1995

Policy Debate

- Widespread concern about auto insurance premiums
  - Growing rapidly
  - Particularly burdensome for low-income groups
  - Provide incentives to drive uninsured
- Debate over causes of premium growth
- How much does excess claiming contribute to high costs?

Over the past decade and a half, automobile insurance premiums, particularly for personal injury coverages, have grown rapidly across the country. Stiff increases in auto insurance premiums are burdensome for everyone, and especially so for low-income populations. Moreover, high insurance premiums are an incentive to drive uninsured, thus exacerbating the uninsured motorist problem.

Escalating auto insurance premiums have touched off heated policy debates in most states: Why have insurance premiums been growing so rapidly? Insurers claim they have to raise premiums to keep pace with the growing costs of compensating auto accident victims. Are compensation costs growing? And, if so, why? Are American drivers having more accidents? How much do increasing health care costs contribute to the problem? Is there some truth to the claim that we are becoming a more litigious society, increasingly prone to seek compensation for injuries, real or imagined?

Debates over auto insurance costs generally feature a variety of clashing perspectives. But nearly everyone involved in the debates shares one common concern: the fear that excess claims may be a major contributor to auto insurance costs. When insurance companies pay compensation for nonexistent or exaggerated injuries, the costs are inevitably reflected in higher insurance bills for everyone. But are these fears justified: How much excess claiming is there? How much does it cost?

The study described in this briefing analyzes the pattern of excess medical claiming across the states to estimate the extent of excess medical claiming and the costs of excess claims to consumers.

Context: Findings from Other ICJ Studies

- Costs of compensating auto accident victims increased 167% since 1980
- Frequency of accidents isn't changing
- Inflation, particularly in health care costs, accounts for 60 percent of growth in compensation costs
- Increases in number and size of claims account for remaining 40 percent of compensation cost growth

This analysis builds on research that the Institute of Civil Justice has been conducting on automobile insurance issues since 1985. A series of studies completed in the past several years examined the costs of compensation. These analyses provided an empirical basis for exploring various hypotheses about premium growth.

We found that the costs insurers incurred in compensating auto accident victims on behalf of Bodily Injury (BI) policyholders increased about 167% between 1980 and 1991, the most recent year for which complete data on compensation costs are available. (BI insurance pays the compensation an insured driver owes someone he or she injured.) These rapid increases in compensation costs are a primary, if not the only, factor driving increases in auto insurance premiums.

Why are compensation costs going up so fast?

- American drivers are *not* having more frequent accidents--in fact, the accident rate is actually falling nationwide;
- Inflation, particularly in health care costs, accounts for 60 percent of the growth;
- Increases in the number and size of claims account for the remaining 40 percent of premium growth.

Thus 60 percent of the increase in auto compensation costs is outside the insurance system and cannot be affected by policies that focus on that system. However, 40 percent of the increase stems from activities within the system: Drivers who have accidents are more prone to submit claims, and the claims have been growing in size over time, per auto accident.

Preview of Findings

- **35-42 percent of claimed medical costs appear to be excess**
- **In 1993, this excess claiming**
  - **Consumed approximately $4 billion of health care resources**
  - **Cost insurers $9-13 billion in compensation for noneconomic losses and other costs**
  - **May have cost consumers $13-18 billion in auto insurance premiums**

What is the role of excess claiming in this significant change in claiming behavior? To date, we have had no comprehensive evidence to answer that question. Sting operations conducted by various law enforcement agencies, private organizations, and investigative reporters have uncovered numerous examples of excess claiming ranging from fraud rings to medical personnel and lawyers who encouraged drivers to claim injuries that weren't real or to pad claims. But these are isolated incidents and do not support conclusions about what fraction of the million or so auto injury claims per year submitted to insurance companies involve excess claims.

Our research has taken a systematic approach to estimating the costs of excess medical claiming. To preview our key findings:

- 35-42 percent of medical costs claimed by auto accident victims appear to be excess;
- About $4 billion in unnecessary health care costs were incurred as a consequence of excess claims;
- These excess claims also cost insurers an additional $9-13 billion in compensation for noneconomic losses and other costs;
- If insurers pass these increased costs on to consumers in the form of proportional increases in premiums, then in 1993 excess medical claims cost auto insurance purchasers across the country anywhere from $13-18 billion.

In the remainder of this briefing, we describe the analysis that underlies these findings. We begin by describing the analytic framework that shaped our work. Then we discuss our research findings in detail. Finally, we briefly discuss some policy directions suggested by our findings.

Research Approach

- Use indirect approach to estimate extent of excess medical claiming
  - What would claiming pattern be if there were no exaggeration?
  - How would exaggeration change the claiming pattern?
  - Do we observe those kind of changes?
- Estimate cost implications of excess medical claiming

In our analysis, we use the term *excess medical claiming* to cover a broad range of activities including claims based on staged or nonexistent accidents, claims for nonexistent injuries when the accidents were real, and buildup of claims for real injuries to leverage a settlement from the insurance company.

We focus on medical claims because virtually all auto personal injury claims include some kind of medical costs. Overall, medical costs account for about three-quarters of accident victims' claimed economic losses. About one-third of accident victims also claim other kinds of economic loss--for example, lost wages. We have deferred attention to these losses for the present; hence, our estimates of the costs of excess claiming are conservative because they ignore the costs generated by excess claims for lost wages.

We cannot directly observe excess claiming globally--we can only observe specific instances of it when it is detected by investigation or undercover activities. Therefore, we have taken an indirect approach to estimating the extent of excess medical claiming across the states. (1) We draw on a large database of individual claims to identify what the claiming patterns would be if there were no exaggeration of claims.* (2) We predict how excess claiming would change the claiming patterns. (3) We use the database to see if we observe those kinds of changes. (4) Finally, we estimate the cost implications of the excess claims.

*This database is described in detail in *No-Fault Approaches to Compensating People Injured in Automobile Accidents*, S. J. Carroll, J. S. Kakalik, N. M. Pace, J. Adams, R-4019-ICJ, RAND: Santa Monica, CA, 1991.

Access to General Damages Provides Incentive for Excess Claiming

	Medical Claim = $700		Medical Claim = $1,100	
	Compensation		Compensation	
	Medical costs	General damages	Medical costs	General damages
Tort	$700	$1,400	$1,100	$2,200

The incentives for excess medical claiming and the ability to exaggerate claims depend, in large measure, on the type of insurance systems in place in a given state and on the characteristics of injuries.

Incentives under the tort system. The tort liability system is the set of legal rules that governs compensation for injuries in all states and directly governs compensation for automobile injuries in about three-quarters of the states. Under the tort system, an individual who is injured is entitled to seek compensation for both the economic loss incurred as a result of that injury (medical costs, for example) and for noneconomic losses, termed *general damages*. These are hurts the individual has suffered that are not directly measured in dollars--"pain and suffering," for example. Because there is no objective measure of the magnitude of an accident victim's general damages, compensation for general damages is typically thought to be a multiple of the victim's economic loss.

This relationship between economic loss and general damages provides incentives for excess claiming.

Suppose an individual is injured in an accident and submits a claim for medical costs in the amount of $700. Under the tort system, that individual might reasonably expect to receive $700 as compensation for medical costs. (The amount of compensation would be reduced if the injured party was partially negligent. For simplicity, we neglect that concern; it has no bearing on the main point of the argument.) The injured party might also reasonably expect some amount of general damages. For purposes of this example, let us assume that general damages are twice the medical costs--in this case, $1,400.

This relationship between medical costs and general damages provides the incentive to bring a claim for nonexistent injuries. For example, driver A hits driver B's car. B is not injured but claims to be injured, and finds a doctor who provides treatment and runs up $700 worth of medical bills. B can pursue a claim with A's insurance company and reasonably expect to be reimbursed for medical costs *and* to receive $1,400 in general damages, which B can pocket. By a similar argument, if B submitted a medical claim of $1,100, B could get paid $1,100 for medical costs and $2,200 in general damages.

The link between medical costs and general damages also provides the incentive to build costs. For example, someone with a real injury, for which appropriate medical treatment would have cost $700, who manages to run up medical bills totaling $1,100, will end up with an extra $800 in his or her pocket.

Dollar No-Fault Systems Enhance Incentive to Pad Claims

	Medical Claim = $700		Medical Claim = $1,100	
	Compensation		Compensation	
	Medical costs	General damages	Medical costs	General damages
Tort	$700	$1,400	$1,100	$2,200
Dollar no-fault ($1,000 threshold)	$700	—	$1,100	$2,200

Incentives under a dollar no-fault system. About a quarter of the states have changed the rules for compensating people injured in auto accidents by introducing what are called dollar threshold no-fault systems. In these systems, a person injured in an automobile accident is not allowed to seek compensation for general damages from the other driver unless his or her medical costs exceed a specified dollar amount.

As the table shows, the dollar no-fault system changes the incentives facing claimants.

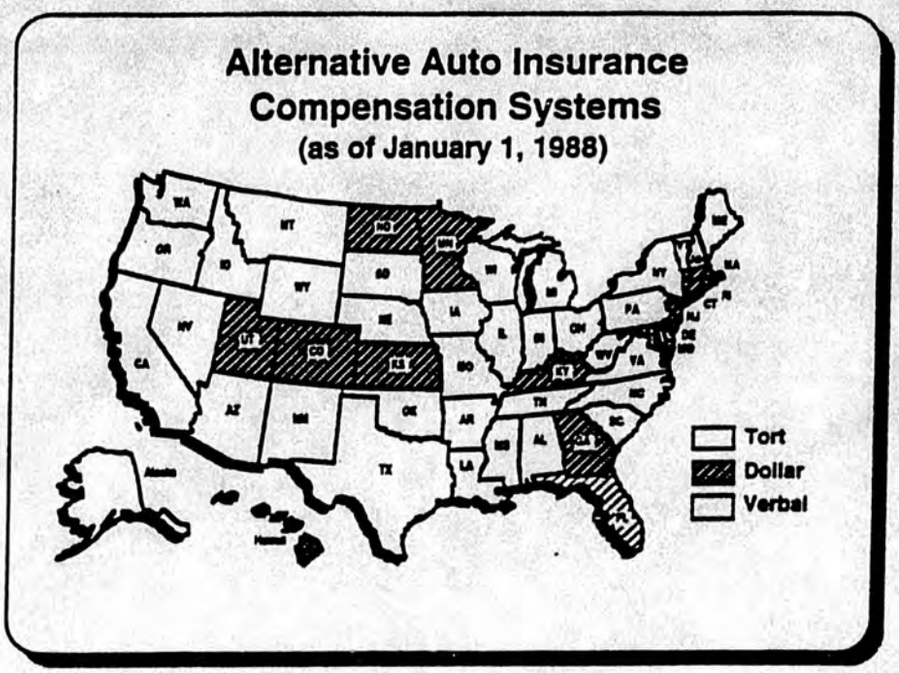
Suppose the driver we were considering in the previous example was in a no-fault state in which the dollar threshold was $1,000. If the individual makes a claim for $700, he or she would receive reimbursement for that amount. But there will be no payment for general damages because the medical costs are under the threshold. On the other hand, making a claim for $1,100 (perhaps by building the medical costs) yields not only $1,100 in medical compensation, but because the dollar threshold has been exceeded, general damages as well. In sum, building the claim to get over the threshold in the dollar no-fault system has a substantial marginal effect on the amount of general damages someone might receive as a result of an auto accident.

Verbal No-Fault Systems Weaken Incentives

	Medical Claim = $700		Medical Claim = $1,100	
	Compensation		Compensation	
	Medical costs	General damages	Medical costs	General damages
Tort	$700	$1,400	$1,100	$2,200
Dollar no-fault ($1,000 threshold)	$700	—	$1,100	$2,200
Verbal no-fault	$700	—	$1,100	—

Incentives under a verbal no-fault system. In 1988, when our data were collected, three states had adopted what are called verbal no-fault systems. In these systems, the law contains an explicit list of injuries for which one is allowed to seek general damages. If an injury is not on that list, the injured party may not seek general damages, no matter how high the medical bills are. The listed injuries tend to be serious: death, dismemberment, loss of a bodily part or sense, fracture.

The table illustrates how the verbal no-fault system weakens the incentives to submit excess medical claims.



The map shows where these three types of auto insurance systems were in place on January 1, 1988. The data on which this analysis is based, and the most recent data available of the type required, are drawn from claims for auto injuries that were closed in late 1987 and early 1988. Thus the law that is relevant for analyzing these claims is the law in place at that date.

The traditional tort system governed compensation for auto injuries in 36 states. Eleven states had adopted dollar no-fault systems.

The three verbal threshold states are Michigan, New York, and Florida. Michigan and New York have strong verbal thresholds—that is, the types of injuries that qualify an individual to seek general damages are all serious injuries. In contrast, the verbal threshold in Florida allows an individual to claim general damages if he or she has a permanent partial disability, no matter how small. Since this threshold is not as stringent as the thresholds in Michigan and New York, in subsequent discussions of verbal threshold states, we exclude Florida.

Characteristics of Injuries Affect Ability to Exaggerate Claims

	Hard injuries	Soft injuries
Examples	Death, loss of limb or sense, fracture, lacerations	Sprains or strains
Objectively verifiable?	Yes	Usually not
Costly/ serious?	Usually	Often not

We have seen that the type of insurance system in place shapes the incentives to exaggerate medical claims. The opportunity for exaggeration is also influenced by the nature of the injuries themselves. This table presents a categorization of injuries that is useful for exploring the ability to exaggerate claims.

Hard injuries are injuries that are objectively verifiable. For example, there is no debate about the loss of a limb or a fracture detected by x-ray. Hard injuries are usually relatively costly; hence, they probably attract attention from claims agents who may pay some attention to the evidence submitted in support of a claim for compensation.

Soft injuries are sprains and strains. They are not usually objectively verifiable; hence, they present an opportunity to exaggerate their existence or seriousness. And because they are often not costly injuries, claims based on them may not attract scrutiny.

Where Do We Expect to See What Kinds of Exaggeration?

		Insurance System		
		Verbal no-fault	Dollar no-fault	Tort
Claims for nonexistent	Hard injuries	---	---	---
	Soft injuries	---	+	++
Cost buildup	Hard injury claims	+	++	+
	Soft injury claims	---	++	+

If we combine the incentives embedded in the different insurance systems with the potential for exaggeration inherent in injury types, we can construct hypotheses about what kinds of exaggeration we would expect to see and under what conditions. The table summarizes these hypotheses.

The first row of the table shows blanks--no claims for nonexistent hard injuries--under all three insurance systems. Since hard injuries are objectively verifiable, it is very difficult to fake a claim for one. Thus we would not expect to see claims for nonexistent hard injuries anywhere.

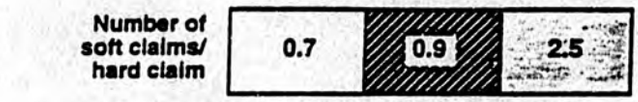
Soft injuries present some opportunities for nonexistent claiming. We would not expect to see claims for nonexistent soft injuries in a verbal threshold no-fault state since this insurance system provides no access to general damages unless the injury is one of those explicitly specified by the law. But we can anticipate some claims for nonexistent soft injuries in dollar no-fault states if the medical claim can be pushed over the threshold, thus providing the potential for general damages. Of course, in tort states, where general damages can flow from the first dollar of one's medical claim, we expect to see comparatively more claims for nonexistent soft injuries.

Where do we expect to see cost buildup on true claims? Many hard injuries are the kinds of injuries that exceed a verbal threshold, so we can anticipate some building of claims for hard injuries in that insurance environment. We can expect even more cost buildup on hard injuries in dollar no-fault states because some hard injuries that normally would not exceed the threshold can be built to exceed a dollar threshold, thus providing the claimant with general damages. Tort states should have levels of cost buildup on hard injuries comparable to verbal no-fault states.

Finally, what about soft injury claims? It makes no sense to build medical claims for soft injuries in a verbal no-fault state because doing so does not provide access to general damages. Dollar threshold states offer the same strong incentive to build medical claims for soft injuries as they do to build claims for hard injuries. The tort system also offers incentives to build medical claims for soft injuries, but these incentives are less strong than in dollar threshold systems.

Estimating Frequency of Claims for Nonexistent Injuries

- Assume hard injury claims generally real
- Soft injury claims may be for nonexistent injuries
  - Rarely in Michigan and New York
  - Sometimes in dollar states
  - More often in tort states
- Number of soft claims per hard claim indicates extent of claims for nonexistent injuries
- Example:

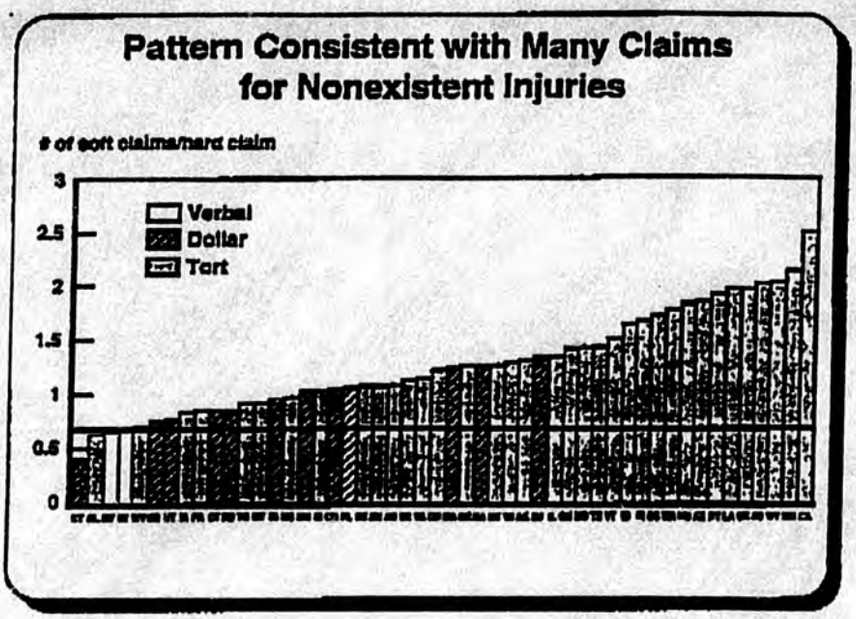


Having stated our expectations about where nonexistent or exaggerated claiming will occur, we now examine the data to see if they support our hypotheses.

To recap: We assumed that hard injury claims were generally real, and that claims for nonexistent soft injuries would be rare in Michigan and New York (the strong verbal threshold states), occasional in dollar threshold states, and more frequent in tort states. Using these assumptions, we have created an index to measure the frequency of claims for nonexistent injuries:

Index: Number of soft claims per hard claim

Based on this definition, Michigan and New York have an index of 0.7. That is, in these states there are 7 soft injury claims for every 10 hard injury claims. In Hawaii, a dollar threshold state, we see 9 soft injury claims for every 10 hard injury claims--an index value of 0.9. That's 25% more than in the verbal threshold states, but much less than in California, a tort state, where we expect to see, and indeed find, evidence of many claims for nonexistent injuries. California's index is 2.5--that is, 25 soft claims for every 10 hard claims.



