LEGAL INSURANCE

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

SECTION III **COMPARATIVE ANALYSIS OF SELECTED PREPAID LEGAL SERVICE PLANS ALLOWING FREE CHOICE OF LAWYER**

BENEFITS OFFERED

Plan	1. Advice and Consultation	2. Office Work	3. Judicial/Administrative Proceedings
I. SHREVEPORT BAR PLAN (operative) [Benefits allocated by dollar amount for lawyer functions performed; co-insurance available if defendant only] (No fixed hourly rate of charge – whatever lawyer would normally bill) (All civil and criminal covered except exclusions)	$100 worth per year, not to exceed $25.00 per visit (No deductible)	$250 worth per year for Conferences, Negotiations, Investigation and Research [Excluding legal research but including title examination and expenses "reasonably necessary to the adequate legal representation of the client"], Letter Writing and Document Drafting and Review or Filling out of Forms ($10 deductible)	$325 for preparation and filing of pleadings and briefs and attendance at trial. (Benefit C–$25 deductible if plaintiff; none if defendant.) $40 for court costs and witness fees. $150 for out-of-pocket expenses and costs (depositions, toll calls, etc.)
II. LOS ANGELES COUNTY BAR PLAN (Proposed June 28, 1971) (Fees allowable in fee schedule computed on hourly rate of $30 per hour)	PREPAID BENEFIT includes (1) legal check-up; 2 hours of consultation and advice (may be divided into 4–½ hour segments); (3) preparation of simple document (like non-trust will); (4) fixed fee schedule for specified services No minimum percentage of group must enroll. No deductible COMPREHENSIVE BENEFIT allows (1) legal research – 2 hours; (2) $40 worth of document preparation; (3) negotiation - 2 hours; (4) legal defense – one day; (5) scheduled services up to $[illegible]; (6) Supplementary services up to $1,000 25% of group must enroll Deductible of $10 payable on benefits (1) and (2). (3) and (4) limited to cases where client is defendant or respondent in court or administrative tribunal. (5) and (6) require payment by client of 20% of fees with Plan paying 80%.		
III. OTHER VARIATIONS 1. Plan A (Model Plan suggested by Preble Stolz in 1968. See University of Chicago Law Review 417, at 455-466)	One hour per year on any problem except preparation of tax returns No deductible	No provision for office work as a separate benefit, but 1 additional hour of consultation (without counting against benefit under (1)) if "scheduled" event occurred. At beginning would normally exclude all negotiation, research, etc., because of danger of lawyer abuse.	On happening of "scheduled" event client entitled to one day of lawyer time in court or before administrative tribunal. Client would have to be defendant or respondent. Fees payable by plan limited to $150 per day of trial. $100 for ½ day; $35 for appearances on motions.
2. Plan B [Benefits limited to $2,500 gross dollar amount per year per family, and only $500 "per case". Benefit amounts further limited by type of cases. i.e., bankruptcy, contested divorce.] (Basic hourly rate of charge is $30.00) (All civil and criminal covered except exclusions.)	[$500 worth of services (at hourly charge of $30) is available for benefits 1-3 above for each "case" subject to four limitations: (1) Maximum amounts established for specific types of cases; (2) Maximum for functional services; (3) Deductibles for specific types of cases; (4) Exclusions.] Maximums imposed ($100 deductible if starred*): (a) Workmen's Compensation. No attorneys' fees but up to $100 for filing fees, process service, depositions, reporters' fees, private investigations and photography (b) Adoptions. $150 (c) Bankruptcy. $200. For non-business and wage earner plans only. $50 additional if spouse joins in proceeding. (d) Probate.* $100. Only for matters not subject to administration of the court (e) Wills. $35. One will per family per year. (f) Real Property foreclosure. $300 when member is defendant. $200 when member is plaintiff* (g) Debt Collection. $200 when defendant in collection on note or chattel mortgage (h) Felony Criminal Defense. $1,000 (one per family per year) (i) Misdemeanor Defense. $300. (Excluding traffic) (j) Criminal Defense.* $300. For traffic offenses of DWI, Hit and Run, Reckless use, or drug offenses (k) Miscellaneous Criminal.* $200. All other misdemeanors except (j) above (l) Defense in Small Claims Court. $30.00 for defense cost of member where plaintiff has attorney. (m) 1. Contested Divorce (Dissolution) $500* 2. Uncontested Divorce or Annulment. $300* 3. Disputed Property Rights, Support, Custody, $75* (Payable in addition to 2 above) 4. Services after Judgment.* $150 For modification of decree.		
	$100 maximum for advice on matter unrelated to other specific type of case for which benefit provided. (No deductible)	$150 allowed for "settlement negotiations" if on case not specifically covered in benefit schedule ($100 deductible)	$150 allowed for attorneys' fees only where plaintiff has dropped action against defendant member ($100 deductible)
3. Plan C Based on a $25 hourly charge	The type of benefits provided by this plan would be almost identical with those provided under Plan B above. The same amount of fees for the same services are allowed with the exception of bankruptcy, defense of collections, misdemeanor and felony defense. For these matters the fees are substantially lower. Although the maximum benefit payable is $2,500 as in Plan A, no more than $500 shall be payable in the first year and the maximum would not be reached until the client has participated in the plan for 5 years. $20 are allowed for costs related to personal injury, workmen's compensation, and uninsured motorist cases.		

4. Co-Insurance	5. Exclusions
If defendant (or respondent), reimburse 80% of $1,000 of expense in excess of limits in Benefit C.	None as to advice component, but as to all other benefits. 1. Business Expenses 2. Controversies involving immediate parties to the Plan 3. Contingent fee cases 4. Fines and Penalties 5. Charges that are unreasonable 6. Filling out tax returns 7. Class actions (not involving immediate interest of member) 8. Where legal services provided through insurance or other means (group plan, etc.) 9. "Shopping"
	Exclusions apply to Comprehensive Benefit: 1. Services provided under Prepaid Benefit 2. Contingent fee cases 3. Liability insurance 4. Any other group legal service program 5. Available through any governmental body or otherwise provided without charge
To supplement benefit provided in (3) plan would pay for 10 additional days of trial. No contribution by client if defendant, but first trial day fees ($150) payable by client if plaintiff.	1. Insurance or other coverage 2. Contingent fee 3. Preparation of tax returns 4. Probate 5. Wage claims and Enforcement of Support Also, possibly: 6. Divorce 7. Criminal
No co-insurance for expenses in excess of $2,500 basic benefit.	(1) Preparation of income tax returns. (2) Probate proceedings, except as provided for herein. (3) Guardianship or Conservatorship proceedings. (4) Partnerships and/or joint ventures. (5) Corporations. (6) Patents and copyrights. (7) Proceedings under National Bankruptcy Act relating to joint ventures, corporations, or partnerships, and any business advice under Chapters 10, 11, or 12 of said Act. (8) Fines and/or penalties whether imposed by a court or other agency (9) Any judicial, administrative or arbitration proceeding wherein the Trust Fund, the Trustees herein, the Administrator of this Trust Fund, any Labor Union or any other person, firm, or organization that may be a party to this Trust Fund is either a plaintiff or a defendant, or the equivalent. (10) Services rendered in connection with arbitration hearings, except workmen's compensation litigation and uninsured motorist litigation. (11) Services rendered in connection with an appeal either from Civil, Criminal, Administrative, or Arbitration processes. (12) Any legal action herein which arose prior to the effective date of this Agreement, or prior to the eligibility of the "member", which ever is later. "Member" may not use as an excuse or defense the fact that said "member" was not aware of such legal action until after becoming eligible for benefits. (13) Any proceedings where the prayed for relief is within the jurisdiction of a Small Claims Court or its equivalent, except where other side has attorney. (14) Any case of proceeding where proof of benefit has not been properly submitted. (15) Legal representation which "Member" was eligible to obtain by reason of another program, plan, group arrangement, or insurance policy even though "member" failed to request such benefit of coverage.
	The exclusions are substantially identical to Plan B

OTHER CHARACTERISTICS

6. Choice of Lawyer and Operating Organization	Cost and other remarks
Any member of Shreveport Bar; lawyer submit bill at customary rates within 30 days and is paid within limits stated in Plan. Payment can be made to any duly licensed attorney in U.S. if covered member needs service elsewhere. Not for profit corporation. [501 (c) (3) status applied for] Directors appointed by Shreveport Bar Association	Union member contributes 2¢ per hour; grant from ABA covers part of administration expense; grant from Ford Foundation backstops benefit payments. True cost was estimated at 5¢ to 7¢ per hour; actual usage, however, indicates much less cost. Group–600 members plus dependents of Laborers Union. All members of group subscribe. No modification of Plan during its Term.
Free choice from members of panel who voluntarily enroll with LA Bar to provide scheduled services. Payment to be made to plan attorneys in accord with schedule of fees agreed to Probably a not for profit organization similar to Shreveport under control of LA County Bar.	Prepaid Benefit-$30 per year Comprehensive Benefit-$60 per year additional or total of $90 Group - California Teachers Association members in L.A. area. Enrollment is voluntary for Prepaid Benefit; 25% must enroll for Comprehensive to become effective
Free choice of lawyer. Possibly should form a not for profit entity like Blue plan with enabling legislation needed.	Estimated cost of $50 per year 100% group participation.
Any duly authorized attorney in U.S., Mexico, Canada For profit corporation organized as administration firm which sells its services to group or employer who form legal service programs. Agreement contemplated an employee trust or, later, jointly trusted organization that will be in control of plan.	Schedule of Benefits shown here is priced at 6.5c/ per hour; may be varied up or down by use of Relative Percentage Table. Changes or Modification. The Trustees, by majority vote, may change, modify, or terminate this agreement: a. Benefits payable hereunder may be revised as required by the Trustees, as experience dictates. b. Any change or modification of this agreement must be preceded by notification in writing, forwarded to all signatories to this Agreement by registered mail, to allow at least ten (10) days between the receipt of said notification and the effective date of such change, modification or termination.
Choice of lawyer is same as Plan B Organized as a corporation, probably for profit.	Cost is estimated at $2.25 per week ($124. 50 per year) for 100% participation of group to be covered

HOME ADDRESS
STAN BUNN
RT. 2, BOX 271
DAYTON, OREGON 97114

YAMHILL, MARION COUNTIES
DISTRICT 29

COMMITTEES
MEMBER:
AGRICULTURE AND
NATURAL RESOURCES
JUDICIARY

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

December 13, 1973

Representative Terry Gardiner
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative Gardiner,

A friend of mine, Mr. Bruce Botthelo, has indicated your interest in pre-paid legal services programs.

I was the primary sponsor of legislation which allowed the Oregon State Bar to set up a non-profit organization to administer such a program.

Pre-paid legal services is analogous to Blue Cross coverage in the medical field. I have enclosed a copy of House Bill 2289 for your use and have also enclosed a few other materials which I hope will be of help to you in reviewing the pre-paid legal services program.

Sincerely,

Stan Bunn

Stan Bunn

SB:mjb

House Bill 2289

Sponsored by Representative BUNN, Senators CARSON, EIVERS, Representatives BLUMENAUER, COLE, HAMPTON, KATZ, LANG, MARTIN, MARX, OAKES, PAULUS, RIEKE, R. STULTS, WHITING, C. WOLFER, Senators BROWNE, J. BURNS, COOK, MACPHERSON, ROBERTS, SMITH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as **introduced.**

Authorizes establishment of nonprofit corporation to provide insurance to cover cost of legal services. Prohibits distribution by corporation of any of its income to its members, directors, trustees or officers except for reasonable value of services rendered. Requires corporation to maintain capital or surplus of at least $25,000 and file surety bond in sum of $50,000. Subjects corporation to certain provisions of Insurance Code.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

1 A BILL FOR AN ACT

2 Relating to legal insurance; creating new provisions; and amending ORS
3 731.004 and 731.026.

4 **Be It Enacted by the People of the State of Oregon:**

5 Section 1. ORS 731.004 is amended to read:

6 731.004. ORS chapters 731, 732, 733, 734, 735, 737, 743, 744, 746, 748, 750 ,
7 [*and*] 751 **and section 3 to 6 of this 1973 Act** may be cited as the Insurance
8 Code.

9 Section 2. ORS 731.026 is amended to read:

10 731.026. The Insurance Code shall apply to:

11 (1) An educational institution or nonprofit corporation issuing annuity
12 policies in compliance with ORS 731.704 to 731.724, only as provided in such
13 sections.

14 (2) A fraternal benefit society complying with ORS chapter 748, only
15 as provided in such chapter.

16 (3) A health care service contractor complying with ORS chapter 750,
17 only as provided in such chapter.

18 (4) A motorist service club complying with ORS chapter 751, only as
19 provided in such chapter.

20 **(5) A legal service contractor complying with sections 3 to 6 of this**
21 **1973 Act, only as provided in such sections.**

22 **SECTION 3.** As used in sections 3 to 6 of this Act:

23 (1) "Attorney" means any person authorized to practice law in this
24 state.

25 (2) "Legal service contractor" means any corporation organized not
26 for profit that is sponsored by or otherwise intimately connected with a
27 group of attorneys.

28 (3) "Legal service" means any service furnished by an attorney that is
29 within the scope of the practice of law.

30 **SECTION 4.** No legal service contractor shall distribute, upon liquida-
31 tion or otherwise, any part of its income to its members, directors, trustees
32 or officers except for the reasonable value of services rendered such con-
33 tractor.

34 **SECTION 5.** (1) A legal service contractor shall possess and there-

1 after maintain capital or surplus, or any combination thereof, of not less
2 than $25,000.

3 (2) In addition to its required capitalization the legal service contractor
4 shall file a surety bond or such other bond or securities in the sum of
5 $50,000 as are authorized by the Insurance Code as a guarantee of the due
6 execution of the policies to be entered into by such contractor in accord-
7 ance with sections 3 to 6 of this Act.

8 **SECTION 6.** (1) The following provisions of the Insurance Code shall
9 apply to legal service contractors to the extent so applicable and not in-
10 consistent with the express provisions of Sections 3 to 6 of this Act:

11 (a) ORS 731.004 to 731.026 and 731.032 to 731.150, 731.204 to 731.280 and
12 731.284 to 731.354, 731.382, 731.386, 731.398 to 731.430, 731.450, 731.454, 731.504,
13 731.508, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 and 731.844 to
14 731.992.

15 (b) ORS 732.230, 732.245, 732.250 and 732.505 to 732.570.

16 (c) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210 to 733.680 and
17 733.720 to 733.780.

18 (d) ORS chapter 734.

19 (e) ORS 743.003 to 743.012, 743.021, 743.036, 743.042 to 743.051, 743.054
20 to 743.096 and 743.114.

21 (f) ORS 744.005 to 744.265.

22 (g) ORS 746.005 to 746.045, 746.065, 746.075, 746.100 to 746.130, 746.160
23 to 746.210 and 746.230 to 746.370.