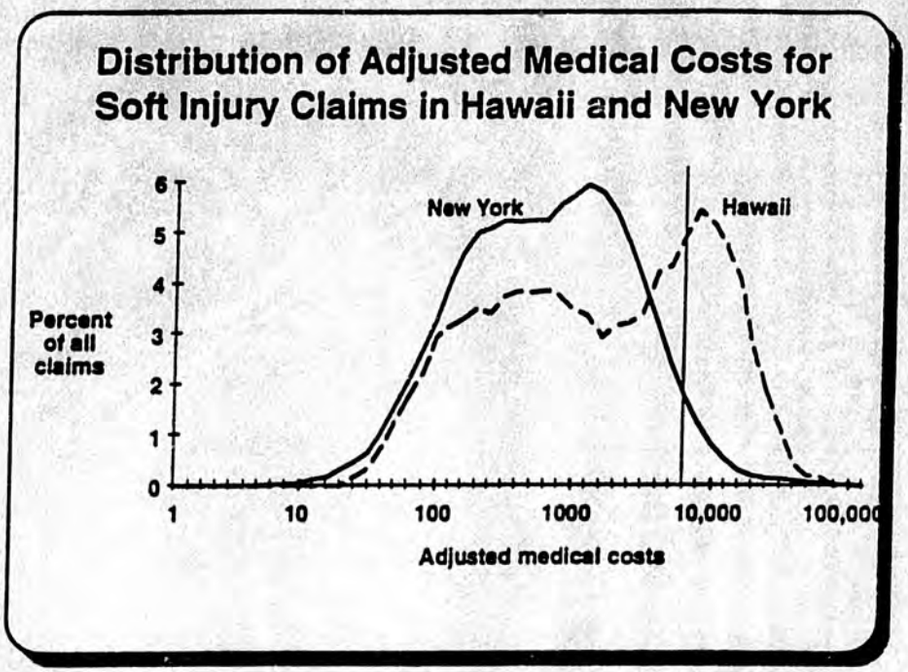
This figure shows the value of the index for all fifty states. The horizontal black line shows the average value for Michigan and New York, which we use as our "baseline." We expect few claims for nonexistent injuries in these states, and the economic barriers to an accident victim's access to medical care are as low or lower than in any other state.

The pattern of the data across all states is consistent with our predictions about where claims for nonexistent injuries would occur. Michigan and New York are at the bottom of the claiming distribution. The dollar threshold states are scattered, but by and large they cluster toward the lower end of the distribution. All of the top 18 states are tort states. Formally stated, a state's insurance system has a statistically significant effect on the distribution of states.

We have explored the possibility that other factors--for example, demographics (percent of population that is rural, over 65, low income) or characteristics of a state's highway system--account for the distribution of states. Only the percent of the population that is rural had a significant effect: The ratio of soft injury claims to hard injury claims declines as the percent of rural population increases. If we adjusted for this relationship, the results would be even stronger than as stated above. To be conservative, we made no adjustments.

We interpret the extent to which the ratio of soft claims to hard claims in each state exceeds the corresponding ratio for Michigan and New York as our measure of the degree to which claims are being submitted for nonexistent soft injuries in that state.*

*Michigan and New York offer first party auto insurance with no deductible or coinsurance, very high benefit levels, and prohibitions on rate increases based on claiming. Thus, more than in other insurance environments, accident victims are likely to claim whatever medical care they need.



We now turn to estimating the extent of cost buildup on soft injury claims. Recall that there is no incentive to build costs on soft injury claims in Michigan and New York. However, there are incentives to build them in other states, especially in dollar threshold states, as claimants inflate claims to get over the threshold and gain access to general damages. The figure, for example, shows the distributions of medical costs for soft injury claims in Hawaii, a dollar threshold state, and New York. (The distribution of medical costs for soft injury claims in New York is nearly identical to that of Michigan.) The vertical line in the figure shows Hawaii's threshold. (To put these two states on a comparable basis, we adjusted the average cost of a soft injury claim in each state for interstate differences in medical costs and treatment patterns.

The distribution for New York is exactly what we expected: The distribution rises sharply, peaks, and then tails off sharply to the right. The large majority of claims are for relatively small medical costs. (Note that the horizontal axis in the figure is a logarithmic scale: Equal intervals show equal percentage differences.)

The distribution begins to decline well below the Hawaii threshold and continues to fall, without interruption, past the threshold. New York had very few claims for medical costs that exceeded Hawaii's threshold.

Hawaii's distribution also rises sharply, but then flattens out. It actually begins to decline at a relatively low level of medical costs, then turns up again and rises sharply through the threshold. The Hawaii distribution peaks above the threshold, and finally, falls off. The distribution is clearly bimodal: There are many smaller claims, but there are also many larger claims. A substantial fraction of Hawaii's claims are for medical costs above the threshold.

Estimated Costs of Excess Claiming

Excess medical costs

- Hard injury claims: 19-31%
- Soft injury claims: 59%
- Overall: 35-42%

Cost of excess health care consumption (1993)

- $4 billion

Additional insurer costs

- $9-13 billion

If premiums vary in proportion to costs (1993), excess claiming adds

- $13-18 billion to total premiums
- $100-130 per policy

Hard Injury Claims: We assume that average adjusted medical expenditures per hard injury claim in the 25th lowest spending state is an index of appropriate average medical expenditures on hard injury claims. Given this assumption, we calculate how much is spent in excess of that index on hard injury claims in the 25 states in which average expenditures per hard injury claim are greater than that index. Adding over those states and dividing by total medical expenditures on hard injury claims in all 50 states, we find that 19% of all the dollars spent for medical costs on hard injury claims are in excess. If we use the 10th lowest spending state as the *numeraire*, our estimate goes up to 31%. The difference between these estimates has two sources. First, the *10th lowest state* assumption allows for excess claiming in 15 more states than the more conservative assumption permits. Second, the *10th lowest state* assumption results in a lower standard.

Soft Injury Claims: We assume that the Michigan/New York ratio of soft injury claims to hard injury claims is an index of the appropriate number of soft injury claims per hard injury claim. Given this assumption, we multiply the Michigan/New York ratio times the number of hard injury claims in each state and subtract the result from the number of soft injury claims in that state. This difference is our estimate of the number of excess soft injury claims in each state.

We then assume that the average adjusted medical expenditure per soft injury claim in Michigan and New York is an index of the appropriate average medical expenditure on soft injury claims. Given this assumption, we calculate how much is spent in excess of that index on soft injury claims in each of the other states.

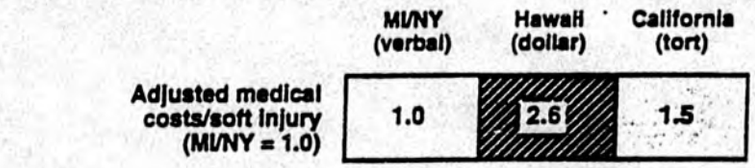
Adjusting for interstate cost differences, the fraction of Hawaii claims that is above the Hawaii threshold is much greater than the fraction of New York claims that exceeds that number. It is clear that, compared to New York, the distribution of adjusted medical costs in Hawaii is shifted substantially to the right, exactly as we predicted, given the incentives built into the state's insurance system.

We compared the distribution of adjusted medical costs for soft injury claims in each of the dollar threshold states to the corresponding distribution for Michigan and New York, combined. All the dollar threshold states were "right-shifted" relative to the reference states; the magnitude of the shift was statistically significant in eight of the eleven dollar threshold states. (The exceptions were Kansas, North Dakota, and Utah.)

We also expect to see some exaggeration of soft injury claims in the tort states although we would not expect to see the bimodal distribution of claims driven by the thresholds in dollar threshold states. To investigate this hypothesis, we compared the distribution of adjusted medical costs for soft injury claims in each of the tort states to the combined distribution for Michigan and New York. The distributions were significantly "right-shifted" in twenty of the thirty-six tort states. There were no tort states in which the distribution of adjusted medical costs was shifted to the left of the combined Michigan/New York distribution.

Estimating Cost Buildup on Soft Injury Claims

- Assume costs of soft injury claims generally valid in Michigan and New York
- Costs of soft injury claims may be built up elsewhere, particularly in dollar threshold states
- Difference from Michigan and New York indicates extent of cost buildup
- Example:



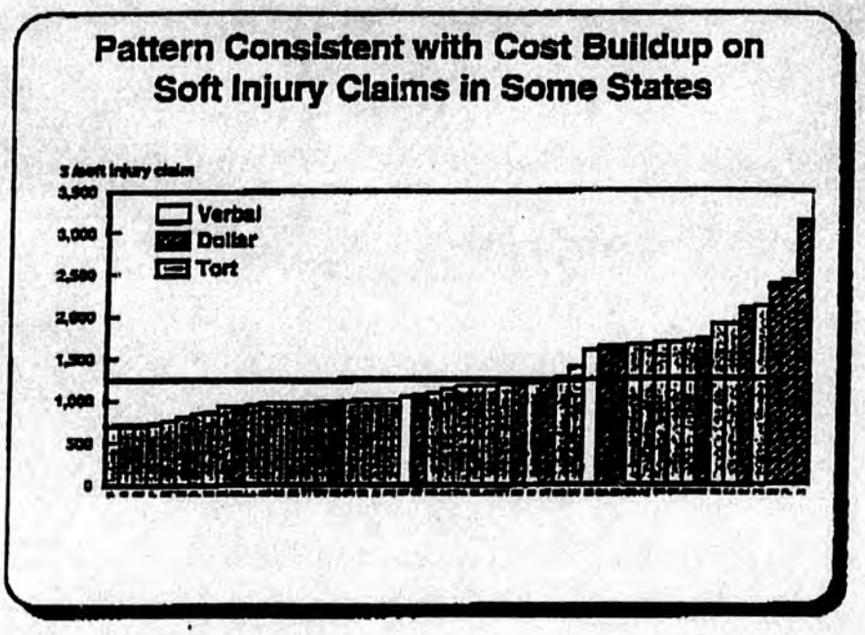
To estimate the extent of cost buildup on soft injury claims, we adjust the average cost of a soft injury claim in each state for interstate differences in medical costs and practice patterns.

We then set Michigan and New York at a level of 1, and index the other state averages by a ratio to Michigan and New York.* Using these assumptions, we have created an index to measure the extent of cost buildup on soft injury claims:

Index: Average adjusted medical costs per soft injury relative to Michigan and New York

If we apply this index to Hawaii and California, the two example states we discussed above, we would assign a value of 2.6 to Hawaii, where the dollar threshold provides strong incentives to build medical claims, and 1.5 to California, a tort state where we expected to find less buildup.

*In indexing the other state averages to the average cost of a soft injury claim in Michigan and New York, we are not asserting that the medical care that accident victims in these two states receive is medically appropriate. We have no information about the appropriateness of their care.

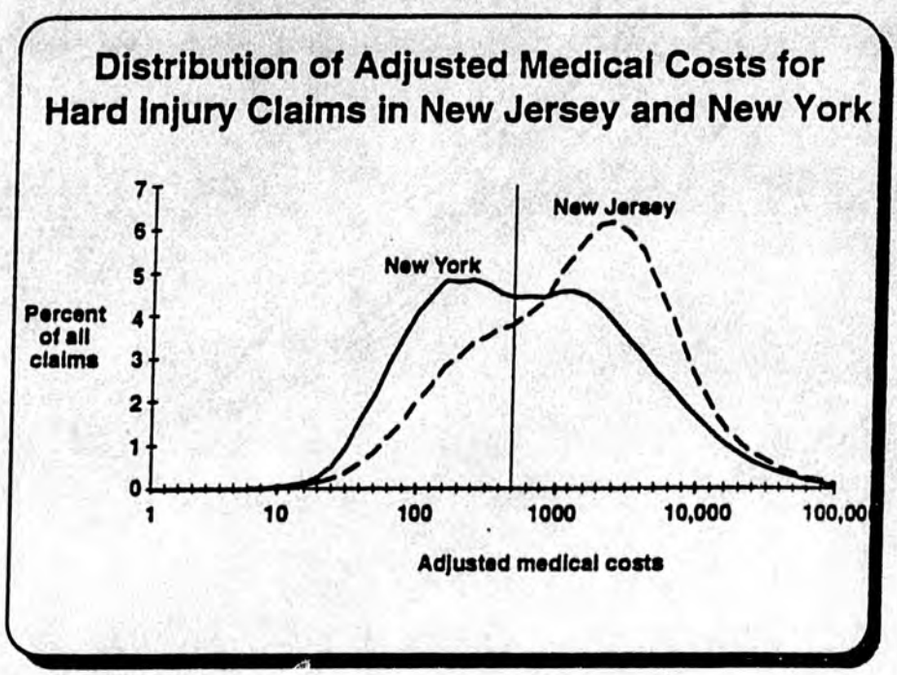


This figure shows the average costs per soft injury claim across all states.

Again we see a pattern consistent with our hypotheses. The strong verbal threshold states, Michigan and New York, bracket the center of the distribution. Very few dollar threshold states appear at the left of the distribution. Eighteen of the 20 states in which the average adjusted medical costs per soft injury claim are below New York are tort states. Of the 14 states in which average adjusted medical costs per claim fall between New York and Michigan, only three are dollar threshold states. The other 11 are all tort states.

In contrast, a high proportion of the states at the far right of the distribution are dollar threshold states. Aside from Florida, five of the 12 highest spending per claim states are those in which there is an incentive to inflate soft claims to exceed a dollar threshold.

Note that the average adjusted costs of soft injury claims in Hawaii were the highest in the nation. Hawaii had the nation's highest dollar threshold, $6,400; someone interested in padding a soft claim to get over the threshold would have to exaggerate more, on average, in Hawaii than anywhere else. The second and fourth highest threshold states, Minnesota at $4,000 and Colorado at $2,500, were close behind Hawaii. Among the five highest threshold states, only Utah and North Dakota were not at the far right of the distribution; and both of them fell in the upper half of the states.

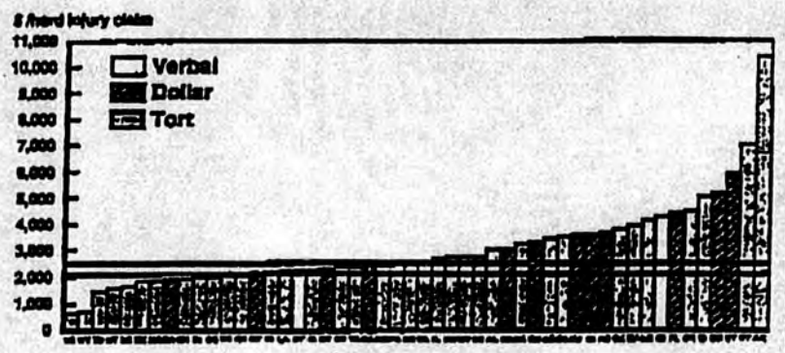


Finally, we estimate the extent of cost buildup on hard injury claims. There are incentives to build costs on hard injury claims everywhere. These incentives are particularly strong in dollar threshold states, as claimants are induced to inflate claims to get over the threshold and gain access to general damages. The figure, for example, shows the distributions of adjusted medical costs for hard injury claims in New Jersey, a dollar threshold state, and New York. The vertical line in the figure shows New Jersey's threshold.

As was the case for soft injury claims, the distributions are exactly as expected. New York's distribution rises sharply, flattens out, and then tails off to the right. New Jersey's distribution is distinctly right-shifted, compared to New York's. The fraction of New Jersey claims that are above the New Jersey threshold is much greater than the fraction of New York claims that exceed that number.

We compared the distribution of adjusted medical costs for hard injury claims in each of the states to the corresponding distribution for Michigan and New York combined. Four of the dollar threshold states--Hawaii, Massachusetts, New Jersey, and North Dakota--were significantly right-shifted relative to the reference states. The distribution of adjusted medical costs for hard injury claims in Florida and in eleven of the tort states was significantly right-shifted compared to the combined Michigan/New York distribution.

Pattern Suggests Cost Buildup on Hard Injury Claims in Some States



We believe that the cost of hard injury claims can be built up everywhere, and we expect the buildup to be greatest in dollar threshold no-fault states. However, because we expect some buildup under any insurance system, we do not have a readily available baseline against which to measure buildup. Consequently, we consider two alternative indexes for assessing the amount of cost buildup on hard injury claims:

Index 1 : Average adjusted medical costs per hard injury relative to the 10th lowest spending state

In using this index, we assume that there is no exaggeration in the costs of hard injury claims in the 10 states having the lowest average adjusted costs per hard injury claim.

Index 2: Average adjusted medical costs per hard injury relative to the 25th lowest spending state

The second index is based on a more conservative assumption: that there is no exaggeration in any of the hard injury claims submitted in the 25 states having the lowest average adjusted costs per hard injury claim.

The figure shows average adjusted expenditures per hard claim across all states.

The two lines drawn across the distribution reflect the two comparison points. That part of the bar for any state that extends above a given line represents cost buildup on hard injury claims in that state. Even under the more conservative assumption, the pattern of the data suggests significant amounts of cost buildup, particularly, as we hypothesized, in the dollar threshold states.

Research Approach

- Use indirect approach to estimate extent of excess medical claiming
  - What would claiming pattern be if there were no exaggeration?
  - How would exaggeration change the claiming pattern?
  - Do we observe those kind of changes?

- **Estimate cost implications of excess medical claiming**

To recap the argument so far: We have

- Distinguished among insurance systems in terms of the incentives they provide to submit claims for nonexistent injuries and to build costs on real injuries;
- Predicted where, given these incentives and the nature of injuries, we would expect to see exaggeration;
- Tested our hypotheses using a large database of individual closed claims;
- Concluded that the data support our hypotheses about the types and extent of exaggeration that will occur in a particular auto insurance environment.

We now consider the cost implications of excess medical claiming.

Finally, we combine our estimates of the number of excess soft claims and the extent of excess spending on the valid soft claims for each state, add over all states, and divide by total medical expenditures on soft injury claims in all 50 states. We estimate that 59% of the costs submitted in support of soft injury claims is excess. This includes both claims for nonexistent soft injuries, and cost buildup on real soft injuries.

Overall: We estimate that 35-42% of all medical costs submitted in support of auto injury claims are excess.

Effects on Consumption of Health Care: We estimate that excess consumption of health care in the auto arena in response to tort liability incentives accounted for about $4 billion of health care resources in 1993.

Effects on Insurer Costs: We estimate that these excess claims would also cost insurers an additional $9-13 billion in compensation for noneconomic losses and other costs.

Effects on Auto Insurance Premiums: If insurers pass these increased costs on to consumers in the form of proportional increases in premiums, in 1993 excess medical claims cost auto insurance purchasers across the country $13-18 billion dollars. Put another way, the costs generated by excess medical claiming add $100-130 to every auto insurance policy.*

*These estimates are for 1993 because that is the last year for which we have the appropriate data.