24 (2) For the purposes of this section only, legal service contractors shall
25 be considered insurers.

PROPOSALS FOR A PREPAID LEGAL SERVICE PLAN

Submitted by the subcommittee on Prepaid Legal Services of the Committee on Availability of Legal Services to the moderate-income public

The following proposals have been prepared as part of a study commenced by the General Practice Section in 1967 to determine methods by which legal services may be made more available to the American people. Perhaps the greatest obstacle to utilization of legal services by the middle-or moderate-income public is fear of cost. To a large measure this concern can be overcome if the cost of needed legal services has been prepaid. A substantial reduction in the cost of legal services to an individual can be realized if the risk is spread over a large group.

The proposals set forth below have not been approved by the General Practice Section or the American Bar Association. They have been drafted only for the purpose of illustration in the belief that state and local bar associations may find them helpful in considering whether or not to adopt a plan of Prepaid Legal Services. The benefits to be offered, the charge for subscription to the plan and the amount to be paid attorneys for services under the plan all depend upon local conditions and negotiations between the entity administering the plan and groups contracting for benefits under the plan.

The proposals contain the following principal features:

1. Administration by a nonprofit corporation the directors of which are initially at least to be named by the sponsoring bar association.

2. Utilization of an "open panel" of attorneys, i.e., all members of the sponsoring bar association will be eligible to render services and the clients covered by the plan will have the freedom of choice of counsel.

3. "Basic Benefits" designed to encourage "preventive law" and to include one hour for a "legal checkup" and three hours of advice and consultation.

4. Use of the lawyers referral system for those clients who request assistance in the selection of attorneys.

The General Practice Section Subcommittee in making this report hopes that the following suggestions it has drafted will be of assistance to bar associations interested in sponsoring prepaid legal plans.

Proposals for a Prepaid Legal Service Plan

1. Administration

A nonprofit corporation should be organized to administer the Plan. Suggestions as to the administering corporation are set forth under paragraph 10. Such an administering corporation is hereinafter referred to as "the corporation."

State bar associations will in many instances be the appropriate body to initiate the organization of the corporation. Local bar associations will be appropriate in those instances where the members of the group contracting with the corporation live and work in the area over which the local bar association has jurisdiction. No bar association should undertake to organize a corporation and sponsor the plan until its membership has been fully informed as to the terms of the plan and have indicated that they support the plan and that a substantial number are willing to serve as counsel under the plan.

2. Attorney Co-operation

All attorneys in good standing will be invited to join the plan. They will constitute a panel from which the subscribers will have an absolute choice of selection. Bar-sponsored lawyer referral systems should be used to assist members who have not established a relationship with a particular lawyer.

The attorneys who join the panel will initially act as co-insurers. "Co-insurance" in this context means that the attorneys rendering services under the plan will bear the risk that the plan may be unable to pay the cost of services rendered. Panel attorneys will agree not to charge at a rate greater than that provided under the plan and that their claims may be met in stages. When a claim submitted by an attorney has been approved by the corporation, the attorney shall be entitled to an initial reimbursement of 50 percent of the claim. At the end of the financial year, the balance of the claim will be paid to the extent that there are funds sufficient to meet the claims of all attorneys.

It is expected that the hold-back will be necessary only for the first several years of the plan and until experience has demonstrated that the charge and schedule of legal services are actuarially correct.

3. Costs of Administration and Reserve Fund

It is recommended that 20 percent of the income derived from payments by the subscribing group be set aside in equal proportions to pay the costs of administration and establish a Reserve Fund. E.g., if the gross payments are $180,000, $18,000 should be set aside to meet costs of administration and $18,000 should be set aside as a reserve. Thus the corpus to which the attorneys may look for reimbursement would be $144,000. Monies in the Reserve Fund equal to 10 percent of the annual income from

subscribers should be invested at the discretion of the Board.

The primary purpose of the Reserve Fund would be to provide for any unforeseen contingency which may arise in the form of attorneys' claims or administrative costs. Thus when the holdback is discontinued, there may be years in which claims exceed payments and the reserve fund would be required. After five years of operation, 50 percent of the Reserve Fund may be used to pay off any outstanding claims of attorneys during the hold-back period.

4. *Adjustment of Subscription Payments and Dollar Benefits*

If experience reveals that the amounts charged are excessive, the corporation in conjunction with the group management would have the power to reduce dues or increase benefits. Conversely, if the amounts charged are not sufficient to carry on the program, the corporation and the group management may negotiate an actuarially realistic set of charges and benefits.

The corporation will have the discretion to increase or decrease the attorneys' fees or to otherwise alter the schedule of services but only prospectively, if in the corporation's opinion such action is warranted by a change in the economy or in the fee structure of the bar.

5. *Contracts to be made with Groups*

Services should be contracted for by a group of individuals for two reasons. The group can be charged with the task of collecting the subscribers' fees. Collection of fees from individuals would greatly increase the administrative costs of the plan. If contracts are made on an individual basis, it is likely that the large majority of persons who subscribe would already have legal problems and immediately utilize the benefits, making the plan unworkable and uneconomical.

6. *Description of Subscribing Groups*

The subscribing group may be any professional association, trade association, union or other nonprofit organization, or combination of persons, incorporated or otherwise.

The members covered by the plan and referred to as subscribers are:

i) Persons who have been certified by the contracting group as being members in good standing until written notice to the contrary is given to the corporation by a responsible officer of the group.

ii) The group member's spouse, unless legally separated or divorced.

iii) All unmarried children of the group member, including any stepchild, legally adopted child, or foster child under 19 years of age and unmarried children under 23 years of age attending college or university full time, financially dependent upon their parents.

7. *Charges and Benefits Available*

The optimum group should consist of approximately 1,000 members. The plan should contain a detailed schedule of benefits to avoid confusion and misunderstanding by attorneys as well as subscribers.

It is estimated that no benefits of any substance can be provided at less than $100 per year. Recently, a union made demand on management for $[illegible]00 per member per year for legal services. Another group estimated the cost per member at $500 per year. It is at this time unlikely that the public can be persuaded to prepay legal expenses at such a high rate. It is believed that $10 to $15 per month would be an acceptable charge. One of the plans provided by "legalcare," a private firm in California offering "closed-panel services," charges $15.00 per participant per month for coverage comparable to the benefits proposed herein.

8. *Basic Benefits*

One of the most attractive features of prepaid legal service plans is the emphasis placed on preventive law and the availability of early consultation. Subscribers are encouraged to submit their problems for review and early correction. In order that the "Legal Check-up" will not preclude a person who feels that he has a legal problem from consulting an attorney, a further benefit "Advice and Consultation" should be included so that a covered member, subsequent to a legal check-up, will not feel inhibited if he believes that due to some new occurrence he has a legal problem.

The Basic Benefit should not be subject to any limitations or exclusions because of the desirability of encouraging subscribers to consult with attorneys and to obtain the benefits of preventive law. No charge should be made for the initial consultation where further benefits are incurred. An interview will often lead to other legal work and the charge for that work includes the interview.

9. *Additional Legal Benefits*

The most elaborate additional benefits will relate to litigation. The plan should be able to bear the cost of such services because of the low incidence of such claims. It is estimated that only about 5 to 10 percent of legal problems result in suit and only about 15 to 20 percent of these reach trial.