Conclusions

- Tort liability system offers significant incentives to submit excess claims for auto injuries
- Different auto insurance systems modify incentives
- Costs of excess claiming can be very large
- Our estimates are conservative
- Excess claiming has implications for health care costs

The tort liability system in the United States has been widely accused of providing incentives to submit excess claims for auto injuries. Although that accusation is well known, and numerous investigators have documented specific examples of excess claiming practices, there has been little empirical evidence regarding the overall extent and magnitude of excess claims for auto injuries. This study provides evidence that the assertions are correct and empirically based estimates of how much exaggeration exists.

The study also shows that different insurance systems modify those incentives. Dollar no-fault systems reduce incentives to submit claims for minor nonexistent injuries. But, at the same time, they provide very strong incentives to build claims on either real or imaginary injuries. Verbal threshold systems appear to eliminate these incentives.

The estimated costs of excess claiming are very large, amounting to perhaps one-third to 40% of all medical bills submitted in support of auto injury claims. We believe that these estimates are conservative. For example, we have assumed no exaggeration for Michigan and New York, but we must assume that some exaggeration occurs. We have not attempted to capture transaction costs or whatever exaggeration might be done by physicians. Nor have we accounted for the costs involved in lost wages.

The implications of this analysis reach far beyond auto insurance premiums. Our data clearly suggest that large amounts of medical resource are being unnecessarily consumed.

Possible Policy Directions

- **Modify insurance systems**
  - **Adopt verbal no-fault**
  - **Review incentives embedded in dollar no-fault**
- **Break connection between medical costs and general damages—e.g., schedule general damages**
- **Change rules governing admissibility of medical cost information**

There are no easy solutions to the problem we have identified, but three policy directions appear promising.

(1) *Examine our insurance systems.* In particular, verbal no-fault systems appear to eliminate the incentives driving excess claiming while dollar no-fault systems appear to exacerbate them.

(2) *Break the connection between medical costs and general damages.* For example, establishing a schedule for general damages based on the nature of the injury--similar to the schedule embedded in disability policies--would eliminate the incentive to inflate medical costs in order to leverage general damages.

(3) *Change the rules governing admissibility of medical cost information in courts.* Currently, juries may be told the cost of a claimant's medical treatment. Several participants in an earlier ICJ conference on interactions between our health care and liability systems argued that claimants inflate costs to impress the jury or to stimulate a favorable settlement in the shadow of the jury. Modifying admissibility rules about medical costs could eliminate the incentive to build medical costs.

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Allstate Insurance

G. Michael Sloane
American Reliable Insurance

Timothy Smith
Country Cos

John C. Spears
State Farm Insurance

Pauline Stultz
Utah Insurance Company

Jack Teagle
USAA

To: Jim Jenks
USAA

From: Jim Frederikson

Re: Data you requested

Date: Feb. 26, 1997

Jim:

Attached is:

1. An overview of the latest IRC study published in 1996.
2. Injury and Property Damage Costs, Countrywide and for Alaska. (I don't believe this information is published yet, but Beth Sprinkle gave me an advance copy).
3. A news release which discusses some of the issues you're concerned about. I think this was released in 1994.
4. Another IRC news release (released in 1995, I think) that talks about the relationship between injury claims, attorneys and insurance costs.

Hope this helps.

Jim

(1)

IRC
INSURANCE RESEARCH COUNCIL

TRENDS IN AUTO INJURY CLAIMS

PART TWO: ANALYSIS OF CLAIM COSTS

Executive Summary

The cost of auto insurance is a concern to many consumers. About one in three Americans said being able to purchase automobile insurance at an affordable price is a major concern (34%), and another 27% said it is a moderate concern in a recent national survey.[1] As a result, there is a desire by many public officials, consumer groups, and insurers to reduce the cost of insurance. In fact, reform measures have been considered and/or adopted in many states in an effort to reduce the cost of auto insurance.

This report highlights the trends in costs associated with auto injuries and the impact on auto insurance costs. This study is part of a series of reports by the Insurance Research Council (IRC) on auto injuries and their reimbursement. IRC has been examining this issue since 1977 with a series of consumer panel surveys, studies of insurance companies' closed injury claim files, and studies of industry trends in auto insurance claiming behavior.[2]

Four major trends are apparent from these previous studies. More people involved in auto accidents are making claims for injuries, even though accident rates have been declining. Many of these additional claims are for relatively minor injuries, such as strains and sprains of the back and neck. Medical expenses and insurance payments for auto injuries are climbing rapidly. People are more likely to hire an attorney for help with an auto insurance claim. All of these trends have put upward pressure on insurance costs.

This report focuses on the cost of private passenger automobile insurance injury compensation systems in all 50 states and the District of Columbia between 1987 and 1993. It details the average amount of injury claim payments per insured car by state and relates injury costs to property damage liability costs within each state. The study uses data from the National Association of Insurance Commissioners, BEST's Database Services, Fast Track Monitoring System, and Automobile Insurers Bureau of Massachusetts.

1987 – 1993

Injuries from auto accidents are compensated under the following auto insurance coverages: bodily injury liability (BI), uninsured motorist (UM), underinsured motorist (UIM), personal injury protection (PIP) and medical payment (MP). Bodily injury liability claims are filed by persons hurt in an accident against the insurance of the driver who caused the accident. Uninsured motorist or underinsured motorist claims are paid by the injured person's own insurance when the at-fault driver has no insurance or not enough insurance. No-fault personal injury protection claims or medical payment claims are paid to an injured person, regardless of whether he or she caused the accident. When claims are made under the personal injury protection and medical payment coverages, claimants are reimbursed for their losses but not reimbursed for non-economic damages (pain and suffering). Bodily injury liability claims commonly include an amount to cover non-economic damages.[3] Property damage liability (PD) coverage pays for damage to another person's vehicle and other property when the insured vehicle's driver is legally at fault.

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[1] Insurance Research Council, *Public Attitude Monitor 1995*, 1995.

[2] Insurance Research Council, (formerly All Industry Research Advisory Council), *Automobile Injuries and Their Compensation in the United States*, 1979; *Attorney Involvement in Auto Injury Claims*, 1988; *Compensation for Automobile Injuries in the United States*, 1989; *Trends in Auto Bodily Injury Claims*, 1990; *Paying for Auto Injuries*, 1994; *Auto Injuries: Claiming Behavior and Its Impact on Insurance Costs*, 1994; and *Trends in Auto Injury Claims: Part One: Analysis of Claim Frequency*, 1995.

[3] For more complete definitions, see the descriptions of auto insurance coverages in the full report.

(2)

Consumers can purchase bodily injury liability, uninsured motorist and underinsured motorist coverages in all states. Either medical payment or personal injury protection coverage is available depending on state statutes. Some states have no restrictions on bodily injury liability claims (tort liability system), other states have no-fault personal injury protection benefits "added on" to the existing tort liability system (add-on system), and some states with no-fault auto insurance laws limit bodily injury claims to claimants with serious injuries.[4] In these states, bodily injury claims are restricted to those claimants whose medical costs exceed a certain dollar amount (monetary threshold no-fault system) or whose injury meets some verbal description, such as a broken bone, serious scarring, etc., (verbal threshold no-fault system). Three states offer consumers a choice between a tort or no-fault system (choice system). Because this study combines data for all of the auto insurance injury coverages, the five different auto injury compensation systems in the United States can be compared.

Figure 1
Injury Costs Vary Across States

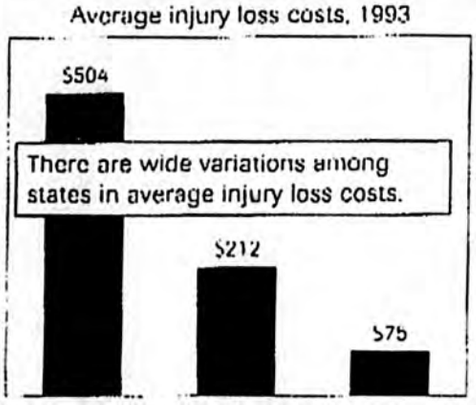
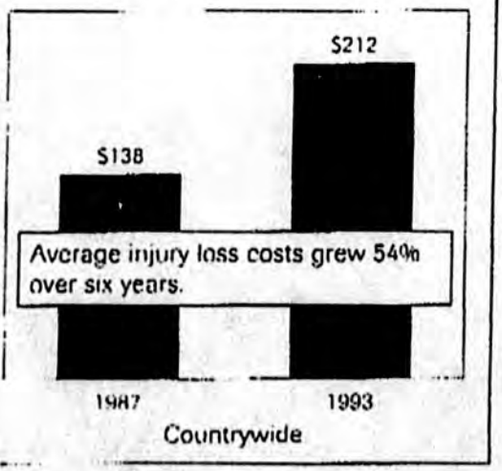


Figure 3
Growth in Injury Costs 1987-1993



Major Findings

Variations in Injury Costs

- The cost of auto injuries varies dramatically by state. In 1993, the average value of injury claim payments per insured car (average injury loss cost) ranged from $504[5] in New Jersey to $75 in North Dakota (Figure 1). Other states with relatively high injury costs included: Hawaii at $380, Connecticut at $366, District of Columbia at $347, Delaware at $316, Nevada at $294, New York at $292, California at $292, Rhode Island at $278, and Florida at $268. In contrast, other states with relatively low injury costs were: Nebraska at $96, Iowa at $98, Kansas at $99, and Wyoming at $106. Nationally, injury costs per car averaged $212 (Figure 2).

Growth in Injury Costs

- Between 1987 and 1993, the national average injury loss cost per insured car increased $74, from $138 to $212 (Figure 3). Over the period, injury costs increased at an average annual rate of 7.4%. The growth in injury costs also varies dramatically by state. States with relatively high increases in dollars of injury costs over the six-year period were Connecticut with a $192 increase, Hawaii with $187, District of Columbia with $159, New York with $144, Rhode Island with $131, Texas with $130, West Virginia with $128, Delaware with $126, Massachusetts with $121, and Alaska with $111. Of these top ten growth states, six are tort or add-on states, three are monetary threshold no-fault states, and one is a verbal threshold no-fault state.
- Five states–West Virginia, Texas, South Dakota, Kentucky, and Connecticut–had injury costs per car that more than doubled in just six years. Countrywide, the injury cost per car increased 54% between 1987 and 1993.
- In sharp contrast, the bottom five states in terms of six-year growth in injury cost dollars were North Dakota with a $21 increase, Georgia with $26, Montana with $29, Kansas with $30, and Idaho with $31. Of these five states, three are now tort states and two are monetary threshold no-fault states.

[4] For more complete information on the types of state laws, see the full report.
[5] See cautionary notes on interpreting New Jersey data in the Technical Notes at end of the full report.

Figure 2.
Injury Loss Costs by State
1993

Tort and Add-On States

Rank	State	Average Injury Loss Cost
1	District of Columbia	$ 347.00
2	Delaware	315.67
3	Nevada	293.79
4	California	291.78
5	Rhode Island	278.15
6	Louisiana	247.43
7	Maryland	246.94
8	Arizona	241.36
9	South Carolina	238.32
10	Alaska	231.26
11	Texas	227.71
12	West Virginia	222.74
13	Washington	221.65
14	New Mexico	211.51
15	New Hampshire	204.80
16	Virginia	171.68
17	Oregon	158.53
18	Georgia	158.11
19	Illinois	155.72
20	Mississippi	148.15
21	Oklahoma	147.21
22	North Carolina	145.36
23	Vermont	143.82
24	Missouri	139.02
25	Ohio	136.80
26	Wisconsin	133.61
27	Indiana	129.80
28	Maine	128.27
29	Alabama	126.07
30	Montana	124.37
31	Tennessee	121.47
32	Arkansas	119.98
33	Idaho	114.03
34	South Dakota	105.77
35	Wyoming	105.65
36	Iowa	97.68
37	Nebraska	96.36

No-Fault States

Rank	State	Average Injury Loss Cost
1	Hawaii	$ 379.92
2	Connecticut	365.72
3	New York	292.36
4	Florida	268.32
5	Massachusetts	264.04
6	Colorado	236.85
7	Minnesota	206.15
8	Michigan	176.98
9	Utah	147.34
10	Kansas	99.17
11	North Dakota	75.48

Choice States

Rank	State	Average Injury Loss Cost
1	New Jersey	$ 504.34
2	Pennsylvania	254.48
3	Kentucky	183.80

Countrywide **$ 212.48**

Property Damage Costs

- The average value of property damage claim payments per insured car (average property damage loss cost) ranged from $100 in Massachusetts to $36 in North Dakota. Unlike the injury costs per insured car, 61% of the states were clustered within $10 of the countrywide property damage average of $63 in 1993. Average property damage loss cost is growing more slowly than injury costs. Average property damage loss cost rose from $54 in 1987 to $63 in 1993, for an average annual growth rate of 2.7%.

Injury Cost Index

Population and vehicle density play a large part in determining the overall costs of the automobile injury system. For example, a low population density leads to a low property damage accident frequency and low property damage costs. As density increases, more accidents result per car and costs increase. In order to remove the effects of population and vehicle density and to allow for more meaningful comparisons between states, the ratio of injury costs to property damage costs (injury cost index) is calculated.

The injury cost index allows comparisons between states since it measures the relative richness of each state's injury system relative to its property damage costs. A factor of 2.0 means the injury system is twice as costly as the property damage liability cost in a given state. A factor of 4.0 means the injury system is four times the property damage liability cost.

- Countrywide, $336 in injury coverage benefits were paid for every $100 in property damage benefits in 1993, up from $257 in injury claim costs per $100 in property damage costs in 1987.

State Variations in the Injury Cost Index

- Even when injury costs are indexed, there are wide variations among states. For example, among tort states, the injury systems in Delaware, Nevada, South Carolina, California, District of Columbia, Washington, West Virginia, and Louisiana cost more than four times the property damage coverage in each of these states. Not surprisingly, consumers have often complained about high automobile premiums in many of the high index states. Conversely, the tort states of Nebraska, Iowa, Arkansas, Missouri, Tennessee, Indiana, Illinois, Alabama and Idaho ran their injury systems at a cost of less than 2.5 times the property damage.
- Among no-fault states with monetary thresholds, Hawaii (5.73), Connecticut (5.22), Colorado (4.51), and Minnesota (4.06) were the most costly. On the other end of the monetary threshold spectrum, Kansas (1.81), North Dakota (2.11), and Utah (2.52) appeared to have a reasonable balance between benefits offered and the cost of the system (Figures 4 and 5).

Figure 4
State Variations in the Injury Cost Index

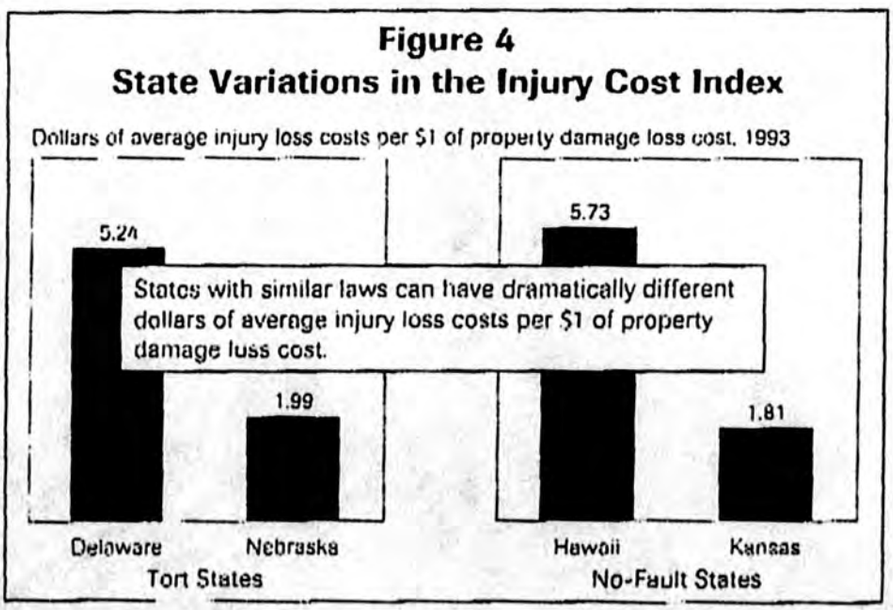
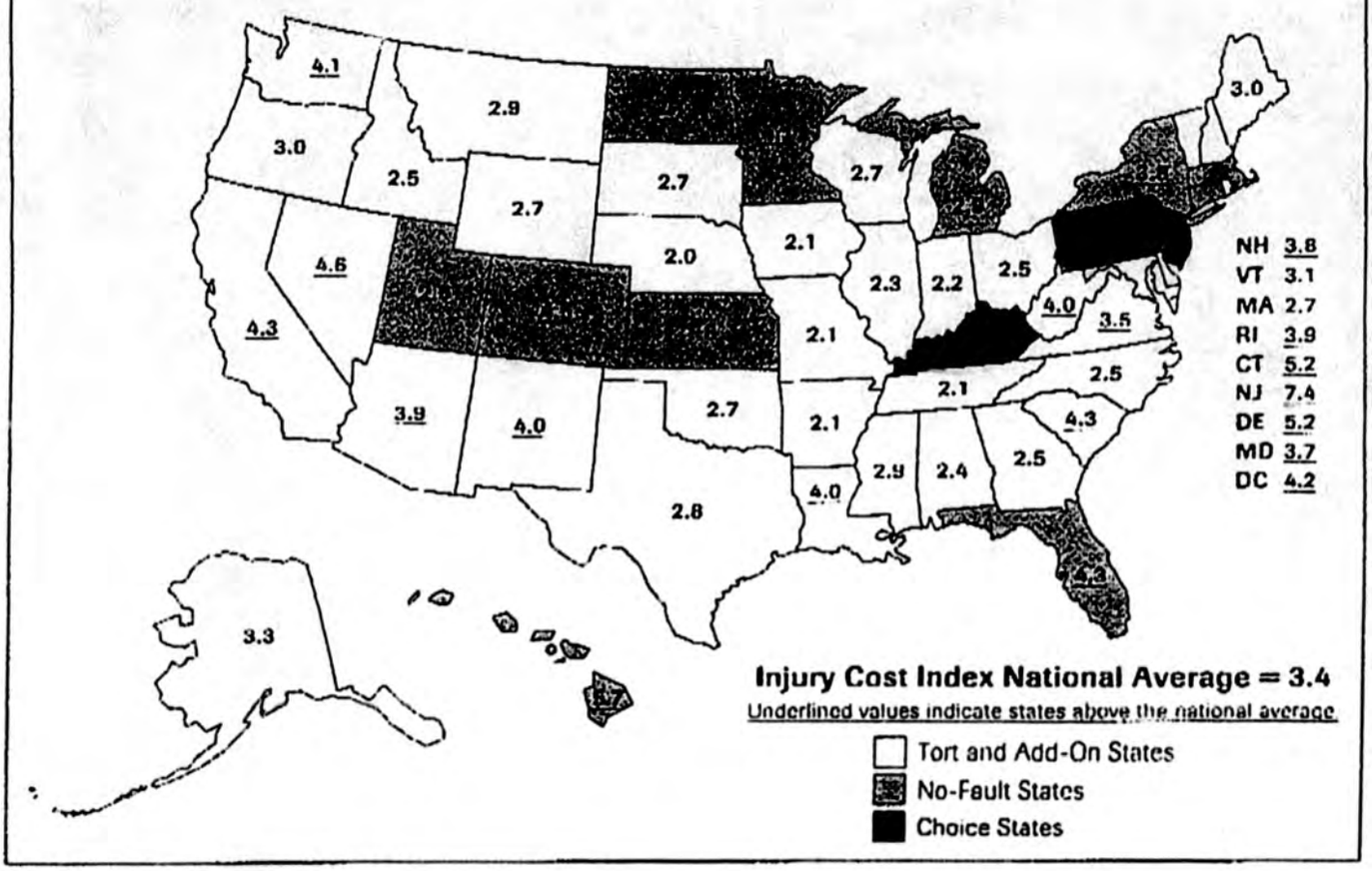


Figure 5
State Variations in the Injury Cost Index



- Within the verbal threshold category, Florida (4.30) with only $10,000 in PIP medical benefits was substantially more expensive than either New York (3.83) or Michigan (2.86). Both New York and Michigan have greater PIP benefits. When New York and Michigan are compared to the other industrialized tort states and add-on tort states, the results are favorable. Both New York and Michigan were running compensation systems with substantial no-fault benefits at a cost below Delaware, California, and Rhode Island.
- In the choice category, New Jersey ranked the highest in the U.S. at 7.44. At 4.20, Pennsylvania was comparable to the more expensive tort/add-on states and Kentucky was below the national average at 3.27. It is important to note that New Jersey and Pennsylvania results cover payments from a mixture of systems that at one time or another covered unlimited medical benefits, and both tort and no-fault systems with changing thresholds.

Changes in the Injury Cost Index Over Time

- In almost all states, the injury cost index has increased each year from 1987 to 1993. Measuring the percentage change in this index indicates how injury costs are changing relative to property damage costs. The percentage change from 1987 to 1993 in the injury cost index varies substantially from state to state. Connecticut's cost index more than doubled in six years. Three other states–New Hampshire, West Virginia, and Massachusetts–had index growth in excess of 90%, meaning that their injury compensation systems almost doubled in cost relative to their property damage.
- Countrywide, the injury cost index increased 31% from 1987 to 1993, from 2.57 to 3.36. There were 26 states with six-year cost index growth above the national average. Montana and Idaho were the only states with negative growth, and there were eight other states–Mississippi, Illinois, Georgia, North Dakota, Kansas, Louisiana, Pennsylvania, and Oregon–with growth rates below 10%.

This study contributes to the understanding of the auto injury system in three ways:

1. This is the first study where the total cost of injuries paid by automobile insurance is quantified by state. Previous industry studies have focused only on BI liability payments in tort states and BI liability and no-fault payments in no-fault states. The medical payment coverage in tort states and the uninsured motorist and underinsured motorist coverages in both tort and no-fault states were ignored. Now, comparisons of the total cost of the injury system by state can be made. For example, in 1993, the total injury payments per insured car were $292 in both New York and California, even though New York has no fault benefits of at least $50,000 while California only has a much smaller medical payment coverage available.
2. The report details both the injury costs and the property damage liability costs by state. Property damage liability systems are largely uniform by state, and cost differences by state tend to reflect accident frequencies and cost of living differences. By looking at the cost of injury coverage relative to the cost of property damage liability coverage, the differences in the cost of the injury systems are revealed. For example, the following table compares 1993 PD liability costs, injury costs, and a calculated "injury cost index:"

	PD Loss Costs	Injury Loss Costs	Injury Cost Index
New York	$76.32	$292.36	3.83
California	68.71	291.78	4.25
Illinois	67.51	155.72	2.31

Even though PD costs are almost identical in California and Illinois, the operation of the injury system in California is substantially costlier than in Illinois, as reflected in both the injury cost and the injury cost index. The index facilitates comparisons between states with differing PD costs, such as New York and California.

3. Finally, this report provides the PD costs and injury costs from 1987 to 1993 by state. The actual increases in paid losses will drive premium increases in states. Thus, in states where the increases are substantial, need for substantial premium

increases will be indicated. In states with only moderate cost increases, more moderate premium increases will suffice. Through this report, the connection between cost increases and premium increases becomes more apparent.

The report allows consumers, insurers, regulators, and public policy makers to compare the costs associated with the various automobile insurance compensation systems. It identifies the more expensive and less expensive states and the characteristics and coverages of each. It is hoped this report will add to the understanding of the various auto insurance injury compensation systems in the United States.

Insurance Research Council

The Insurance Research Council, Inc. is a nonprofit organization founded by the property-casualty insurance industry. The Council's purpose is to provide timely and reliable research to all parties involved in public policy issues affecting risk and insurance, but the Council does not lobby nor take legislative positions.

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1996 report

Table C-1
Injury and Property Damage Costs

Countryw'de

Year	Average Written Liability Premium	Average Injury Loss Cost	Average Property Damage Loss Cost	Injury to Property Damage Cost Index	Number of BI Claims Per 100 PD Claims
1994	419.74	210.42	68.29	3.08	29.1
1993	412.70	212.48	63.20	3.36	29.3
1992	389.42	201.42	59.76	3.37	29.4
1991	374.27	200.83	59.68	3.37	27.7
1990	349.59	185.85	62.71	2.96	26.4
1989	334.46	173.94	60.52	2.87	24.9
1988	314.58	155.33	57.33	2.71	23.6
1987	292.55	138.38	53.83	2.57	22.2
Percent Change '87-'94	43.5%	52.1%	26.9%	19.8%	31.1%
Annual Growth '87-'94	5.3%	6.2%	3.5%	2.6%	3.9%

Notes:
(1) Average written liability premium is the average premium per insured car.
(2) Average injury loss cost is the average amount of loss paid per year under the Bodily Injury, Personal Injury Protection, Medical Payments, Uninsured Motorists, and Underinsured Motorists coverages (as available in each state) per insured car, including cars not involved in accidents
(3) Average property damage loss cost is the average amount of loss paid per year under the Property Damage coverage per insured car, including cars not involved in accidents.
(4) The injury to property damage cost index measures the number of injury claim dollars paid for every paid property damage claim dollar. Column (3) divided by column (4).
(5) Since Michigan does not hava conventional Property Damage coverage, Countrywide PD data as reported in Fast Track are used for Michigan.

Source: National Association of Insurance Commissioners, Best's Database Services, Fast Track Monitoring System and Automobile Insurers Bureau of Massachusetts.

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Table C-3
Injury and Property Damage Costs

Alaska

Year	Average Written Liability Premium	Average Injury Loss Cost	Average Property Damage Loss Cost	Injury to Property Damage Cost Index	Number of BI Claims Per 100 PD Claims
1994	452.40	223.34	72.98	3.06	23.4
1993	443.38	231.26	69.35	3.34	21.3
1992	424.46	181.67	69.61	2.61	21.3
1991	376.03	195.56	72.17	2.71	19.2
1990	345.83	179.29	72.82	2.46	19.8
1989	330.64	169.17	60.62	2.79	20.3
1988	331.38	148.00	55.47	2.67	19.4
1987	290.63	120.32	50.28	2.39	19.6
Percent Change '87-'94	55.7%	85.6%	45.1%	28.0%	19.4%
Annual Growth '87-'94	6.5%	9.2%	5.5%	3.6%	2.6%

Notes:
(1) Average written liability premium is the average premium per insured car.
(2) Average injury loss cost is the average amount of loss paid per year under the Bodily Injury, Personal Injury Protection, Medical Payments, Uninsured Motorists, and Underinsured Motorists coverages (as available in each state) per insured car, including cars not involved in accidents.
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(4) The injury to property damage cost index measures the number of injury claim dollars paid for every paid property damage claim dollar. Column (3) divided by column (4).

Source: National Association of Insurance Commissioners, Best's Database Services and Fast Track Monitoring System.

IRC
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NEWS RELEASE

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~~1995~~ 1980 – 1993 Study

AUTO INJURY CLAIMS CLIMB, WHILE ACCIDENT RATES DECLINE

American consumers today are far more likely to claim auto injuries than in 1980, even though accident rates have declined during that same period.

Paid injury liability claims for every 100 auto crashes serious enough to produce vehicle damage claims increased by 64% from 1980 to 1993. On average, there were 29 paid injury claims per 100 vehicle damage claims in 1993, compared to 18 in 1980.

"This changing claiming behavior, coupled with increasing medical costs, has put substantial upward pressure on auto insurance costs," according to Terrie Troxel, executive director of the Insurance Research Council, Inc. (IRC).

Surprisingly, this rise in injury claiming behavior occurred during a time of increased focus on auto passenger safety, Troxel noted. Since 1980, nearly all the states passed seat belt laws, the number of drunken drivers has declined, vehicle safety standards were strengthened to make cars safer for occupants, and auto fatalities have gone down by 27%.

The findings are based on an IRC review of the accident and injury claim patterns in every state and the District of Columbia from 1980 to 1993.

Claim patterns vary across the country. "The number of injury claims per 100 vehicle damage claims in California, Louisiana, South Carolina,

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Nevada and Arizona is high," said Troxel.

In California, for example, there were 61 injury claims for every 100 property damage claims in 1993, nearly twice the 1980 level of 31 injury claims. Louisiana residents generated 49 injury claims per 100 vehicle damage claims, followed by South Carolina with 47 injury claims, and Nevada and Arizona with 45 injury claims.

Injury liability claims rose in these states even though liability claims for property damage declined. Property damage claims since 1980 dropped by 17% in Arizona and Nevada, 22% in Louisiana, 24% in South Carolina, and 28% in California.

Because vehicle damage claims are a good indicator of the actual number of serious accidents, the trends suggest a major change in injury claiming behavior in the United States, Troxel said.

The change in injury claiming behavior is more apparent in some states than others. Illinois and Ohio residents were far less likely to claim an injury compared to Californians, despite the fact that all three states have large populations and rely on fault-based auto insurance laws.

There were 30 injury claims in Illinois and 28 in Ohio for every 100 property damage claims in 1993, less than one-half the 61 injury claims in California. States with no-fault auto insurance laws had even fewer injury claims, including Michigan (8 injury claims per 100 property damage accidents), Kansas (9), Minnesota (12), and New York (16). No-fault laws prohibit liability claims and lawsuits unless the injury is serious, but assure automatic payments for the accident victim's medical and wage losses.

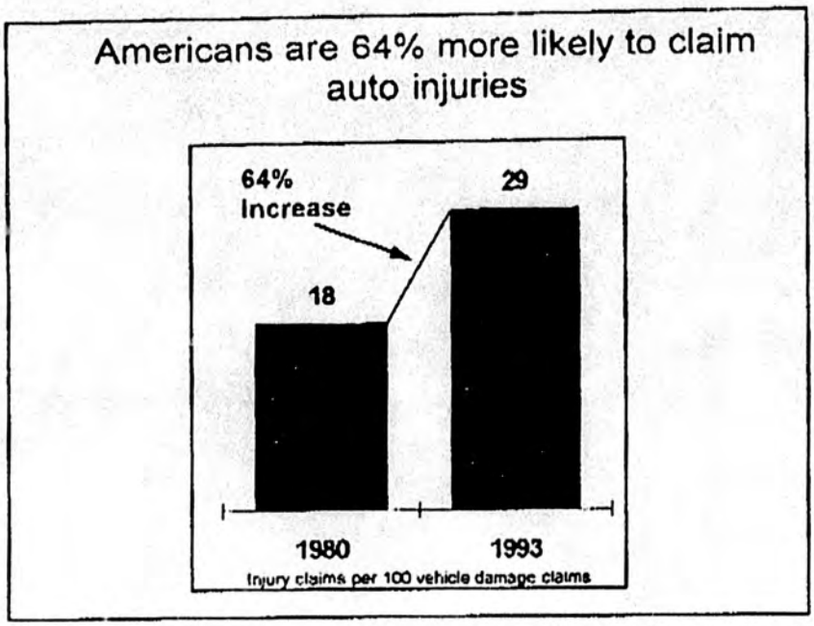
Even within states, the number of injury claims can vary dramatically among cities. In Los Angeles, there were 99 injury liability claims for every 100 property damage claims. That is astounding, Troxel noted. Nearly every property damage accident had a corresponding injury claim. By comparison, San Diego and San Francisco had 40 injury claims per 100 accidents. Philadelphia had 79 injury claims per 100 accidents, compared to only 18 in Pittsburgh. Cleveland recorded 41 injury claims per 100 accidents, compared to 26 in both Columbus and

Cincinnati.

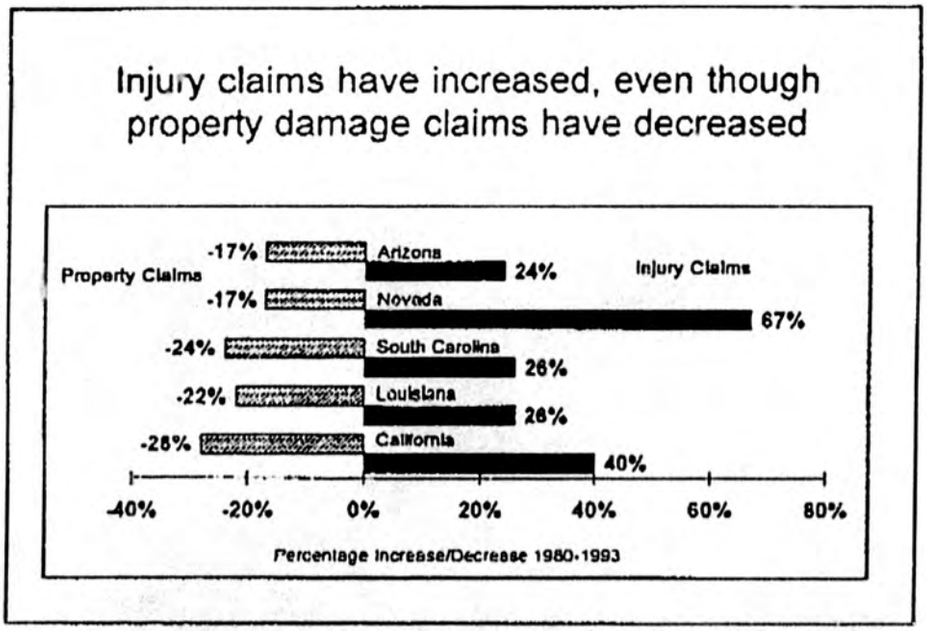
Other IRC research indicates that claimants in high-claim areas are less seriously injured than other claimants and more likely to hire a lawyer. "What we see is more claimants with sprains and strains, more claimants hiring attorneys, and more non-emergency treatment of injuries with chiropractors and physical therapists," Troxel said. "The data suggest people who previously would not have filed injury liability claims for minor injuries are now becoming claimants."

Copies of *Trends in Auto Injury Claims* are available for purchase from the Insurance Research Council, 211 S. Wheaton Avenue, Wheaton, IL 60187, telephone 708.871.0255.

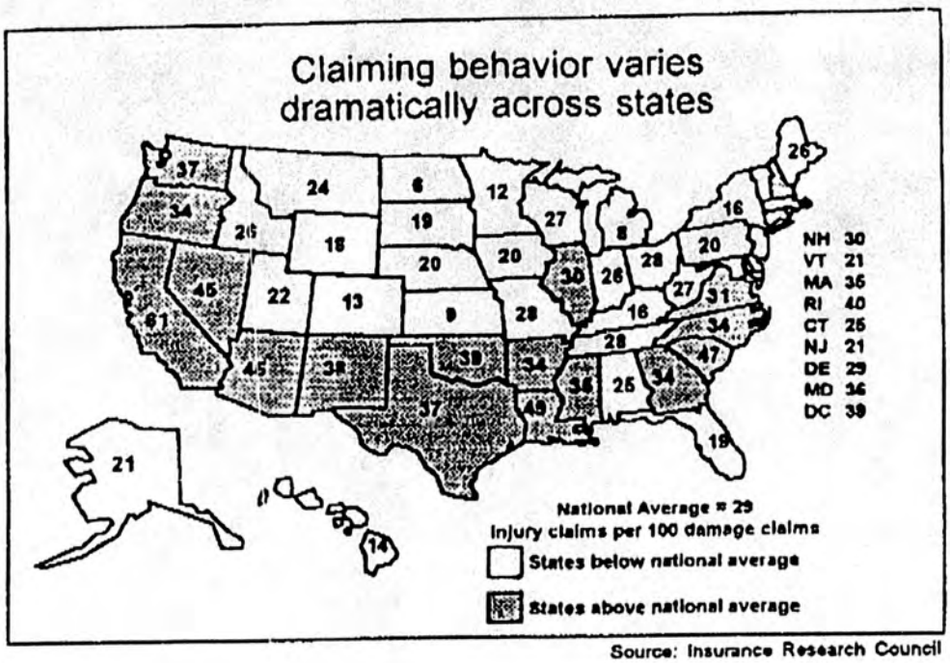
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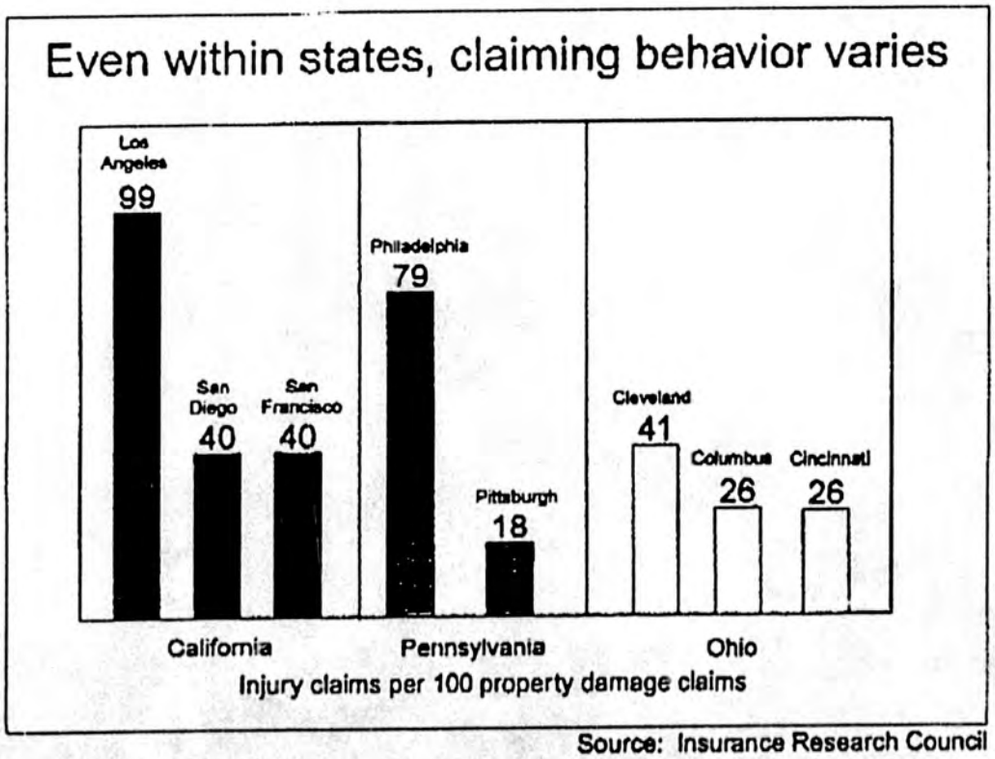
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ACCIDENT RATES DOWN, BUT SPRAINS AND STRAINS DRIVING UP AUTO INSURANCE COSTS, ACCORDING TO NEW STUDY

Oak Brook, IL, Nov. 15 -- At a time when the number of insurance claims for car damage is decreasing, the number of claims for hard-to-verify sprains and strains is skyrocketing, according to a study released today by the Insurance Research Council (IRC).