It has been suggested that divorce be excluded from the categories of benefits. Mr. Preble Stolz, professor of law, University of California, (35 *Univ. of Chicago Law Rev.* 417, 458) suggests that the plan can be effectively sold without including divorce notwithstanding the fact that a large majority of the claims involve domestic relations cases. Domestic relations cases have been included in the schedule of benefits because it is felt that the plan should offer benefits which the subscribers need and will use.

10. *Organizational Structure of Administering Corporation*

The membership of the corporation should consist of all the lawyers who are members of the sponsoring bar association and who agree to become members of the panel rendering services under the plan.

The Board of Directors should be composed entirely of active members of the sponsoring bar. Initially, the Board could be selected by the Board of Governors of the sponsoring bar on the basis of professional and business

ability. The subsequent selection of directors could be by election by the membership from persons nominated either by the Board of Governors or the general membership.

The By-Laws of the corporation should provide for no compensation for the directors. The By-Laws should also permit the creation of an Executive Committee of the Board at such times and for such purposes as the Board determines appropriate. The By-Laws should provide the appointment of an advisory committee for any purpose.

The success of the program would largely depend on a very competent staff, the size and composition of which will be left to the discretion of the Board of Directors. Provision should also be made for consultations with accountants, actuaries and others.

11. *Collection of Subscription Charges*
The subscribing group should be responsible for the collection of payments required for membership in the plan.

Payment should be due as of the subscriber's first day after the effective date of the agreement adopting the plan. Membership under the plan and the obligation to pay by a member of a group organized on the basis of employment should cease at the end of the pay period during which the employment is terminated, except that an employee who ceases work because of sickness or injury should be deemed to be still actively employed at work for a period of three months from the last day of the month in which such disability commenced.

Termination of employment should include voluntary termination, lay-off, discharge, work stoppage, or entry into active service in the armed forces of the United States or any State thereof, except as a member of a reserve organization for a training period of one month or less.

12. *Claims Procedure*
A. Subscriber contacts the Administrative Office of Corporation which may be at the office of the Group.

B. The office does not give legal advice. It verifies the coverage, partially completes the claim form and gives it to the subscriber. The subscriber is then free to contact the attorney of his choice who has enrolled in the panel. If the subscriber does not know any lawyer and wishes assistance in this regard, a bar-sponsored lawyer referral service will be recommended and if one is not available the office will refer him to a lawyer under procedures which may be devised by the Board of Directors.

C. The attorney completes the claim form stating the nature of the services rendered, the charges for the services and the result, if any, accomplished for the participant. The form is then returned to the Administrative Office.

D. The Office then verifies the result accomplished by securing the subscriber's confirmation, and if so confirmed, provides the office of the group of which the client is a member a copy of the confirmation.

E. If the subscriber does not confirm the attorney's reports, the attorney will be called upon to explain the nonconfirmation.

F. On being satisfied with the claim, the office pays the attorney within the amounts specified, and obtains a receipt from him.

G. It shall be the duty of the corporation to ascertain whether or not the attorney is providing professional services in a competent and ethical fashion.

13. *Maintenance of Ethical Standards*
When a subscriber selects an attorney and that attorney consents to represent him, the attorney-client relationship comes into existence. This relationship shall be inviolate, and under no circumstances will the powers granted to the corporation or its Board of Directors be construed to authorize any intereference whatsoever with the independent exercise of the professional judgment of the attorney. Furthermore, the professional responsibility of the attorney shall be maintained at its highest levels, and participation in the program shall not obligate an attorney to act in any manner which might be in derogation of his professional responsibility.

14. *Resolution of Disputes Arising Under Plan*

i) The corporation may entertain any grievance or complaint from a subscriber or from the group management.

ii) Any grievance relating to the quality of the services, scope of benefits available, charges or contributions or any other matter relating to the administration or implementation of the plan shall be reduced to writing and forwarded to the corporatic . A copy of such grievance or complaint shall be filed with the sponsoring bar association.

iii) On receipt of a complaint from a subscriber or the group management, the corporation shall investigate the nature of the grievence and forward such written reply as it deems appropriate to the subscriber or group management. A copy of such reply shall be filed with the sponsoring bar association.

iv) If the subscriber or group management is dissatisfied with the response referred to in (iii) he or it shall so inform the corporation, whereupon one representative designated by the corporation and one representative designated by the member or group management and a third person mutually agreed upon by such representatives shall meet and attempt to arrive at a solution.

v) In the event of no acceptable solution being reached, the parties may proceed to either arbitration or litigation.

15. *Termination of Contract between Corporation and Group Management*
The agreement should be for year to year and subject to termination only upon three months' notice.

16. *Annual Report*
The Corporation shall cause to be published at the end of each financial year a report of its activities which shall be

distributed to the members of the group, participating attorneys, the sponsoring bar association, and other interested persons. Such report shall include information relating to the finances of the plan, the use patterns, the number of attorneys whose services were utilized, the number of beneficiaries who used the plan, and other matters.

17. *Advisory Group*
There should be an advisory group consisting of members appointed by the corporation, group management, and the sponsoring bar. The members may be attorneys, subscribers, group officials, consumers and other interested persons. The function of the Advisory Group shall be to review the organization and operation of the plan and suggest improvements.

Proposals For Schedule of Benefits

A. Basic Benefits

1. *"Legal Check-Up":* Maximum Per Year Per Family $____. Persons covered by the plan will be entitled to have their activities reviewed in order to find out whether they have any legal problems by any attorney of their choice who has joined the panel.

This benefit will be available annually and will be of one hour's duration. The attorney's fee will be $ ____

2. *Advice and Consulation* Maximum Per Year Per Family $____. A participant who feels that he has a legal problem will be entitled to a consulation with a panel attorney of his choice.

The attorney will be paid a fee of $ ____ per consultation. The subscriber shall not be entitled to more than three of such consultations.

If the consultation discloses the need for further legal services which are provided by the plan, no charge will be made for the consultation leading to the use of these extra benefits. In this case, the claim will be submitted under the appropriate category

However, if the consultation leads *only* to the drafting or review of a single legal document, form or other instrument, a claim for $ ____ for such work may be submitted under this benefit and charged against the maximum allowable.

B. Additional Benefits

If there is a need for further legal service in connection with a case or problem relating to the categories mentioned below, and not falling within any of the exclusions, the attorney shall be entitled to reimbursement up to the maximum amounts stipulated per year. A deductible of $ ___ per year per case and not to exceed $ ___ per year is payable by the subscriber. This does not include the deductible payable under paragraph 5. However, if benefits under paragraph 5 are used as a part of other additional benefits, the deductible will not exceed $ ____.

1. *Negotiation of Settlements:* Maximum Per Year Per Family $___. This relates to meeting with adverse or associated parties, their attorneys or agents in efforts to settle cases or problems short of litigation or after litigation has commenced.