"Clearly more people are going after the other driver to collect for injuries," said Terrie Troxel, executive director of IRC, "and they're reporting more soft-tissue injuries than in previous years."

Troxel cited what he called "very curious" auto insurance claiming patterns uncovered by the study:

- Claim costs for injured parties are about four times higher, on average, than they were 15 years ago; and,
- In the past five years, the cost of medical treatment paid by auto insurance has increased dramatically, even though the claims studied by the IRC showed less serious injuries, fewer hospital stays, and fewer disabilities.

The study is based on 62,000 claims settled by insurance companies during a two-week period in 1992.

Researchers say that there is a correlation between higher costs and attorney representation of accident victims.

"Injured people represented by plaintiff lawyers report more types of injuries, especially hard-to-verify sprains and strains, than others," Troxel said.

"They visit chiropractors, physical therapists and doctors more often. They submit much higher medical bills even for similar types of injuries," he added.

Troxel said although dollars paid by insurance companies increase dramatically -- on average nearly $8,700 more -- when an attorney represents a car accident victim's liability claim, those injured net only about $100 more. Nearly all of the $8,700 goes to health care providers and lawyers, people who make their living off the system," Troxel explained.

Nevada and Arizona is high," said Troxel.

In California, for example, there were 61 injury claims for every 100 property damage claims in 1993, nearly twice the 1980 level of 31 injury claims. Louisiana residents generated 49 injury claims per 100 vehicle damage claims, followed by South Carolina with 47 injury claims, and Nevada and Arizona with 45 injury claims.

Injury liability claims rose in these states even though liability claims for property damage declined. Property damage claims since 1980 dropped by 17% in Arizona and Nevada, 22% in Louisiana, 24% in South Carolina, and 28% in California.

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The change in injury claiming behavior is more apparent in some states than others. Illinois and Ohio residents were far less likely to claim an injury compared to Californians, despite the fact that all three states have large populations and rely on fault-based auto insurance laws.

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Even within states, the number of injury claims can vary dramatically among cities. In Los Angeles, there were 99 injury liability claims for every 100 property damage claims. That is astounding, Troxel noted. Nearly every property damage accident had a corresponding injury claim. By comparison, San Diego and San Francisco had 40 injury claims per 100 accidents. Philadelphia had 79 injury claims per 100 accidents, compared to only 18 in Pittsburgh. Cleveland recorded 41 injury claims per 100 accidents, compared to 26 in both Columbus and

Some major findings of the study include:

- Average medical expenses and other verifiable out-of-pocket costs to victims of at-fault drivers increased dramatically from $1,162 in 1977 to $4,532 in 1992.
- Claims for sprains and strains of the neck, back and other parts of the body, were filed by 83 percent of all claimants in at-fault accidents in 1992, up from 75 percent five years earlier.
- When attorneys are involved, accident victims wait much longer for payment. After three months, 63 percent of victims without attorneys had received final payment. That compares with only 8 percent of victims with attorneys.
- The extent of attorney involvement in auto accident injury claims varies dramatically by city and state.

Troxel said the study shows that, in Los Angeles, for example, attorneys are involved in 92 percent of bodily injury claims. The California average is 67 percent. Other states are lower: Indiana (32 percent); Alabama (27 percent); and Iowa (24 percent). Nationally, the average is 57 percent.

Troxel said a parallel study of claimants found that, in nearly 2 of 10 cases the attorney advised the injured person which clinics and which medical providers to visit.

People injured in auto accidents can receive payment from the driver responsible for their "pain and suffering" in addition to payments for actual medical costs and other verified out-of-pocket costs.

Because there are no objective means of measuring "pain-and-suffering," settlements usually are set at a multiple of verified economic losses, typically two or three times those objectively measured losses.

"That creates an incentive to build up verified losses to increase 'pain-and-suffering' awards," Troxel said. Lawyers are paid a portion of the total settlement.

"But these studies demonstrate that people, on average, do almost as well for themselves financially -- and get paid sooner -- by working on claims directly with insurance companies."

"The latest studies," Troxel said, "raise serious questions of ethics and standards of practice that leaders of the health care professions and the trial bar need to address."

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Fax: 916/442-1328

REMARKS: ☐ Urgent ☒ FYI/Review ☐ As Requested ☐ Please comment

Please see attached. This is a very insightful analysis of the actual experience under the Utah Uninsured Motorist Database Program. I believe Mr. Imig is correct in his observation that if uninsured motorists claims are increasing, there must be strong doubt as to whether the number of uninsured motorists are decreasing as claimed by the DMV and other Insure-Rite supporters.

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Analysis of the Utah program, and the HB 1209 mechanisms

Reasonable information is presently available as to the numbers of Colorado uninsured motorists. DMV records for calendar year 1996 show that less than 10% of drivers involved in accidents were unable to prove financial responsibility.

THE UTAH PROGRAM ISN'T WORKING:

Utah's database program has not shown positive results. It is presently the subject of a performance audit which has not been completed. As you can see from the attached sheet, actual sampled uninsured motorist claims in Utah are substantially up since the program went into effect - up 5.8% from 1994 to 1995, and up 11.6% from 1995 to 1996. If the program were working, the number of uninsured drivers would be down. The only conclusion that can be reached to date is that it is a waste of money.

SIMILAR PROGRAMS HAVE FAILED

Nevada's database program is the subject of a repeal effort: According to the January 26, 1997 Sacramento Bee, "Assemblyman John Carpenter has introduced a bill to suspend a much-criticized Nevada auto insurance verification program that is socking many innocent motorists with a $50 penalty. Carpenter said he has been getting two to three calls a day from motorists irate because their registration has been canceled due to a lack of insurance... Up to 10,000 notices a month are sent to registered car owners warning them the department cannot verify their insurance coverage. Even if drivers have coverage, they still get charged $50 if they don't respond or if there's a foul-up." According to the January 26, 1996 Salt Lake City Tribune, "Since it began operation, the database has led to large numbers of Utahns receiving false notifications that their policies have lapsed...."

THERE ARE POTENTIAL SERIOUS PROBLEMS WITH THE HB 1209 ENFORCEMENT MECHANISMS

- It will allow an uninsured driver to drive uninsured for 4 months and 15 days (bill, p. 9, lines 1-6). At that point such an owner only need purchase a short term policy, cancel it immediately, and then drive uninsured for another 4 months and 15 days.
- Bounty hunters are prohibited from seizing plates on private residential property (bill, p. 9, lines 15-17). This limitation will make it exceedingly difficult to seize such plates.
- A faxed or mailed letter from an insurer or agent will be considered proof of financial responsibility (bill, p. 6, lines 11-15). What is to prevent forgeries and fraud in connection with such letters?

- Seizure of plates may lead to many more stolen plates, particularly of out of state vehicles which are less easily checked.

THE DESIGNATED AGENT IS EXEMPTED FROM LIABILITY FOR HIS NEGLIGENCE

The "designated agent" will be given current lists of all insureds of every insurer every month. This information is invaluable proprietary information. The bill exempts the agent from any civil liability for damages for negligently releasing or using this information (bill, p. 12, lines 1-3). The same section exempts the agent from liability to those persons whose vehicles are wrongly listed as uninsured by the database.

UTAH UNINSURED MOTORIST CLAIMS

GUARANTY NATIONAL

Month	*1994*	*1995*	*1996*
January	7	11	8
February	4	6	18
March	6	7	11
April	9	7	10
May	10	5	12
June	7	12	15
July	9	10	12
August	11	12	7
September	8	13	15
October	8	20	14
November	9	14	9
December	8	15	2
Totals	**96**	**132**	**133**

FARMERS INSURANCE GROUP

Month	*1994*	*1995*	*1996*
January	78	106	74
February	180	60	171
March	224	178	236
April	286	236	296
May	334	320	352
June	402	346	430
July	454	434	476
August	506	520	522

September	644	600	566
October	574	736	706
November	746	784	784
December	549	850	1156
Totals	**4977**	**5170**	**5769**

ALLSTATE INSURANCE COMPANIES

Month	1994	1995	1996
January	32	43	42
February	33	41	57
March	36	51	42
April	31	37	61
May	38	39	48
June	39	36	41
July	22	45	52
August	38	37	39
September	27	37	42
October	37	64	51
November	51	48	64
December	44	43	59
Totals	**428**	**521**	**598**
GRAND TOTAL	**5501**	**5823**	**6500**

5.8% increase 1995 over 1994

11.8% increase 1996 over 1995

THE UTAH PROGRAM IS NOT WORKING!

| This - 213 | Analysis |

Proposition 213: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Civil Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This measure shall be known and may be cited as "The Personal Responsibility Act of 1996."

SECTION 2. Findings and Declaration of Purpose

(a) Insurance costs have skyrocketed for those Californians who have taken responsibility for their actions. Uninsured motorists, drunk drivers, and criminal felons are law breakers, and should not be rewarded for their irresponsibility and law breaking. However, under current laws, uninsured motorists and drunk drivers are able to recover unreasonable damages from law-abiding citizens as a result of drunk driving and other accidents, and criminals have been able to recover damages from law-abiding citizens for injuries suffered during the commission of their crimes.

(b) Californians must change the system that rewards individuals who fail to take essential personal responsibility to prevent them from seeking unreasonable damages or from suing law-abiding citizens.

(c) Therefore, the People of the State of California do hereby enact this measure to restore balance to our justice system by limiting the right to sue of criminals, drunk drivers, and uninsured motorists.

SECTION 3. Civil Justice Reform

Section 3333.3 is added to the Civil Code, to read:

3333.3. In any action for damages based on negligence, a person may not recover any damages if the plaintiff's injuries were in any way proximately caused by the plaintiff's commission of any felony, or immediate flight therefrom, and the plaintiff has been duly convicted of that felony.

Section 3333.4 is added to the Civil Code, to read:

3333.4. (a) Except as provided in subdivision (c), in any action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if any of the following applies:

(1) The injured person was at the time of the accident operating the vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense.

(2) The injured person was the owner of a vehicle involved in the accident and the vehicle was not insured as required by the financial responsibility laws of this state.

(3) The injured person was the operator of a vehicle involved in the accident and the operator can not establish his or her financial responsibility as required by the financial responsibility laws of this state.

(b) Except as provided in subdivision (c), an insurer shall not be liable, directly or indirectly, under a policy of liability or uninsured motorist insurance to indemnify for non-economic losses of a person injured as described in subdivision (a).

(c) In the event a person described in paragraph (2) of subdivision (a) was injured by a motorist who at the time of the accident was operating his or her vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense, the injured person shall not be barred from recovering non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages.

SECTION 4. Effective Date

This act shall be effective immediately upon its adoption by the voters. Its provisions shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997.

SECTION 5. Severability

If any provision of this measure, or the application to any person or circumstances is held invalid or void, such invalidity or voidness shall not affect other provisions or applications that can be given effect without the invalid or void provision or application, and to this end, all of the provisions of this measure are declared to be severable.

SECTION 6. Conflicting Measures

In the event another measure to be voted on by the voters at the same election as this measure, and which constitutes a comprehensive regulatory scheme, receives more affirmative votes than this measure, the electors intend that any provision or provisions of this measure not in direct and apparent conflict with any provision or provisions of that other measure shall not be deemed to be in conflict therewith, and shall be severed from any other provision or provisions of this measure that are in direct and apparent conflict with the provision or provisions of the other measure. In that event, the provision or provisions not deemed in conflict shall be severed according to Section 5 of this measure upon application to any court of competent jurisdiction.

| This - 213 | Analysis |

USAA®
STATE LEGISLATIVE AFFAIRS

915 "L" Street, Suite 1100
Sacramento, CA 95814

FAX

Date: 03/05/97 9:25 AM
Number of pages to follow: 8

To:
Jim Sourrant
Rep. Porter

Phone:
Fax: 907/465-3834
CC:

From:
James R. Jinks, AVP
Senior Legislative Counsel

Phone: 916/552-6715
Fax: 916/442-1328

REMARKS: ☐ Urgent ☐ FYI/Review ☒ As Discussed ☐ Please comment

Per our conversation, the "no-pay, no-play" tort reform for auto insurance.

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USAA
STATE LEGISLATIVE AFFAIRS

915 "L" Street, Suite 1100
Sacramento, CA 95814

FAX

Date: 02/12/97 12:59 PM
Number of pages to follow: 13

To:
Rep. Brian Porter
Attn: Judy

Phone:
Fax: 907/465-3834
CC:

From:
James R. Jinks, AVP
Senior Legislative Counsel

Phone: 916/552-6715
Fax: 916/442-6715

REMARKS: ☐ Urgent ☐ FYI/Review ☒ As Discussed ☐ Please comment

Judy: Attached please find the materials we discussed in our earlier conversation. Please call me at work or at my home (916/863-0858) if you have any questions or if I can provide any additional information.

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government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 31. **Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including medical malpractice cases.

Section 32. **Definitions; health care provider.** This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 33. **Definitions; professional negligence and professional services.** This section adds new subsections to define professional negligence and professional services in the health care area.

Section 34. **Attorney contingent fee agreements.** This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under AS 09.17.020(d) shall pass free and clear of any contingent fees which would otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 35. **Civil liability of hospitals for nonemployees.** This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least $500,000 per incident.

Section 36. **Damages resulting from commission of a felony, or while under the influence of alcohol or drugs.** With one exception, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured

| This - 213 | Analysis |

Proposition 213: Text of Proposed Law

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(b) Californians must change the system that rewards individuals who fail to take essential personal responsibility to prevent them from seeking unreasonable damages or from suing law-abiding citizens.

(c) Therefore, the People of the State of California do hereby enact this measure to restore balance to our justice system by limiting the right to sue of criminals, drunk drivers, and uninsured motorists.

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Section 3333.3 is added to the Civil Code, to read:

3333.3. In any action for damages based on negligence, a person may not recover any damages if the plaintiff's injuries were in any way proximately caused by the plaintiff's commission of any felony, or immediate flight therefrom, and the plaintiff has been duly convicted of that felony.

Section 3333.4 is added to the Civil Code, to read:

3333.4. (a) Except as provided in subdivision (c), in any action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if any of the following applies:

(1) The injured person was at the time of the accident operating the vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense.

(2) The injured person was the owner of a vehicle involved in the accident and the vehicle was not insured as required by the financial responsibility laws of this state.

(3) The injured person was the operator of a vehicle involved in the accident and the operator can not establish his or her financial responsibility as required by the financial responsibility laws of this state.

(b) Except as provided in subdivision (c), an insurer shall not be liable, directly or indirectly, under a policy of liability or uninsured motorist insurance to indemnify for non-economic losses of a person injured as described in subdivision (a).

(c) In the event a person described in paragraph (2) of subdivision (a) was injured by a motorist who at the time of the accident was operating his or her vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense, the injured person shall not be barred from recovering non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages.

Section 23. **Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 19--).

Section 24. **Alternatve Dispute Resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th legislature.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see what the experience has been in other jurisdictions before putting into place any program.

Section 25. **Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve Superior Court fast-track procedures.

Section 26. **Voluntary arbitation.** This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including medical malpractice cases.

Section 27. **Medical advisory panels.** This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 28. **Expert advisory panel; panel questions.** This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 29. **Expert advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. The change appears to allow discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The reason given in the Governor's Task Force report is to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 30. **Expert advisory panel; public sector provider.** This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of

SECTION 4. Effective Date

This act shall be effective immediately upon its adoption by the voters. Its provisions shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997.

SECTION 5. Severability

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In the event another measure to be voted on by the voters at the same election as this measure, and which constitutes a comprehensive regulatory scheme, receives more affirmative votes than this measure, the electors intend that any provision or provisions of this measure not in direct and apparent conflict with any provision or provisions of that other measure shall not be deemed to be in conflict therewith, and shall be severed from any other provision or provisions of this measure that are in direct and apparent conflict with the provision or provisions of the other measure. In that event, the provision or provisions not deemed in conflict shall be severed according to Section 5 of this measure upon application to any court of competent jurisdiction.

| This - 213 | Analysis |

persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

Section 18. **Apportionment of damages.** This section eliminates a reference to AS 09.16.040 because that statute was repealed by the 1987 Initiative Proposal.

Section 19. **Definition; intentional torts.** This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 20. **Expert witness qualification.** This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases.

Section 21. **Offers of judgment.** This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is not at least 5% more favorable than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 22. **Interest on judgments; prejudgment interest.** This section provides for a floating interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

The Governor's Task Force report recomends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

| Text of Proposed Law | This - 213 | Argument in Favor |

Analysis of Proposition 213

by the Legislative Analyst

PROPOSAL

This measure would limit the ability of certain people to sue to recover losses suffered in accidents.

Limits on Uninsured Motorists and Drunk Drivers

Under existing law, someone who has suffered an injury in a car accident may sue the person, business, or government at fault for the injury in order to recover related losses. These losses can include both *economic* losses (such as lost wages, medical expenses, and property damage) and *noneconomic* losses (such as pain and suffering).

This measure would prohibit the recovery of *noneconomic* losses in certain car accidents. Specifically, an uninsured driver or a driver subsequently convicted of driving under the influence of alcohol or drugs ("drunk drivers") at the time of an accident could not sue someone at fault for the accident for noneconomic losses. (These drivers could still sue for economic losses.) If, however, an uninsured motorist is injured by a drunk driver in an accident, the uninsured motorist could still sue to recover noneconomic losses from the drunk driver.

Limits on Convicted Felons

Currently, in certain cases a person who is injured while breaking the law may sue on the basis of another person's negligence to recover any losses resulting from the injury. For example, a person convicted of a robbery who was injured because he or she slipped and fell while fleeing the scene of the crime can sue to recover losses resulting from the injury.

This measure prohibits a person convicted of a felony from suing to recover any losses suffered while committing the crime or fleeing from the crime scene *if* these losses resulted from another person's negligence. Convicted felons, however, would still be able to sue to recover losses for some injuries suffered while committing or fleeing a crime--for instance those resulting from the use of "excessive force" during an arrest.

FISCAL EFFECT

Restricting the ability of people to sue for injury losses in the above situations would reduce the number of lawsuits handled by the courts. This would reduce annual court-related costs to state and local governments by an unknown but probably minor amount. These restrictions would also result in fewer lawsuits filed against state and local governments. Thus, there would be an unknown savings to state and local governments as a result of avoiding these lawsuits.

In addition, the restrictions placed on uninsured motorists and drunk drivers could result in somewhat lower costs, or "premiums," for auto insurance. Under current law, insurance companies doing business in California pay a tax of 2.35 percent of "gross premiums." This tax is called the gross premiums tax and its revenues are deposited in the state's General Fund. Any reduction in insurance premiums would also reduce gross premiums tax revenue to the state. We estimate that any revenue loss would probably be less than $5 million annually.

by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

Section 14. **Award of damages; periodic payments.** This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

Section 15. **Collateral benefits.** This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by ar injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the repealed collateral benefits statute, no evidence could be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It was only after the verdict was in that the defense could offer evidence to show how much the plaintiff had received, or would receive in the future, from collateral sources.

This section now allows the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The repealed statute specifically excepted the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exclusion.

Section 16. **Apportionment of damages.**

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

Section 17. **Apportionment of damages.** This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more

| Analysis | This - 213 | Rebuttal to Argument in Favor |

Argument in Favor of Proposition 213

Arguments on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

PROPOSITION 213 WILL FIX A SYSTEM THAT REWARDS PEOPLE WHO BREAK THE LAW.

It's *AGAINST THE LAW TO DRIVE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS* in California. In most cases it's also against the law to drive without insurance. Unfortunately, thousands of people *ignore these laws and get rewarded for it.* Drunk drivers and uninsured motorists can sue law-abiding citizens for huge monetary awards in addition to being compensated for medical and other expenses.

These huge awards cost Californians who play by the rules and obey the law $327 million every year! That's not fair!

Proposition 213 will prevent drunk drivers, convicted felons and uninsured motorists from collecting these huge monetary awards, while still protecting their right to be compensated for medical and out-of-pocket expenses. That *is* fair.

Further, if Proposition 213 becomes law, convicted felons would be prohibited from collecting any damages if they're accidentally injured while fleeing from their crime.

PROPOSITION 213 SAYS PEOPLE WHO BREAK THE LAW SHOULD NOT BE REWARDED, WHILE LAW ABIDING CITIZENS PICK UP THE TAB.

Law-abiding citizens already pay higher insurance premiums to cover uninsured motorists. Law-abiding citizens should *not* be punished for living responsibly! *The system needs to be fixed. Illegal behavior shouldn't be rewarded. People who break the law must be held accountable for their actions.*

PROPOSITION 213 SAYS DRUNK DRIVERS WHO INJURE AND EVEN KILL PEOPLE SHOULD NOT BE REWARDED.

Drunk drivers in California cost all of us in terms of lost lives, serious injuries to family members and friends and higher insurance premiums.

- In 1994, 1,488 people were killed in crashes caused by drunk drivers.
- 39,437 people were injured in collisions involving drunk drivers during 1994.
- These victims and their families shouldn't be forced to suffer a second time through huge lawsuits.
- Proposition 213 will stop drunk drivers from being rewarded for breaking the law.

PROPOSITION 213 SAYS CONVICTED FELONS SHOULD NOT BE ALLOWED TO PROFIT FROM THEIR CRIMES.

Proposition 213 takes the "profit" out of crime by closing a legal loophole that allows convicted felons to sue law-abiding citizens, businesses and governments to pay for "accidental injuries" incurred while running from their crime.

PROPOSITION 213 SAYS NO TO UNINSURED DRIVERS BY SAYING NO TO HUGE MONETARY AWARDS FOR "PAIN AND SUFFERING!"

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions and they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or $600,000, whichever is greater.

Subsection (d) requires that one half of any punitive damage award be paid into the general fund of the State of Alaska.

Section 11. **Award of damages; periodic payments.** This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

Section 12. **Award of damages; periodic payments.** This section clarifies that cases involving judgments in excess of $100,000 may be paid in periodic payments rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

Section 13. **Award of damages; periodic payments.** This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of U.S. government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued

On average, nearly 30% of all drivers on the road in California are uninsured. In some parts of California, the percent of uninsured drivers is as high as 93%.

Proposition 213 will stop uninsured motorists from being rewarded for breaking the law, while still covering medical and out-of-pocket expenses.

JOIN THE CALIFORNIA ASSOCIATION OF HIGHWAY PATROLMEN, DORIS TATE CRIME VICTIMS BUREAU, THE CALIFORNIA PEACE OFFICERS' ASSOCIATION, PEACE OFFICERS RESEARCH ASSOCIATION OF CALIFORNIA, CALIFORNIA POLICE CHIEFS' ASSOCIATION, THE ASSOCIATION FOR CALIFORNIA TORT REFORM, AND MANY OTHERS WHO SUPPORT THE PERSONAL RESPONSIBILITY ACT OF 1996.

- *STOP LAWBREAKERS FROM PROFITING FROM THEIR CRIMES.*
- *VOTE YES FOR PERSONAL RESPONSIBILITY.*
- *VOTE YES ON PROPOSITION 213.*

LINDA OXENREIDER
California President, Mothers Against Drunk Driving (MADD)

CHUCK QUACKENBUSH
California Insurance Commissioner

D. O. "SPIKE" HELMICK
California Highway Patrol Commissioner

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brought before the child's eighth birthday, including actions brought against obstetricians and gynecologists. This statute is tolled in cases where fraud or collusion, or intentional concealment of facts can be shown. It is also tolled until the actual discovery of a foreign object in the body of the injured person.

Section 6. **Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.** This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between exisiting subsections AS09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls.

Language is added indicating that ordinary negligence and other non-intentional actions is covered by the two year statute of limitations.

Section 7. **Limitation of actions involving injury to person or property.** Subsection (c) of the statute is a consistency change with respect to the one year statute of limitations set forth in AS 09.10.080, relating to actions against peace officers for the escape of prisoners, and in AS 09.10.090, relating to actions for statutory penalties.

Section 8. **Noneconomic damages.** This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places more stringent limits on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought.

This section lowers the recovery cap from $500,000 to $300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadraplegic, or has other specified disabilities, in which case the cap remains at $500,000.

Section 9. **Punitive damages.** This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought.

Section 10. **Punitive damages.** This section relates to new subsections which are added to the preceding Section 9 in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or $300,000.

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Argument Against Proposition 213

Arguments on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

SAY "NO" TO NO-FAULT FOR RECKLESS DRIVERS . . .
VOTE "NO" ON PROPOSITION 213

In March, $^2/_3$ of California's voters said "NO" to Proposition 200--No-Fault auto insurance. We don't want a law that allows reckless drivers to avoid responsibility for their actions.

But Proposition 213 says that if a reckless driver who can afford insurance hits an innocent person who cannot . . . the reckless driver gets off without paying for all the injuries and damage they've done.

That's wrong.

The high cost of insurance makes it impossible for many poor and working people to buy insurance. If insurance companies won't sell affordable insurance, it is completely unfair to deny people full compensation for a car accident that is not even their fault.

YOU CAN SAY "NO" TO FELONS AND STILL . . .
VOTE "NO" ON PROPOSITION 213

Courts won't allow convicted felons to get damages for injuries they cause. So why are "felons" included in the title of Proposition 213?

The insurance companies pushing No-Fault want to divert your attention from their real agenda: boosting their profits to excessive levels.

Insurance companies make money anytime a reckless driver they insure is not held at fault.

The insurance companies couldn't get us to swallow No-Fault in one big gulp, so they're trying to feed it to us in little bites.

YOU CAN SAY "NO" TO DRUNK DRIVERS AND STILL . . .
VOTE "NO" ON PROPOSITION 213

California laws already say drunk drivers can't recover damages if they cause an accident. So why are they included in the title of Proposition 213?

The insurance companies have failed twice to get No-Fault insurance started in California. In Proposition 213 they are hiding the No-Fault idea behind wild talk about felons and drunk drivers.

NO MONEY-BACK GUARANTEE . . .
VOTE "NO" ON PROPOSITION 213

The No-Faulters argue that Proposition 213 will save Californians $323 million per year.

We've heard that line before.

There is nothing in Proposition 213 that says Californians will see their insurance rates go down. In No-Fault states, auto insurance premiums have increased an average of 40% in recent years. No insurance rate reductions. No savings for consumers. The only people who benefit from this No-Fault scheme are reckless drivers . . . and the insurance companies who paid to put it on the ballot.

Working Copy No. 4. February 11, 1997
[Saved as "hb58sectional"]

Sectional Summary

of

SSHB 58 (JUD)

An Act Relating to Civil Actions

Section 1. **Legislative intent.** This section generally sets forth the legislative intent of this Act.

Section 2. **Certain property actions to be brought in six years.** This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the six year statute of limitations for recovery of, or damages to, personal property. See Section 6.

Section 3. **Contract actions to be brought in three years.** This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions.

Section 4. **Statute of repose of eight years.** This section adds a new section which generally imposes an eight year statute of repose.

In this section, the statute of repose begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage.

This section does not apply if the cause of action resulted from:

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
(b) hazardous waste exposure;
(c) intentional act or gross negligence;
(d) fraud or fraudulent misrepresentation;
(e) breach of express warranty or guarantee;
(f) a defective product;
(g) intentional concealment of facts,
(h) where a shorter statute of limitations applies.

In medical malpractice cases the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

Section 5. **Limitation of actions against health care providers.** This section amends AS 09.10 by adding a new section which generally requires that actions for medical malpractice involving children under the age of six be

Insurance companies win, you lose.

SAY "NO" TO RECKLESS DRIVER NO-FAULT . . .
VOTE "NO" ON PROPOSITION 213.

HARVEY ROSENFIELD
Proposition 103 Enforcement Project

KEN McELDOWNEY
Executive Director, Consumer Action

INA DeLONG
Executive Director, United Policyholders

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* **Sec. 54.** AS 28.33.130(c) is amended to read:

(c) A person who is ordered out of service

(1) may not operate a commercial motor vehicle or be on-duty for 24 hours following issuance of the out of service order; and

(2) shall report that fact, in writing,

(A) within 24 hours to the person's employer; and

(B) within 30 days to the **department** [DIVISION OF MOTOR VEHICLES] if the person possesses a commercial motor vehicle license.

* **Sec. 55.** AS 28.35.024(c) is amended to read:

(c) Every person renting a motor vehicle shall keep a record of the registration number of the vehicle rented, the name, address and license number of the person to whom the vehicle is rented, and the date and place when and where the license of the intended driver was issued. The record shall be open to inspection by a peace officer or employee of the **Department of Public Safety** [DEPARTMENT] acting in an official capacity.

* **Sec. 56.** AS 28.35.036(e) is amended to read:

(e) If not released under AS 28.35.037, a motor vehicle forfeited under this section may be disposed of at the discretion of the **Department of Public Safety** [DEPARTMENT].

* **Sec. 57.** AS 28.35.080(b) is amended to read:

(b) The driver of a vehicle involved in an accident resulting in bodily injury to or death of a person or total property damage to an apparent extent of $2,000 or more shall, within 10 days after the accident, forward a written report of the accident to the Department of **Administration** [PUBLIC SAFETY] and to the local police department if the accident occurs within a municipality. A report is not required under this subsection if the accident is investigated by a peace officer.

* **Sec. 58.** AS 28.35.080(d) is amended to read:

(d) The Department of **Administration** [PUBLIC SAFETY] may require the driver of a vehicle involved in an accident of which a report must be made to file supplemental reports whenever the original report is insufficient in the opinion of **that**

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Rebuttal to Argument Against Proposition 213

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PROPOSITION 213 STOPS REWARDING DANGEROUS FELONS

California law allows felons convicted of resisting a peace officer *and causing serious injury or death to the peace officer to sue* a city, county or anyone else who gets in their way and accidentally injures the felon fleeing from that crime. The same goes for crimes such as carjacking, "drive-by" shooting resulting in murder, multiple hate crimes and many others. *Proposition 213 stops rewarding criminal behavior.*

PROPOSITION 213 REFORMS AN UNFAIR SYSTEM THAT REWARDS LAWBREAKERS AND PUNISHES THOSE WHO PLAY BY THE RULES

Under Proposition 213, every driver involved in an accident could recover their medical and out-of-pocket expenses. Proposition 213 says "NO" to additional big money awards that *drunk drivers, uninsured motorists and their attorneys go after when these lawbreakers are in an accident with an insured driver--even if they also cause the accident!*

PROPOSITION 213 TAKES AWAY TRIAL LAWYERS' INCENTIVE TO SUE FOR OUTRAGEOUS AWARDS TO LINE THEIR OWN POCKETS

One-third of every dollar awarded for "pain and suffering" goes to attorneys, *and they want to ensure the most lucrative of all injury awards isn't taken from them.*

PROPOSITION 213 BENEFITS CONSUMERS BY MAKING INSURANCE MORE AFFORDABLE FOR EVERYONE

Law-abiding drivers pay additional premiums to protect themselves from uninsured drivers. Eliminating huge monetary awards for irresponsible drivers will save $327 million each year!

- *VOTE YES FOR PERSONAL RESPONSIBILITY.*
- *VOTE YES FOR CRITICAL REFORMS.*
- *VOTE YES FOR PROPOSITION 213.*

RONALD E. LOWENBERG
President, California Police Chiefs' Association

JAN MILLER
Chairman, Doris Tate Crime Victims Bureau

STEVEN H. CRAIG
President, Peace Officers Research Association of California

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a citation under AS 12.25.180 - 12.25.230 to a person who violates a regulation adopted under **AS 28.05.011(a)(2)** [AS 28.05.011(2)]. An employee of the **Department of Public Safety** [DEPARTMENT] who is authorized by the commissioner **of public safety** to enforce both hazardous materials and commercial vehicle safety regulations may not take a person into custody under AS 12.25.180(b).

*** Sec. 50.** AS 28.32.040(c) is amended to read:

(c) If a certificate is revoked or suspended under (b) of this section the division shall give a commercial motor vehicle inspector a hearing within 10 days after the receipt of a written request filed with the commissioner **of public safety** within 30 days after revocation or suspension.

*** Sec. 51.** AS 28.33.010(b) is amended to read:

(b) Evidence of security required under (a) of this section shall be filed with the **Department of Public Safety** [DEPARTMENT] and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to **that** [THE] department;

(2) a bond of a surety company licensed to write surety bonds in the state;

(3) evidence accepted by **that** [THE] department, showing ability to self-insure; or

(4) other security approved by **that** [THE] department.

*** Sec. 52.** AS 28.33.010(c) is amended to read:

(c) The **Department of Public Safety** [DEPARTMENT] may authorize [DEPARTMENT] personnel **of that department** to enforce this section and may adopt procedural regulations necessary to implement this section.

*** Sec. 53.** AS 28.33.010(d) is amended to read:

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days' written notice to the **Department of Public Safety** [DEPARTMENT]. This requirement must be clearly stated in the policy or endorsement for an insurance policy submitted as proof of financial responsibility under (b)(1) of this section. The 30-day notice period is measured from the date on which the **Department of Public Safety** [DEPARTMENT] receives notice.

CHART 2

AB 432

Impact of Disallowing Uninsured Motorists from Collecting Pain & Suffering Payments on Auto Liability Policy in the 10 Largest Cities in California

City	Average Premium (all Liability)[1]	AB 432 %Savings [2]	AB 432 $ Savings [3]
Anahiem	641	7.25%	46
Fresno	501	6.54%	33
Long Beach	701	6.45%	45
Los Angeles	1010	8.32%	84
Oakland	624	6.92%	43
Sacramento	511	3.18%	16
San Diego	495	4.72%	23
San Francisco	664	8.34%	55
San Jose	489	4.73%	23
Santa Anna	670	7.82%	52
California	549	6.86%	38

[1] This is an average premium for Bodily Injury, Property Damage, Medical Payment, and Uninsured Motorist Coverages per vehicle insured. Source: Auto Liability Data Base.

[2] This figure reflects percent savings on the combined liability claims (BI, PD, UM, and med Pay).

[3] Actual savings to individual policyholders may vary depending on the risk characteristics, policy limits, garaging area, and company's rate making formula.

Prepared by the CA Dept. of Insurance, Statistical Analysis Bureau

terrain, ice, or snow and that has been declared by its owner at the time of registration and determined by the **Department of Public Safety** [DEPARTMENT] to be unsuitable for general highway use, although the vehicle may make incidental use of a highway as provided in this title, but not including implements of husbandry or special mobile equipment, such as construction machinery or earthmoving equipment.

* **Sec. 46.** AS 28.15.131 is amended to read:

Sec. 28.15.131. License to be carried and exhibited on demand. A licensee shall have the licensee's driver's license in immediate possession at all times when driving a motor vehicle, and shall present the license for inspection upon the demand of a peace officer or other authorized representative of the **Department of Public Safety** [DEPARTMENT] identified as such to the licensee by the officer or representative. However, a person charged with violating this section may not be convicted if the person produces in court or in the office of the arresting or citing officer, a driver's license previously issued to the person that was valid at the time of the person's arrest or citation.

* **Sec. 47.** AS 28.17.041(a) is amended to read:

(a) The commissioner of **administration** [PUBLIC SAFETY] shall adopt regulations necessary to carry out the provisions of this chapter, and may call upon the commissioner of education for assistance in formulating these regulations.

* **Sec. 48.** AS 28.20.560(a) is amended to read:

(a) A person whose license or registration is suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, is canceled or terminated, shall immediately return the person's license or registration to the department. If a person fails to return the license or registration to the department, the department**, through the commissioner of public safety,** shall immediately direct a peace officer to obtain possession of it and to return it to the department.

* **Sec. 49.** AS 28.32.010(b) is amended to read:

(b) A peace officer, or an employee of the **Department of Public Safety** [DEPARTMENT] who is authorized by the commissioner **of that department** to enforce both hazardous materials and commercial vehicle safety regulations, may issue

AB 432

Impact of Disallowing Uninsured Motorists from collecting Pain & Suffering Payments on Auto Liability Policy in CALIFORNIA

(1)	Uninsured Vehicles:	0.28
(2)	Insured Vehicles:	0.72
(3)	Probability of a claim involves Insured and Uninsured vehicle :	0.4032
(4)	1992 Incurred Losses for Bodily Injury:	2,614,046,463
(5)	Pain & Suffering (31% of Bodily Injury):	810,354,404
(6)	Estimated Pain & Suffering Claimed by Uninsured Motorist:	326,734,890
(7)	Savings on Bodily Injury Coverage* :	12.50%
(8)	1992 Incurred Losses for All Liability Coverages:	4,759,792,277
(9)	Savings on Losses of all Liability Coverages** :	6.86%

* While this figure may indicate savings on Bodily Injury Coverage losses, companies do not sell this coverage alone.