2. *Adoption:* Maximum Per Year Per Family Indicated Below:

a) Uncontested Adoption. $

b) Contested Adoption. $ plus benefits under Paragraph 5

c) Custody Proceedings. $

d) Contested Custody Proceedings. $ plus benefits under Paragraph 5

3. *Bankruptcy:* (Individual non-business). Maximum Per Year Per Family Indicated Below:

a) Preparation and filing of voluntary petition, including schedules and statement of affairs. $

b) Attendance at the first meeting of creditors. $

c) Conference with creditors, auditors, and accountants, trustee and trustee's attorney. $

d) Obtain discharge. $

e) Spouse with similar schedules filing contemporaneously $

4. *Change of Name:* Maximum Per Year Per Family Indicated Below

a) First person in the family. $

b) Each additional person in the family. $

5. *Court Proceedings Involving Civil Suits*
This benefit extends to hearings, trials, motions, rules or appearances in any *trial court* of general jurisdiction or before any administrative board or agency or *arbitration panel*. A deductible of $ is chargeable.

a) Maximum of 8 hours for the following services: $

i) Initial Conference

ii) Investigations

iii) Interviewing witnesses

iv) Legal Research

v) Preparation, drafting and filing of complaint

b) 1 day of hearing or trial. $

c) Out of Pocket Expenses and Costs. $

i) Deposition including stenographic fees

ii) Printing and copying, including briefs

iii) Long distance toll charges

iv) Photocopy

v) Bond Premiums

vi) Scientific or technical assistance, reports or tests including medical examination

6. *Criminal Matters:*

a) Arranging release or bail in felony cases. $

b) Release or bail in misdemeanor and traffic cases. $

c) Juvenile court proceedings (first appearance). $

d) Juvenile court proceedings (each subsequent appearance). $

e) District Court appearance through first day of trial. $

f) District Court, each subsequent day of trial. $

g) Superior Court appearance (for other than capital offense) through first day of trial. $

h) Superior Court (for other than capital offense) each subsequent day of trial. $

7. *Estate Planning:*

a) 10 hours for the following services. Maximum Per Year Per Family $

i) Ascertainment and analysis of family assets

ii) Determination of desires and objects of clients

iii) Computation of death taxes and liquidity requirements

b) Drafting:

i) Simple will $

ii) Will containing trust $

iii) Codicil to will $

iv) Husband and wife creating simple trusts $

v) Husband and wife wills $

8. *Marital Relations:*

a) Divorce (dissolution of marriage) including filing complaint, default hearings, interlocutory and final judgment. $

b) Initial order to show cause. $

c) Appearance in connection with order to show cause, each appearance. $

d) Final decree (when only service) prepared by panel attorney. $

9. *Conveyance and Landlord and Tenant:*

a) Agreement for Sale. $

b) Deed on printed form. $

c) Note and mortgage on all new titles and re-loans. $

d) Residence lease on standard form. $

e) Notice to quit premises. $

f) Note and chattel mortgage (printed form). $

g) Note and trust deed on standard form. $

10. *Sales:*

a) Bill of Sale. $

b) Contract of sale (simple). $

C. Major Legal Expense Benefit

Subject to the exclusions listed below, a subscriber who is:

i) Named as a defendant in a civil suit, in a trial court of general jurisdiction:

ii) Charged with a felony by information or indictment;

iii) Named as respondent in any action before an administrative agency of the state, municipality or federal government:

or has

iv) His tax audited by the state or federal government

in addition to the benefits listed in B.5 and B.6 shall be entitled to payment and reimbursement of 80 percent of the next $ incurred, over and above the said covered expenses, costs and fees.

D. Exclusions

Excluded from coverage under Benefits "B" and "C" of the plan are the following:

1. Business Expenses—Legal fees and expenses for which a federal income tax deduction would be allowable as a business expense, including the purchase, sale or management or rental of income property of every nature.
2. Controversies between members of the same family unit, except that by agreement, one member may use the services of a panel attorney and receive benefits under this plan.
3. Contingent Fee Cases.
4. Fines and Penalties or amounts for which any subscriber may be liable as a result of judgement or verdict.
5. Charges that are unreasonable or for services that are unnecessary or for which no charge would have been made except for the existence of the plan or in which the costs and/or attorneys' fees are recoverable and are in fact, recovered.
6. Cases arising out of the operation of an automobile by a motorist subscriber who has failed to comply with statutes requiring insurance etc.
7. Physically filling out and filing of tax returns.
8. Class actions or interventions or *amicus curiae* filings in any suit or controversy among other parties not involving the immediate and direct interests of the subscriber.
9. Cases in which any government agency or attorney, federal, state or local or a private attorney can and will represent the interest of the subscriber without charge or expense except that charges will be allowed for work necessarily performed in determining the availability or nonavailability of these services.
10. Any case in which defense or other legal representation is provided to the subscriber through any policy of insurance.

Motor
Vehicle
Insurance

National Conference of Commissioners on Uniform State Laws
Chicago, Illinois

INFORMATION KIT

Appendix III

Summary of Report and Recommendations of the American Bar Association Special Committee on Automobile Insurance Legislation

Created in May 1971, the Special Committee on Automobile Insurance Legislation of the American Bar Association has reviewed existing and proposed legislation in the field of automobile insurance, both state and national. The Special Committee has also taken cognizance of and reviewed the 1971 report of the Department of Transportation on automobile accident reparations, the work done in 1971 and 1972 by the National Conference of Commissioners on Uniform State Laws in relation to the drafting of its *Uniform Motor Vehicle Accident Reparations Act*, and the 1969 report of the American Bar Association Special Committee on Automobile Accident Reparations (the "Powers' Report").

The Special Committee on Automobile Insurance Legislation submitted its report to the Annual Meeting of the American Bar Association at San Francisco, California, in August 1972. Excerpts from that report follow.

> We are unalterably opposed to legislation now pending in the United States Congress which would preempt state motor vehicle accident reparation reform by the establishment of a federal law governing the subject. We are similarly opposed to legislation developed by the Senate Commerce Committee which would coerce the States to meet or exceed certain motor vehicle insurance and reparation standards or face the imposition of a more stringent federal law. Rather, we are in accord with the view expressed by the Department of Transportation that state experimentation with diverse motor vehicle reparation plans offers the best solution to the development of meaningful reform in the public interest.
>
> The legislation which has been enacted in 10 States and Puerto Rico, in addition to studies under way and legislation being considered in other States, demonstrates that the States can and will act to meet the problems that are found to exist. We are unimpressed with arguments that legislation enacted to date is inadequate, or that the failure of certain States to enact "meaningful no-fault legislation" evidences disinterest with the problems facing their citizens. Those advancing these arguments support particular points of view or particular plans. Their dissatisfaction may be traced to the fact that the States have not adopted the type of plans which they are committed to support. We are convinced that a State Legislature is in a much better position to judge the problems which exist within its borders, and the best means to correct them.

> As lawyers we are subject to criticism if we caution against rapid change and seek evaluation and experimentation before a course of action becomes irreversible. We must face this criticism in the interest of the public unless we are convinced that change will promote the public welfare. On the other hand, where improvement and change are called for in the public interest, we support it fully. Some will say our recommendations have not gone far enough, others will say that we have gone too far. The Committee believes it has recommended change where needed and provided a vehicle which can unify the Bar in its support of meaningful but responsible reform.

Major Recommendations of the Special Committee

1. That States which have not done so adopt laws which provide for required motor vehicle bodily injury and property damage liability with coverage limits of $15,000 for bodily injury to one person, $30,000 for all bodily injury associated with one accident and $5,000 for all property damage from one accident, and that these laws be of a self-certification type.[1]

2. That the laws which provide for required motor vehicle liability coverage also provide for required uninsured motorist coverage with limits of $15,000 for bodily injury to one person and $30,000 for all bodily injury from one accident.[2]

3. That all States which have not done so adopt laws which require that minimum first-party coverage of at least $2,000 be included in all motor vehicle liability insurance policies offering protection for economic loss to the named insured, members of his family residing in the same household as the named insured, guest passengers in the insured's vehicle and pedestrians struck by that vehicle. Those laws should give the innocent accident victim the option to seek indemnity for economic loss from his own insurer, or in an action in tort, but should avoid duplicate reimbursement for the same loss and should shift the ultimate burden for the loss to the tortfeasor or his insurer.[3]

4. That in personal injury claims or actions arising out of motor vehicle accidents, general damages recoverable for pain, suffering, mental anguish, inconvenience and other similar loss should be limited to a multiple of one times the medical expenses unless they exceed $500 or unless the injury results in death, dismemberment, permanent total or permanent partial disability, temporary partial disability be-

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1. Approved by the House of Delegates of the American Bar Association, August 15, 1972.

2. Approved by the House of Delegates of the American Bar Association, August 15, 1972.

3. Approved by the House of Delegates of the American Bar Association, August 15, 1972.

yond four weeks duration, serious disfigurement, or loss or impairment of a bodily function.[4]

Commentary by the Special Committee

With regard to its Recommendations 1 and 2, the Special Committee submitted a "Sample Statute" covering liability insurance and uninsured motorists insurance, modeled after legislation enacted by the State of Delaware. The Special Committee also offered background comments on these two recommendations, some of which are excerpted below.

> If the tort system is to operate effectively as a reparation mechanism for innocent accident victims, as opposed to being merely a mechanism to fix legal responsibility for injury or damage, tortfeasors who cause accidents must be financially responsible.
>
> Available information indicates that upwards to 90 percent of the motorists in compulsory insurance States comply with the laws. The remaining States operate under so-called "Financial Responsibility" laws which compel the purchase of insurance only after accident involvement or a serious traffic law violation. The percentage of insured motorists in those States is reported to vary from a high of over 80 to a low of near 55 percent. Based upon these realities, a person driving in a compulsory insurance State is faced with a probability of one in 10 that he will be involved in an accident with an uninsured driver. Whereas, in States not having compulsory insurance the probabilities are much higher.
>
> The widespread use of uninsured motorist coverage has taken some of the sting out of those probabilities. Certainly, even in compulsory insurance States, some motorists will attempt to avoid the law and drive without being insured. Uninsured motorists from other States will also cause accidents. However, if the choice of who is to pay for damages resulting from automobile accidents has to be made, as well it must, we conclude that it is preferable to assess the cost of accidents against those who are responsible for them through liability insurance premiums rather than to shift that cost to innocent accident victims through uninsured motorist coverage premiums.
>
> Critics of required insurance assert that claim frequency will rise under such a system. While this is a factor, probably no small part of the claims frequency increase will be due to the fact that more persons will be insured and thus there will be more financially responsible persons against whom claims may be brought. Except for the question of limits, those persons who already insure their vehicles will be unaffected by the enactment of a required insurance law.
>
> We are recommending a compulsory law only in the sense that automobile insurance would be required for all motorists. However, the law is based on the principle of self-certification and does not require that a motorist file a certificate from his insurer for his vehicle to be registered. This type of "required" insurance should not prove to be as costly to enforce as the "compulsory" type in effect in New York, Massachusetts and North Carolina. It should not add substantially to the cost of motor vehicle law enforcement in a State and is modeled after the Delaware Act.

4. This provision was rejected by the House of Delegates of the American Bar Association, August 15, 1972, and the following was substituted: "The American Bar Association is opposed to any federal 'no-fault' insurance legislation and believes that any changes which may be made in the so-called automobile accident reparations system should be by state action."

With regard to its Recommendation 3, the Special Committee submitted a "Sample Statute" covering required minimum first-party coverage in all motor vehicle liability insurance policies offering protection for economic loss. Excerpts from the Special Committee's commentary on this subject are shown below.

> A stage has been reached in the so-called "automobile accident reparation controversy" at which there appears to be little serious controversy over the question of whether all persons injured in auto accidents should have some form of first-party insurance. The controversy now centers on the questions which concern the amount of loss which should be recoverable under the first-party system and the extent to which tort liability should be abrogated, if at all, to finance the first-party system.
>
> Laws which have been enacted in Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, New Jersey and Oregon all follow along lines similar to this Committee's proposal. Motorists in those States who buy liability insurance are required to purchase first-party coverage in specified amounts to protect themselves, their passengers and pedestrians. Our proposal would require the purchase of first-party coverage. It would not abrogate tort liability. This recommendation was approved unanimously, but two members of the Committee would have preferred that a reasonable [illegible] exemption be provided. The tortfeasor, or his insurer, will have ultimate responsibility for the damages caused. The innocent accident victim is given an option. He may seek full compensation under the tort system, or he may recover a portion of his damages from his own insurer and the balance from the tortfeasor. In the latter case, the insurer paying first-party benefits will be able to seek reimbursement, to the extent of payment, from the tortfeasor or his insurer. The

sample statute which follows this discussion illustrates the type of minimum first-party coverage law favored by this Committee.[5]

It would not cover the total economic losses of all, but it must be remembered that the vast majority of Americans are protected by medical, hospital and wage loss benefit plans collateral to auto insurance. In addition, coverage for all economic loss under a first-party auto insurance system would require a severe limitation of the tort right of recovery for general damages so that the first-party benefits can be financed. The Sample Statute provides for coverage for the named insured and resident relatives in all auto accidents. Thus, they would be covered while they are guests in another's vehicle or while they are pedestrians. However, duplicate payment is to be avoided since it increases the cost of the system. The coverage provided is primary and payment thereunder is not dependent upon the injured person's collateral sources of compensation.

With regard to its Recommendation 4, the Special Committee submitted a "Sample Statute" covering regulation of awards for pain and suffering. This recommendation was not unanimous, and a minority report was filed "to record disagreement only with the Committee's fourth recommendation that general damages be limited to an equivalent of the medicals unless a monetary medical expense threshold or other condition is met." It should also be noted that the American Bar Association House of Delegates voted down this recommendation when acting on the report. Excerpts from the commentary in the majority report are shown below.

> To completely deny recovery for general damages or to allow recovery to some persons and deny it to others based on some arbitrarily selected special damage threshold is inequitable. In fact, a reading of all of the 23 preliminary reports and the final report of the Department of Transportation fails to reveal any sound reason for elimination of this element of damages. The arguments for its elimination stress pragmatic reasons — it is too hard to evaluate these damages and their payment costs too much money.
>
> The main problem cited by critics of the present system with relation to general damages centers around overpayment in the so-called "small case." The "nuisance settlement" has become a fact of life for those insurers who believe it is less expensive in the long run to settle such cases for a little more than they are worth than to pay defense costs. One DOT report showed that claims payments for accident victims with special damages of $500 or less averaged about four and one-half times the specials, whereas, those with specials of between $5,000 and $10,000 were paid an average of one and one-tenth times their specials.
>
> Our recommendation seeks to control, not eliminate compensation for general damages in the small case. When medical specials are $500 or less, the claimant would not be able to recover more than a sum equal to this medical treatment cost as general damages. Above that amount, the present system would be unchanged. In addition, even if the amount of expenses were below $500, the limitation would not apply if the injury resulted in death, dismemberment, permanent total or permanent partial disability, temporary partial disability beyond four weeks duration, serious disfigurement, or loss or impairment of a bodily function.
>
> It has been estimated that close to 80 percent of auto accident victims sustain economic loss (excluding property damage) of $500 or less. This does not mean that all of those persons would be taken out of the tort system by our proposal. As to general damages all would remain under the tort system. However, for those whose medical specials do not exceed $500 or who do not meet the other "serious" injury exceptions, if fault can be established, their recovery for general damages would be limited.
>
> There are those who will raise a constitutional question as to the propriety of limiting general damages. It should be noted that the limitation found in the Sample Statute differs from the type employed in Illinois which was found unconstitutional by a state trial court. First, the Sample Statute formula applies only to the so-called "small case" in which medical treatment expenses are $500 or less. The Illinois formula applied across the board to all cases except those involving death or very serious injury. Second, under the Illinois formula, as interpreted by the trial court, two accident victims with the same type of injuries could receive disproportionate amounts of general damages simply because one sought and was able to afford more expensive medical and hospital care. We believe that the Sample Statute we have prepared to illustrate our proposal with respect to limitation of general damages for the "small case" will not be subject to the same constitutional problems found by the Illinois trial court. That court did not find fault with the concept of a general damage limitation, but only with the unequal application of the limitation, under the Illinois law.