** We estimate that 85% of the insured vehicles are covered with all liability coverages. Therefore the 6.86% may be considered an estimate of the savings which an average auto liability policyholder may realize on their annual premium. Actual savings to individual policyholder may vary depending on the risk characteristics, policy limits, garaging area, and company rate making formula.

(1) & (2): DOI estimates of Uninsured Vehicles.
(3) is (1) X (2) X2
(4) is from 1992 Annual Statements & Auto Liability Data Base
(5) is (4) X 0.31. See "Automobile Claims, A Study of Closed Claims Patterns in California." by Al-Faris, Boushehri, and Gillespie.
(6) is (3) X (5)
(7) is (6)/(4)
(8) is from 1992 Annual Statement, page 14, Line 19.2
(9) is (6)/(8)

Prepared by the CA Dept. of Insurance, Statistical Analysis Bureau

may an owner knowingly permit to be driven or moved, on a highway or vehicular way or area, a vehicle required to be registered under this chapter unless valid registration plates, decals, or permits for the current registration period are attached to and displayed on the vehicle in the manner required by this chapter, and unless a valid certificate of registration for the current registration period is carried, as required by this chapter, in the vehicle and is available for inspection by a peace officer or an authorized representative of the **Department of Public Safety** [DEPARTMENT].

*** Sec. 43.** AS 28.10.502(b) is amended to read:

(b) A lien under this section is limited to towing and storage charges. Storage charges cease to be part of the lien after 60 days unless the registered owner or primary lienholder, if any, has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and primary lienholder, if any, at their addresses of record with the **department** [DEPARTMENT OF PUBLIC SAFETY] or the corresponding office in another jurisdiction in which the title to the motor vehicle and the lien on it are recorded.

*** Sec. 44.** AS 28.10.502(d) is amended to read:

(d) The money realized from a sale made under this section shall be applied first to the payment of costs and expenses of the sale and secondly to the lawful charges of the person having a lien on the motor vehicle under this section. Remaining proceeds from the sale shall be retained by the **department** [DEPARTMENT OF PUBLIC SAFETY] to be distributed to the registered and legal owner or lienholder entitled to the remaining proceeds. A purchaser in good faith of a titled motor vehicle sold under this section takes the motor vehicle free of any rights of prior lien.

*** Sec. 45.** AS 28.11.025(c) is amended to read:

(c) In this section, "vehicle" means a

(1) passenger car, motor home, bus, truck, truck-tractor, motorcycle, motorbike, or similar motor vehicle that is designed for use primarily to transport a person or to transport or draw property on a highway or vehicular way; and

(2) snowmobile, three-wheeler, four-wheeler, or a similar off-highway motor vehicle designed or adapted for cross-country operation over unimproved

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

First Regular Session

Sixty-first General Assembly

LLS NO. 97-0222.01 EBD HOUSE BILL 97-1197

STATE OF COLORADO

BY REPRESENTATIVES Swenson, Agler, Allen, Dean, Dyer, June, May, Owen, Pfiffner, Schauer, and Schwarz;

also SENATOR Coffman.

TRANSPORTATION & ENERGY

A BILL FOR AN ACT

CONCERNING LIMITATIONS ON RECOVERY OF DAMAGES ARISING OUT OF A MOTOR VEHICLE ACCIDENT, AND, IN CONNECTION THEREWITH, LIMITING RECOVERY OF NONECONOMIC DAMAGES BY CONVICTED FELONS, UNINSURED MOTORISTS, OWNERS OF MOTOR VEHICLES THAT ARE NOT INSURED, PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE AT THE TIME OF AN ACCIDENT, AND PERSONS DRIVING WITH A LICENSE THAT IS UNDER RESTRAINT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

In actions arising out of the operation or use of a motor vehicle bars recovery of noneconomic damages by persons committing or fleeing from the scene of a felony, convicted of driving while under the influence during an accident, uninsured motorists, owners of motor vehicles that are not insured, and persons driving with a license that is under restraint. Specifies that insurers are not liable to the above persons for noneconomic damages. Continues to allow recovery by uninsured motorists who are injured by a person convicted of driving under the influence or injured by a person engaged in the commission of, or flight from, a felony.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 7 of article 4 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-4-712.5. Limitation of recovery to convicted felons, uninsured motorists, persons convicted of driving under the influence, and persons driving with a license under

(2) the department determines that a registered vehicle is mechanically unsafe to be driven or moved on a highway, vehicular way or area, or other public property in this state and the vehicle has been seized or impounded under AS 28.05.091;

(3) a registered vehicle has been scrapped, dismantled, or destroyed beyond repair;

(4) the department determines that a required fee or tax has not been paid and the fee or tax is not paid upon reasonable notice and demand;

(5) a registration plate, permit, or certificate is knowingly displayed upon a vehicle other than the vehicle for which issued;

(6) the department determines that the owner of a vehicle has committed an offense under this chapter involving the registration or the certificate, plate, or permit to be suspended or revoked;

(7) the vehicle has been reported to the department as stolen or unlawfully converted;

(8) the department is otherwise required to do so under the laws of this state;

(9) the department determines that the vehicle owner has violated the requirements of AS 28.10.146 or 28.10.147;

(10) the department determines that a repair to a commercial motor vehicle, ordered by the **Department of Public Safety** [DEPARTMENT] under regulations adopted under AS 28.05.011, was not completed after the owner or operator represented to the **Department of Public Safety or the Department of Administration** [DEPARTMENT] that the repair had been completed; or

(11) the owner or operator of a commercial motor vehicle has placed a commercial motor vehicle back in service after it has been placed out of service by the **Department of Public Safety** [DEPARTMENT] without having it reinspected as required under regulations adopted under AS 28.05.011.

*** Sec. 42.** AS 28.10.461 is amended to read:

Sec. 28.10.461. Driving vehicle without evidence of registration. Except as otherwise expressly permitted in this chapter, a person may not drive or move, nor

restraint. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) IN 1973 THE GENERAL ASSEMBLY ADOPTED A SYSTEM OF COMPULSORY AUTOMOBILE INSURANCE CONSISTING OF LIABILITY INSURANCE AND A COMPREHENSIVE PACKAGE OF PERSONAL INJURY PROTECTION BENEFITS PAID ON A NO-FAULT BASIS.

(b) COLORADO LAW PREVENTS INSURED MOTORISTS FROM COLLECTING IN TORT ANY ECONOMIC DAMAGES UNDER THE COLORADO AUTOMOBILE ACCIDENT REPARATIONS ACT, SUCH AS MEDICAL EXPENSES OR LOST WAGES, BECAUSE SUCH DAMAGES ARE PAID UNDER A COMPLYING POLICY AND IF A MOTORIST IS UNINSURED, SUCH MOTORIST IS, IN EFFECT, SELF-INSURED AND THEREFORE PREVENTED FROM COLLECTING IN TORT SUCH ECONOMIC DAMAGES.

(c) THE GENERAL ASSEMBLY RECOGNIZES THAT A SIGNIFICANT NUMBER OF MOTORISTS BREAK THE LAW BY DRIVING UNINSURED, COMMITTING OR FLEEING FROM A FELONY, DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, OR DRIVING UNDER A REVOKED OR SUSPENDED LICENSE AND YET ARE PERMITTED TO RECOVER NONECONOMIC DAMAGES, SUCH AS PAIN AND SUFFERING, UNDER LIABILITY INSURANCE POLICIES.

(d) BY ENACTMENT OF THIS STATUTE, THE GENERAL ASSEMBLY INTENDS TO STATE THAT THE PUBLIC POLICY OF COLORADO IS TO NO LONGER TOLERATE THE ABUSE OF THE PRESENT LIABILITY INSURANCE SYSTEM BY THOSE WHO FAIL TO HAVE IN EFFECT A COMPLYING POLICY AS REQUIRED UNDER SECTION 10-4-705 OR 10-4-706 OR BY THOSE WHO BREAK THE LAW AS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1).

(e) THE GENERAL ASSEMBLY, BY PASSING THIS SECTION, DOES NOT ALTER THE RIGHT OF ANY PERSON TO RECOVER ECONOMIC LOSSES IN A TORT ACTION AS CURRENTLY ALLOWED BY LAW.

(2) EXCEPT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, IN ANY ACTION, BASED ON NEGLIGENCE, TO RECOVER DAMAGES RELATED TO THE OPERATION OR USE OF A MOTOR VEHICLE, AN INJURED PERSON SHALL NOT RECOVER NONECONOMIC DAMAGES TO COMPENSATE FOR PAIN, SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT, DISMEMBERMENT, DISABILITY, DISFIGUREMENT, OR OTHER NONPECUNIARY DAMAGES IF ANY OF THE FOLLOWING APPLIES:

(a) SUCH INJURED PERSON'S INJURIES WERE IN ANY WAY PROXIMATELY CAUSED BY THE INJURED PERSON'S COMMISSION OF ANY FELONY, OR IMMEDIATE FLIGHT THEREFROM, AND THE INJURED PERSON HAS BEEN CONVICTED OF, OR PLEAD GUILTY OR NO CONTEST TO, THAT FELONY.

(b) SUCH INJURED PERSON WAS CONVICTED OF, OR PLEAD GUILTY OR NO CONTEST TO, OPERATING SUCH MOTOR VEHICLE WHILE DRIVING UNDER

of Administration [DEPARTMENT] nearest to the residence of the person involved in the hearing unless the **appropriate** department and the person agree that the hearing is to be held elsewhere. The **appropriate** department shall grant a hearing delay if the person presents good cause for the delay. If a person fails to attend or appear for the hearing at the time and place stated by the **appropriate** department and if a hearing delay has not been granted, the person's failure to attend or appear is considered a waiver of the hearing and the **appropriate** department may take appropriate action with respect to the person.

(c) If at **a** [THE] hearing **conducted by the Department of Administration** under (a) of this section it appears that the record of the person sustains suspension, revocation, limitation, denial, or other remedial action, the hearing officer shall so order and the **Department of Administration** [DEPARTMENT] may suspend, revoke, limit, deny, or take other remedial action against that person's license, registration, or title and, if appropriate, the department shall adjust the person's point total accumulated under AS 28.15.231.

(d) A person aggrieved by the decision of the hearing officer may, within 30 days after a decision is mailed or delivered to the person, file an appeal in superior court for judicial review of the hearing officer's decision. The judicial review shall be on the record. The court may reverse the [DEPARTMENT'S] determination **of the Department of Public Safety or of the Department of Administration** if the court finds that the department **making the determination** misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record. The **respective department's** decision [OF THE DEPARTMENT] suspending, revoking, canceling, limiting, restricting, or denying a license, registration, title, permit, or privilege is stayed and does not take effect during the pendency of an appeal.

*** Sec. 41.** AS 28.10.051(a) is amended to read:

(a) The department may suspend or revoke the registration of a vehicle, the certificate of registration or registration plates for a vehicle, or a special permit when

(1) the department determines that the registration or certificate, plate, or permit was fraudulently procured or erroneously issued;

THE INFLUENCE AT THE TIME OF THE ACCIDENT IN VIOLATION OF SECTION 42-4-1301, C.R.S.;

(c) SUCH INJURED PERSON WAS THE OPERATOR OF, OR A PASSENGER IN, AND WAS THE OWNER OF A MOTOR VEHICLE INVOLVED IN THE ACCIDENT AND SUCH MOTOR VEHICLE WAS NOT INSURED AS REQUIRED BY SECTION 10-4-705 OR 10-4-716;

(d) SUCH INJURED PERSON WAS A NONOWNER OPERATOR OF A MOTOR VEHICLE INVOLVED IN THE ACCIDENT AND CANNOT ESTABLISH HIS OR HER FINANCIAL RESPONSIBILITY AS REQUIRED PURSUANT TO SECTION 10-4-705 OR 10-4-716; OR

(e) SUCH INJURED PERSON WAS OPERATING A MOTOR VEHICLE WHILE SUCH PERSON'S LICENSE WAS UNDER RESTRAINT IN VIOLATION OF SECTION 42-2-138, C.R.S.

(3) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN INSURER SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, UNDER A POLICY OF LIABILITY OR UNINSURED OR UNDERINSURED MOTORIST INSURANCE TO INDEMNIFY FOR NONECONOMIC DAMAGES OF A PERSON INJURED AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

(4) SUBSECTION (2) OF THIS SECTION SHALL NOT APPLY IN THE EVENT A PERSON DESCRIBED IN PARAGRAPH (c) OR (d) OF SUBSECTION (2) OF THIS SECTION SUSTAINED INJURIES CAUSED BY A PERSON WHO, AT THE TIME OF THE ACCIDENT, WAS OPERATING HIS OR HER MOTOR VEHICLE WHILE UNDER THE INFLUENCE IN VIOLATION OF SECTION 42-4-1301, C.R.S., AND WAS CONVICTED OF THAT OFFENSE, OR IF THE INJURIES WERE IN ANY WAY CAUSED BY A MOTOR VEHICLE ACCIDENT IN WHICH THE NEGLIGENT DRIVER WAS ENGAGED IN THE COMMISSION OF, OR FLIGHT FROM, A FELONY.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to causes of action filed, and insurance policies issued or renewed, on or after the effective date of this act.

title is suspended, revoked, cancelled, limited, restricted, or denied or a vehicle is impounded by **that** [THE] department. If action is required under this section and prior opportunity for a hearing cannot be afforded, the **appropriate** department shall promptly give notice of the opportunity for a hearing as soon after the action as possible to the parties concerned.

(b) The notice under this section must state the reasons for the [DEPARTMENT'S] proposed action **of the Department of Public Safety or of the Department of Administration,** and **must** provide for a reasonable attendance date of not less than 10 days after service of the notice. If there is no request for a hearing by the attendance date specified in the notice, the hearing is considered to have been waived.

*** Sec. 40.** AS 28.05.141 is amended to read:

Sec. 28.05.141. Hearings and appeals. (a) Unless otherwise specifically provided, all hearings required under this title or regulations adopted under this title shall be conducted by the **Department of Public Safety or the Department of Administration, as appropriate,** [DEPARTMENT] under regulations adopted by the **appropriate** commissioner governing practice and procedure and consistent with due process of law. Hearings must be informal, and technical rules of evidence do not apply. A person who requests a hearing may retain an attorney. The hearing officer shall be appointed by the **appropriate** commissioner and may be appointed from the department **conducting the hearing**. A hearing officer need not be an attorney, but must be impartial and may not have participated in the decision that is under review. The hearing officer does not have to file a full opinion or make formal findings of fact or conclusions of law, but the hearing officer must state the reasons for the determination and indicate the evidence relied upon. The proceedings at the hearing shall be recorded.

(b) A hearing ordered under (a) of this section must be held by telephone unless the hearing officer finds that a telephonic hearing would substantially prejudice the rights of the person involved in the hearing or that an in-person hearing is necessary to decide the issues to be presented in the hearing. An in-person hearing must be held at the office of the **Department of Public Safety or of the Department**

Finally, we calculated relative savings under the proposition as the percentage difference between the break-even premium under the current system and the one under the proposition.

We focused on the effects of the proposed plan on auto insurers' compensation costs, including both the amounts they pay out in compensation and the transaction costs they incur in providing that compensation. We neglected the many other factors (e.g., insurers' overhead, profit margins, and investment income) that also affect insurance premiums.

We focused on the relative costs of the two insurance systems. Because any factors that proportionately affect costs under both the current system and the proposed plan net out in the comparison, the results are insensitive to changes in such factors over time.

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[1] *Economic losses* include an accident victim's medical costs, lost wages, burial expenses, replacement service losses, and other pecuniary expenditures. *Non-economic losses* include physical and emotional pain, physical impairment, mental anguish, disfigurement, loss of enjoyment, and other nonpecuniary losses.

[2] Felons would be allowed to collect damages for intentional acts of harm against them.

[3] The data were collected by the Insurance Research Council (1994) from 61 insurance companies that together accounted for about 77 percent of California's private-passenger automobile insurance (by premium volume) in 1992.

[4] See Carroll, Abrahamse, and Vaiana (1995).

[5] Insurance Research Council (1994) provides a detailed description of the data.

[6] Carroll et al. (1991), Appendix D, describe the data and methods used to estimate insurers' transaction costs.

[7] We do not include claimants' legal costs, the value of claimants' time, or the costs the courts incur in handling litigated claims. Those costs do not affect insurers' costs and, hence, do not affect auto-insurance premiums.

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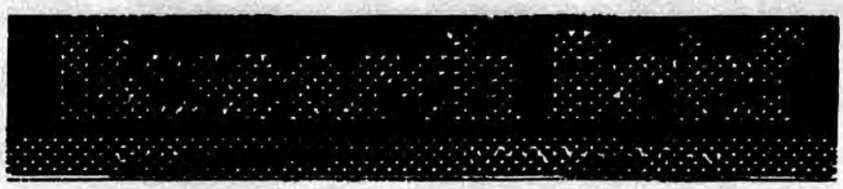
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Choosing an Alternative to Tort

Escalating auto insurance premiums have been a major public policy issue at the state level for the last three decades. *No-fault* auto insurance, spawned in the 1970s, was one response, offering cost savings to motorists and speedier compensation to auto accident victims. But because it required claimants to give up rights to seek compensation through the courts unless their losses exceeded a specified threshold, many states found it an unappealing alternative.

Choice auto insurance was proposed to address this concern. Under a choice auto insurance system, drivers may choose either a traditional auto insurance plan (tort) or a no-fault plan. Those who choose tort retain traditional tort rights and liabilities. Those who choose no-fault neither recover, nor are liable to others for, noneconomic losses (typically, pain and suffering) for less-serious injuries incurred in auto accidents.

Giving motorists a choice of coverage has strong appeal. But how does the choice alternative affect the premiums motorists pay? In a series of analyses, Stephen Carroll and Allan Abrahamse estimated how a choice auto insurance plan would affect insurance premiums in each state. Their basic finding: Overall, choice auto insurance could reduce the price tag for auto insurance by about 30 percent.

Approach

To understand the cost effects of choice auto insurance, the researchers estimated how a plan that offers a choice between tort and no-fault would affect the costs of auto insurance in each state that now relies on the traditional tort system. The plan they analyzed is *absolute no-fault*, the most extreme version of choice: Motorists may never sue, or be sued, for noneconomic loss. Thus, these estimates suggest the upper bound on the savings that can be accomplished in each tort state via the choice approach.

The researchers also estimated the cost effects of a choice plan in each state that already has some form of no-fault auto insurance. These estimates suggest the upper bound on the savings that can be accomplished in current no-fault states by extending the no-fault concept to its limit.