5. It should be noted that the first-party insurance requirements in Connecticut, Florida, Illinois, New Jersey and Oregon apply only to "private passenger vehicles" as defined in those States' acts. In *Grace v. Howlett* (Ill. 1972) the Illinois Supreme Court held that limiting the mandated coverage requirement to one class of vehicles to the exclusion of other classes amounted to "special" legislation contrary to the provisions of that State's constitution. The Sample Statute is therefore drawn broadly to apply to all motor vehicles. Those wishing to restrict this broad requirement should consider *Grace* in light of the provisions of their own State's constitution.

[NOTE: The full report of the Committee contained sample statutory language as well as additional commentary on many aspects of the Committee's recommendations.]

Appendix I

Comparison of State No-Fault Laws

Appendix I (Continued)

Comparison of State No-Fault Laws

State	*Benefits*	*Applicability*	*Tort Limitation*	*Prompt Payments*	*Insurance Requirements*
Connecticut	$5,000 of medical and disability benefits.	Private passenger motor vehicle (other than motorcycle) or vehicle with load capacity of 1,500 lbs. or less not used for commercial purposes other than farming.	No limitation of tort liability if party sustained death, permanent injury, fracture of any bone, permanent significant disfigurement, permanent loss of body function or loss of body member, and cost in excess of $400 for medical expenses.	Benefits are overdue if not paid within 15 work days of proof of loss. Overdue payments bear 12 percent interest.	Mandatory.
Delaware	$10,000/$20,000 medical expense, earnings, personal services — funeral limited to $2,000 per person. Deductibles available.	All motor vehicles: any person injured in a motor vehicle accident.	No actions permitted for damages otherwise indemnified under compulsory insurance.	No specific provision.	Compulsory for all motor vehicles (self-insurer exception).
Florida	$5,000 per person medical, disability and funeral. Deductibles available.	All motor vehicles: owner, relative resident in same household, other occupants of insured vehicle, pedestrians.	$1,000 threshold. No recovery for certain general damages when medical expense under threshold.	Benefits payable as losses accrue. Payments are overdue 30 days after filed proof of loss.	Compulsory for all motor vehicles.
Illinois*	Basic: $2,000 medical and funeral, lost wages and loss of services for one year. Optional excess: excess medical, $2,000 funeral, lost wages and loss of services, and survivor's benefit for 5 additional years — aggregate limit of $50,000/$100,000.	All private passenger vehicles insured. Coverage may be made available for any other motor vehicle: named insured, relatives residing in same household, guest passengers, permissive operators, pedestrians.	Formula applied to certain general damages recovery limited to 50 percent of medical expense under $500 and 100 percent of medical expense over $500.	Benefits payable as losses accrue. Payments overdue after 30 days. Willful delay subjects insurer to treble damages.	Voluntary purchase of insurance.
Maryland	$2,500 economic loss benefits which cover medical bills and wage loss.	All motor vehicles.	No limitations.	Benefits payable as claims arise or within 30 days of proof.	Compulsory for all motor vehicles.
Massachusetts	All medical expenses, loss of wages and loss of services for 2 years.	All motor vehicles: named insured, relatives of same household, authorized operators and passengers, pedestrians.	$500 threshold. No recovery for certain general damages when medical expense under threshold.	Benefits payable as losses accrue. Payments overdue after 30 days.	Compulsory for all motor vehicles.
Michigan	Unlimited medical and rehabilitation; work loss, $1,000 maximum per month for 3 years; property damage other than auto, $1 million.	All motor vehicles which are operated on public highways and have more than 2 wheels.	No action permitted unless death, serious impairment of body function, serious permanent disfigurement.	Benefits payable within 30 days. Overdue interest at rate of 12 percent.	Compulsory for all motor vehicles.
New Jersey	Unlimited medical expenses, $5,200 loss of wage benefits, $4,380 loss of services, and $1,000 funeral and survivor's benefits.	Private passenger automobile, including pick-up or panel body vehicle.	No limitation of tort liability if party sustained death, permanent disability, permanent significant disfigurement, permanent loss of body function or loss of a body member in whole or part, and soft tissue injuries exceeding $200 of medical expense.	Payment of benefits are overdue if not paid within 30 days and will collect interest at a rate of 10 percent per annum.	Compulsory.
Oregon	$3,000 medical, $6,000 disability. Loss of services. One-year limitation.	All insured private passenger vehicles: named insured, relatives of same household, guests, pedestrians.	No limitation.	Benefits payable as losses accrue.	Voluntary purchase of insurance.

*Statute declared invalid by the Illinois Supreme Court.

Appendix B

COMPARISON OF AUTO REPARATION LAWS
(Enacted to November 1, 1972)

STATE	Compulsion To Buy Insurance*			Approximate First Party Benefits			Tort Exemption For 1st Party Benefits Pd.		General Damage Limitation			Vehicular Property Damage	
	Compulsory	Mandatory	None	Medical	Wage	Total	Yes	None	Threshold	Formula	None	Exemption	Under Tort
CONNECTICUT Pub Act 2731 (1972)	L (a) 1st					$5,000	(b) Partial		(b) $400				X
DELAWARE Code Ch 21 Tit 21 §2118	L 1st					$10,000		X			X		X
FLORIDA Laws Ch 71-252 (1971)	L (a) 1st					$5,000	(c) Partial		(c) $1000			(d) Partial	(d) Partial
ILLINOIS Ins Code Art 35 (1971)†		(a) 1st	L	$2,000	$7,800	$9,800		X		(e) X			X
MARYLAND House Bill 444 (1972)	L 1st					$2,500		X			X		X
MASS Laws Chs 670 (1970) & 978 (1971)	L 1st					$2,000	(f) Partial		(g) $500			X	
MICHIGAN Sen. Bill No. 782 (1972)	L 1st			ALL	$36,000	(h)	X		(i) X			X	
MINNESOTA Stats 72A .1492-72A. 1495			L 1st	$2,000	$3,120	(j) $5,120		X			X		X
NEW JERSEY Assm. Bill 667 (1972)	L (a) 1st			ALL	$5,200	(k) $5,200	(l) Partial		(l) $200				X
OREGON Laws Ch 523 (1971)		(a) 1st	L	$3,000	$6,000	$9,000		X			X		X
PUERTO RICO Act No 138 (1968)	1st		L	ALL	$3,800	(m)	X		(n) $1000				X
SOUTH DAKOTA Laws Ch 270 (1971)			L 1st	$2,000	$3,120	(j) $5,120		X			X		X
VIRGINIA Laws Ch 859 (1972)			L 1st	$2,000	$5,200	$7,200		X			X		X
Arkansas Act 138-1973	1st			2000	7,280	9280		x			x		x

Gentleman:

I am William Baker, Director for the Alaska Association of Independent Insurance Agents, Inc., and my testimony is on behalf of that organization.