Results for Each State

In the tort states, the costs of compensating accident victims on behalf of drivers who elect no-fault would be at least 60 percent less than they would have been if those drivers had been insured under the traditional tort system. These savings include both the compensation paid to accident victims and the transactions costs incurred in providing that compensation.

If these savings are passed on to consumers, drivers in tort states who select choice could buy personal injury coverages for about 60 percent less than they pay for those coverages under the tort system. Because coverages for personal injury and property damage each account for roughly half of total auto insurance compensation costs, this 60 percent reduction translates roughly into a 30 percent reduction in a driver's total auto insurance premium. Premiums are unchanged for motorists who choose to remain in the traditional tort system.

In most no-fault states, a choice plan would have a similar effect on the costs of compensating accident victims and, again assuming that insurer savings are passed on to consumers, would result in similarly lower insurance premiums. And in most no-fault states, drivers who preferred to retain their current

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no-fault plan would pay no more for personal injury coverage than under the current system.

The savings an individual driver will realize from a choice system do not depend on the proportion of uninsured drivers in a state's current system, the proportion of previously insured who switch to absolute no-fault, or the proportion of the previously uninsured who switch to absolute no-fault. The effects of the plan on the total costs of auto insurance do depend on how many drivers choose to switch to the absolute no-fault option.

Nationwide, the reductions in personal injury premiums resulting from choice could be enormous. For example, if every currently insured driver in the country were to choose absolute no-fault, total auto insurance premiums in 1993--the last year for which data are available--would have been $26 billion lower. The table shows the relative savings for motorists in each state.

In addition to the savings in premiums, choice has another important cost effect. Because the no-fault premium is much lower than the premium for mandatory coverage under a tort system, some motorists who chose to drive without insurance under tort will choose no-fault. These uninsured drivers who switch to no-fault could contribute $1 billion to $4 billion to the compensation system nationwide.

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Automobile Insurance Savings in Each State Under Choice[1]

State	% Premium Savings for All Motorists (assumes 50% of insured motorists choose absolute no-fault)	% Premium Savings for Low-Income Motorists (assumes 50% of insured motorists choose absolute no-fault)	Total savings, $ millions (assumes all insured motorists choose absolute no-fault)
Alabama	19	38	178
Alaska	28	49	39
Arizona	37	53	533
Arkansas	28	47	126
California	35	53	3622
Colorado	31	47	466
Connecticut	41	57	679
Delaware	24	37	82
Florida	32	44	1366
Georgia	24	42	387
Hawaii	40	55	229
Idaho	26	44	74
Illinois	33	47	772
Indiana	27	45	454
Iowa	27	46	197
Kansas	19	34	96
Kentucky	14	21	40
Louisiana	25	44	368
Maine	31	51	114
Maryland	36	56	661
Massachusetts*	41	57	1134
Michigan	18	36	837
Minnesota	32	49	483
Mississippi	20	44	307
Missouri	28	44	425
Montana	33	51	74
Nebraska	23	46	113
Nevada	36	56	194
New Hampshire	28	42	92
New Jersey	29	39	1044
New Mexico	33	52	173
New York	40	54	2364
North Carolina	22	47	668
North Dakota	21	36	36
Ohio	20	47	843
Oklahoma	28	46	276
Oregon	29	43	272
Pennsylvania	24	41	1064
Rhode Island	28	41	103
South Carolina	26	45	346
South Dakota	24	38	61
Tennessee	22	36	341
Texas	26	34	1869
Utah	28	46	128
Vermont	21	36	31
Virginia	24	39	474
Washington	37	53	821
West Virginia	27	44	260
Wisconsin	31	53	443
Wyoming	22	36	41
All states	31	49	29100

[1] The choice plan examined here is described in J. O'Connell, S. J. Carroll, M. Horsefitz, and A. Abrahamse, "Consumer Choice in the Auto Insurance Market," *Maryland Law Review*, Vol. 52, 1993. Reprinted as RAND RP-254, 1994.
*Insurance system changed since January 1, 1988.

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RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as follows: S. J. Carroll, J. S. Kakalik, N. M. Pace, and J. L. Adams, *No-Fault Approaches to Compensating People Injured in Automobile Accidents*, R-4019-ICJ; S. J. Carroll and J. S. Kakalik, "No-Fault Approaches to Compensating Auto Accident Victims," *The Journal of Risk and Insurance*, Vol. 60, No. 2, 1993, reprinted as RP-229; J. O'Connell, S. J. Carroll, M. Horowitz, and A. Abrahamse, "Consumer Choice in the Auto Insurance Market," *Maryland Law Review*, vol. 52, 1993, reprinted as RP-254; A. Abrahamse and S. J. Carroll, *The Effects of a Choice Auto Insurance Plan on Insurance Costs*, MR-540-ICJ; J. O'Connell, S. J. Carroll, M. Horowitz, A. Abrahamse, and D. Kaiser, "The Costs of Consumer Choice for Auto Insurance in States Without No-Fault Insurance," *Maryland Law Review*, Vol. 54, No. 2, 1995; J. O'Connell, S. Carroll, M. Horowitz, A. Abrahamse, and P. Jamieson, "The Comparative Costs of Consumer Choice for Auto Insurance in All Fifty States," *Maryland Law Review*, forthcoming.

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Issue Paper

September 1996

The Effects of Proposition 213 on the Costs of Auto Insurance in California

Stephen J. Carroll and Allan F. Abrahamse

What Is Proposition 213?

The cost of automobile insurance has been a major public policy issue in California, as in many other states, for more than a decade. A variety of public and private organizations and individuals have proposed alternative, purportedly less expensive, automobile insurance plans. But, to obtain the savings from such plans, the state would have to limit the compensation traditionally provided to people injured in auto accidents. To date, policymakers confronted with this trade- off have not been willing to limit accident victims' compensation rights.

Proposition 213, the Personal Responsibility Act of 1996, has qualified for the November 1996 California ballot. The proposition differs from previous proposals in that it would limit the compensation rights of only those people who were breaking certain laws when they were injured. If approved, the proposition would bar drunk drivers and uninsured motorists from compensation for any non-economic losses[1] resulting from auto accident injuries. It would also bar compensation for any loss incurred by felons who were involved in auto accidents while committing crimes or fleeing from them.[2]

We estimated the likely effects of the proposition's provisions regarding uninsured or drunk drivers on the costs of private-passenger auto insurance. Because of data limitations, we did not consider the provisions' effects regarding felons or its effects on the costs of commercial auto insurance.

Key Findings

Our analyses suggest that the proposition would reduce auto insurance costs. If current claiming, negotiating, and insurance-purchase patterns persist, the proposition would reduce auto insurers' compensation costs for personal injuries by about 10 percent relative to the costs under California's current auto insurance rules. Given the past relationship between compensation costs and auto insurance premiums in California, this difference would translate into a reduction of about 5 percent in the average California driver's auto insurance premiums.

To put this estimate in perspective, we estimated what auto insurance premiums would have been in 1994, the most recent year for which we have data on total auto insurance premiums, if the proposition had been in force then. Statewide, California drivers' auto insurance premiums would have been about $550 million lower if the proposition had been in force in 1994, a reduction of roughly $40 to the average California insured driver.

Our results address relative costs; they show the difference between what will happen if the current system is retained and what would occur if the proposal is adopted. We do not suggest that auto

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insurance costs will necessarily fall if California adopts the proposal. Proposition 213 may not reverse the long-term trend toward higher auto insurance costs. Rather, we suggest that Proposition 213 will slow the rate of growth in premiums so that future premiums would be roughly 5 percent less, on average, than they would be if the current system is not modified.

Our results address the effects of the proposition on the average California driver. Both the expected costs of insuring a driver under the current auto insurance system and the likely effects of the proposition vary from one part of the state to another. For example, the uninsured-motorist rate is much higher in urban areas than in rural areas. Consequently, the savings that would result from limiting compensation to uninsured drivers injured in auto accidents would be greater in urban areas.

Because approval of the proposition could engender changes in behavior, we recalculated our estimates under different sets of assumptions incorporating such changes. We also explored the sensitivity of these results to sampling error. Although the precise estimates vary from one set of behavioral assumptions to another, the results generally suggest that the proposition would cut the costs of compensating auto accident victims by 10 to 13 percent. Thus, our basic conclusion--that Proposition 213 would result in savings of about 5 percent on the average driver's auto insurance premiums--holds for all the alternatives we considered.

The Probable Effects of Proposition 213: Detailed Discussion

The traditional rules of the tort system govern recovery for auto accident injuries in California. An accident victim may seek compensation for all economic and non-economic losses from the driver who caused the accident. However, the victim is entitled to compensation only to the degree that the other driver is responsible for the accident.

Proposition 213 would eliminate compensation for non-economic losses to uninsured motorists and to drunk drivers injured in auto accidents. The proposition would not affect the rights of these drivers to compensation for economic losses. Nor would it affect the compensation rights of any other person injured in an auto accident--insured, sober drivers; passengers; pedestrians; bicyclists; etc.--including passengers injured while riding in cars operated by uninsured or drunk drivers.

In sum, the only accident victims that would be affected by the proposition are

- uninsured or drunk drivers injured by an insured driver
- drunk drivers covered by uninsured-motorist insurance injured by a negligent, uninsured motorist.

The savings achieved by the proposition would be the amount of compensation for non-economic loss that would be paid to these victims under the current law, plus the transaction costs--claims handling and defense costs--that insurers would have incurred in providing that compensation.

To estimate the effects of Proposition 213, we used data derived from a representative sample of California auto- accident injury claims closed with payment during 1992.[3] For purposes of the analysis, we assume that the distributions of accidents, losses, and claimants reported in those data are representative of the corresponding future distributions. We also assume that, in the future, 30 percent of California drivers will be uninsured and that 90 percent of insured drivers will purchase uninsured-motorist coverage.

Given these assumptions, we estimate that about 11 percent of future California auto accident victims will be uninsured drivers injured by an insured driver. Another 2 percent of future victims will be insured drunk drivers who are either injured by another insured driver or are injured by an uninsured motorist and have uninsured-motorist coverage. In all, the proposition would bar compensation for non-economic loss to about 13 percent of auto accident victims. If the costs of compensating uninsured or drunk drivers hurt in auto accidents are reduced by the average compensation for non-economic loss paid California drivers hurt in auto accidents, plus the associated transaction costs, the total costs of

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compensating auto accident victims would fall about 10 percent.

Personal-injury coverages account for about half of auto- injury premiums; property-damage coverages account for the other half. Thus, a 10 percent reduction in the costs of compensating auto accident victims translates into a 5 percent reduction in total auto insurance premiums. In 1994, total auto insurance premiums in California added up to more than $11 billion. Accordingly, if Proposition 213 had been in force then, the costs of auto insurance in 1994 would have been about $550 million lower:

- Drivers denied compensation for non-economic losses because they were drunk or uninsured when they were injured would have lost about **$360 million**. (Because some accident victims are represented by attorneys paid on a contingency fee basis, a cut of $360 million in accident victims' gross compensation would be divided between the victims--in the form of lower net compensation--and attorneys--in the form of lower fees.)
- Because insurance companies would have faced smaller claims from drunk and insured drivers injured in accidents, they would have had to pay about **$70 million** less in claims handling and defense costs.
- Finally, if insurance companies' other costs (overhead expenses, selling expenses, taxes, and license fees) vary in proportion to premiums, the companies would be able to cut premiums **$118 million** and still earn the same rate of profit.

Possible Behavioral Responses to Proposition 213

The estimates described above assume that past behaviors persist. But it is possible that people will change their behavior if Proposition 213 is adopted. We speculated about what some of these possible behavioral changes might be, modified our model to reflect alternative behavioral assumptions, and re-estimated the proposition's effects. We emphasize that we have no evidence that any of these behavioral changes *will* occur if the proposition is approved. Our purpose is to identify the extent to which our estimates are sensitive to the behavioral assumptions that underlie the calculations.

It is possible that the **claiming behavior** of uninsured or drunk drivers might change if they could no longer obtain compensation for non-economic loss. We have found evidence of extensive excess claiming for medical costs in auto personal-injury cases across the United States, and particularly in California.[4] California's current system encourages excess claiming as a means for leveraging greater compensation for non-economic loss; by eliminating that incentive to affected drivers, Proposition 213 would discourage fraudulent or excessive claims. At the same time, many accident victims rely on compensation for non-economic loss for the funds needed to pay their attorney; eliminating this source of funds to affected drivers may reduce their ability to obtain an attorney and, consequently, may discourage some legitimate claims.

The civil justice policy implications of reducing the frequency of excessive claims are very different from the policy implications of reducing the frequency of legitimate claims. But from a cost perspective, the two look the same: Fewer claims imply lower costs.

To estimate how reducing the frequency of claims--excessive claims, legitimate claims, or some combination--would affect costs, we assumed that adoption of Proposition 213 would result in either a 25 percent or a 50 percent reduction in the frequency of claims by drunk and uninsured drivers, and estimated what the savings would be in each case.

The **negotiating behavior** of accident victims, of their attorneys, or of claims adjusters might change if the proposition is adopted. In many cases, objective measures of an accident victim's non-economic losses or of the insured's negligence or both are not available and are determined in the course of negotiations. Our data reflect the results of those negotiations as they are conducted in the context of California's current insurance system. It is possible that under the proposition those involved in resolving a claim by an uninsured or drunk driver will agree on a compensation figure that is less than

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what would have been paid under the current system, but not by the full amount that our data suggest is being paid for non-economic loss.

To estimate how a partial, rather than full, elimination of compensation for non-economic loss to uninsured or drunk drivers would affect our estimates, we assumed that, despite the formal provisions of Proposition 213, uninsured or drunk drivers injured in auto accidents would be compensated for either 25 percent or 50 percent of their non- economic loss and estimated what the savings would be in each case.

Adoption of the proposition could also change some drivers' **insurance-purchase behavior.** The potential costs of going uninsured would be increased--uninsured drivers would not only be in violation of the law, they would not have access to compensation for non-economic loss if they were injured in an auto accident. At the same time, the proposition would reduce the costs of purchasing auto insurance relative to the current system. It is possible that some drivers who would go uninsured under the current system will choose to purchase insurance under the proposition.

To estimate how an increase in the fraction of drivers who purchase insurance would affect our estimates, we assumed that either 25 percent or 50 percent of the uninsured-motorist population chooses to purchase insurance and estimated what the savings would be in each case.

Our estimates are based on data obtained in a sample of claims; they are subject to **sampling error.** Some of these claims were high-dollar claims, and it is possible that these high-dollar claims had an undue influence on our results. However, high-dollar claims are a fact of life, and although they are relatively rare, they might indeed have a real influence on savings under the proposition.

To examine the possible effect of sampling error on our results, we estimated the proposition's cost effects under three very different assumptions about the sample: (1) We used all the cases in our sample. (2) We dropped the 10 percent of all cases with the greatest economic loss. (3) We doubled the economic loss of cases in the top 10 percent of all cases. It is unlikely that the effect of sampling error in a file of 6,000 cases would be as great as the effect of discarding or doubling the top 10 percent of the sample.

In sum, we considered the sensitivity of our results to three alternative assumptions about the values of each of four factors: claim frequency, the fraction of non-economic loss compensated, the percentage of uninsured drivers induced to purchase insurance, and the frequency of very large claims. We calculated relative savings under Proposition 213 under all 81 combinations of the four factors over the three levels discussed above.

Table 1 shows the results of these calculations.

Table 1

Relative Proposition 213 Savings (%) Under Alternative Assumptions

			Cost Savings Estimates		
Claiming Rate	Proportion of Non-Economic Loss Compensated	Percentage of Uninsured Drivers Getting Insurance	Nominal	Drop Top 10%	Double Top 10%
No claiming reduction	No non-economic loss	0%	10.0	9.0	10.8
		25%	11.2	10.4	12.2

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		50%	12.4	11.9	13.6
	25% of non-economic loss	0%	7.5	6.7	8.1
		25%	9.2	8.7	10.1
		50%	11.0	10.7	12.1
	50% of non-economic loss	0%	4.9	4.5	5.3
		25%	7.3	6.9	7.9
		50%	9.6	9.4	10.5
25% claiming reduction	No non-economic loss	0%	11.4	10.5	12.2
		25%	12.3	11.7	13.3
		50%	13.2	12.8	14.4
	25% of non-economic loss	0%	9.5	8.8	10.1
		25%	10.8	10.3	11.7
		50%	12.2	11.9	13.3
	50% of non-economic loss	0%	7.6	7.1	8.1
		25%	9.4	9.0	10.1
		50%	11.1	10.9	12.1
50% claiming reduction	No non-economic loss	0%	12.8	12.0	13.6
		25%	13.4	12.9	14.4
		50%	14.1	13.7	15.2
	25% of non-economic loss	0%	11.5	10.9	12.2
		25%	12.4	12.0	13.3
		50%	13.3	13.1	14.5
	50% of non-economic loss	0%	10.3	9.8	10.9
		25%	11.4	11.1	12.3
		50%	12.6	12.4	13.7
Maximum			14.1	13.7	15.2
Top quartile			12.4	12.0	13.5

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Data and Methods

We obtained data from closed-claim surveys conducted by the Insurance Research Council.[5] These surveys obtained detailed information on a random sample of about 6,000 California auto-accident injury claims closed with payment during 1992 under the principal auto-injury coverages. The data describe each victim's accident, resulting injuries and losses, and the compensation obtained from auto insurance. We combined data from several sources to estimate insurers' transaction costs,[6] including both allocated loss-adjustment expenses--costs, primarily legal fees and related expenses, incurred on behalf of and directly attributed to a specific claim--and unallocated, or general claim-processing costs, for each line of private-passenger auto insurance.[7]

We estimated the effects of Proposition 213 on insurance costs by comparing the costs of compensating the accident victims in the sample under the current insurance system with the costs of compensating the same victims, for the same injuries and losses, under Proposition 213. We included all accident victims--insured and uninsured drivers, passengers, pedestrians, bicyclists, people injured in single-car accidents, etc.--in these calculations.

We assumed that the proportion of drivers who will purchase each available type of auto insurance personal-injury coverage and, by implication, the proportion of drivers who will go uninsured under California's current system will be about the same as those today. Given these assumptions, we computed the probability that an accident victim will have access to compensation under each coverage, multiplied by the average compensation paid California accident victims under that coverage, and summed over all coverages to estimate insurers' expected compensation costs under the current system. We then estimated a *break-even premium* for the current system--the amount insurers would have to charge the average insured driver to just recover what they paid out in compensating victims and the transaction costs they incurred in providing that compensation.

We assumed that drivers would make the same insurance- purchase decisions under the proposition and, by implication, that the same proportion of drivers would go uninsured. We computed insurers' expected compensation costs under these assumptions, and estimated the break-even premium under the proposition--the amount insurers would have to charge insured drivers to just recover compensation costs.

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FROM: ***James R. Jinks, Legislative Counsel***

DATE:

OPERATOR: ***Diana J. Newman***

PAGES TO FOLLOW: 12

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COMMENT:

Thought These might be of some interest.