The AAIIA has studied the No-Fault Automobile Insurance question for over three years and we have gone on record many times before various legislative hearings such as this one. Our most recent testimony was on January 5, 1973, in Ketchikan and the statement was made by our State National Director, Carl H. Porter. In that report Carl Pointed out that "we have adjusted our position somewhat to accommodate what we see as minimum ACCEPTABLE criteria. His statement continued,"I will not recite all the factors and facets that led to our present position, but I will tell you that we moved from a position of total opposition to No-Fault (because of the "pure" No-Fault plans of the American Insurance Association and the New York Insurance Commissioner), to a firm considered position IN FAVOR OF A MODIFIED NO-FAULT PLAN FOR ALASKA. This plan should pay substantial benefits for medical expenses, wage loss and loss of services on a mandatory, no-fault basis: AND THESE AMOUNTS SHOULD REPLACE COURT ACTION (in cases where court action is taken for greater amounts or for specific exclusions, such as dismemberment or disfigurement, these no-fault recoveries would be subtracted from the judgement)."

Since the January 5th report, the Board of State National Directors of the National Association of Insurance Agents has acted affirmatively upon guide lines suggested by the National No-Fault Committee. These guide lines are compatable with the position of the Alaska Agents Association and we therefore set them forth now as recommended guide lines for consideration by the Alaska Legislature.

1. The National Association recognizes that if effective First Party/No-Fault Auto Accident Reparations legislation is not passed at the State level, some form of Federal Legislation, Federal Guidelines and/or Federal Control of the automobile insurance system will result.

2. The NAIA is convinced that in order for the automobile insurance system to be most responsive to the public needs, it must be regulated at the state level, should remain under state jurisdiction only and be subject to state legislation exclusively.

3. The NAIA commends those companies who are in accord on The Basis of an All-Industry Agreement on a State No-Fault Insurance Program in pursuit of the broad, general principle set forth in #2 above.

4. The NAIA recommends to its member state associations that they support the Program in their individual states during the 1973 legislative sessions, insofar as it does not conflict with their presnet commitments.

The particulars of the proposal are as follows:

a. Automobile insurance will be primary as against collateral sources except as to statutory benefit systems in existence.

(1) An effort will be made to get future statutory benefit systems to exclude or "carve out" auto accidents up to the basic limits.

(2) Oppose all deductibles from the basic program and accept deductibles only as necessary.

(3) In particular, oppose as unacceptable Section 14.b.2 (the Section which makes collateral lines primary) of the Uniform Motor Vehicle Accident Reparations Act (UMVARA).

b. First-party benefits:

(1) Propose initially a $5,000. limit for combined medical expense and wage loss, including any rehabilitation program.

(2) Be prepared to go up to higher combined limits as necessary. Oppose unlimited benefits. Suggested range of $5,000. to $25,000.

(3) No deductibles or waiting periods.

(4) Internal limits of semi-private room for medical expense and 85% of wage loss if income replacement benefits are not subject to federal income taxes.

c. Tort limitation (no-fault) features:

(1) Tort actions for general damages (pain and suffering) should be retained for all described serious injuries or wherever medical expenses exceed $1,000.

(2) The dollar limit on medical expenses is preferable to a statutory description seems advisable, an effort will be made to convert $1,000. of medical expense into a given number of days of disability.

(3) The legislative effort is to begin at the $1,000. medical limit or its equivalent. It was necessary for the purpose of having an agreement between the companies that there be a sincere commitment to, and a pledge of

strenuous effort for, the $1,000. medical threshold or its equivalent.

(4) Anticipating that there would be pressures for a lower medical threshold, it was the understanding that it might be advisable under certain conditions to go to a lower medical threshold if it was necessary to get a bill passed.

d. Insurance for no-fault benefits, and for bodily injury and property damage liability will be compulsory.

(1) The compulsory bill will provide for an assigned claim plan.

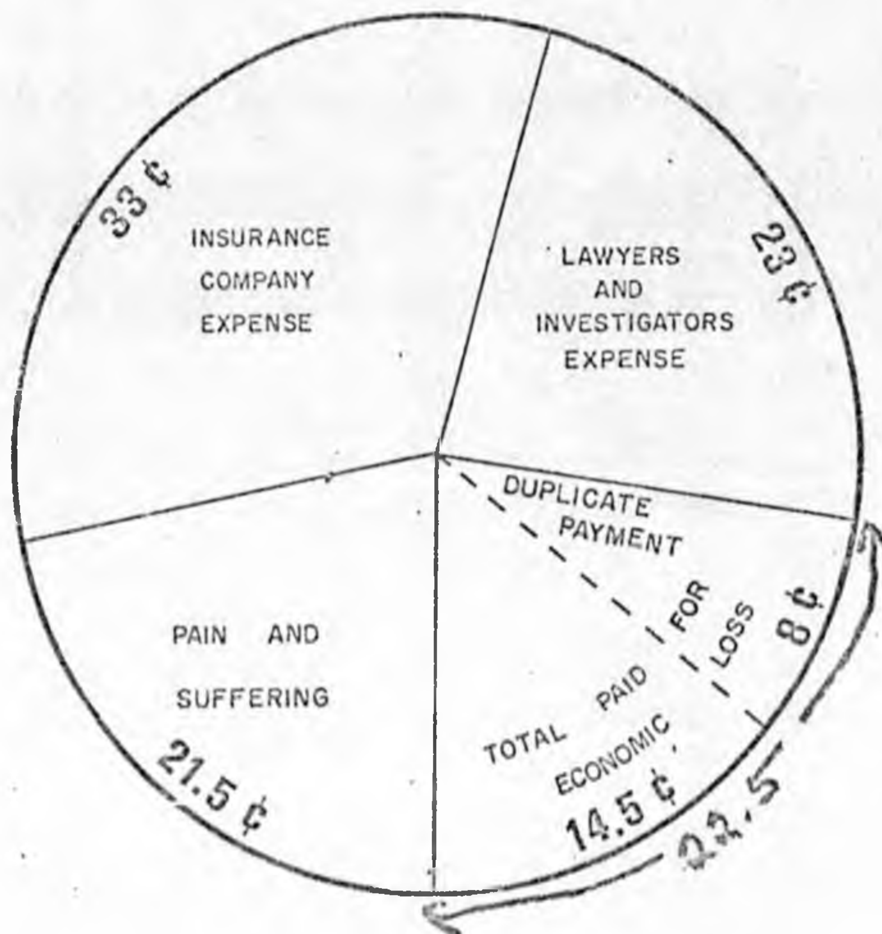
(2) A self-certification plan as to coverage will be used if possible with criminal sanctions supporting it. An effort will be made to avoid highly restrictive certification programs.

e. Both private passenger and commercial vehicles shall be included in the bill.

f. Property damage will not be included in the no-fault system. Physical damage coverages will be optional as now.

g. Subrogation will be eliminated where there is no tort claim under the provisions of the bill. There will be subrogation where there is a tort claim under the provisions of the bill (for example: 1. where the threshold has been exceeded, 2. where there is a claim for benefits in excess of first-party coverages, and 3. where there is a claim for property damage).

This concludes my testimony on behalf of the Alaska Association of Independent Insurance Agents, Inc.. We sincerely hope that our efforts and testimony to this date have assisted the Alaska State Legislature in its search for a meaningful Modified No-Fault solution.



DISTRIBUTION OF PREMIUM DOLLAR UNDER TODAY'S LIABILITY SYSTEM

SOURCE- ROBERT KEETON, "COMPENSATION SYSTEMS: THE SEARCH FOR A VIABLE ALTERNATIVE TO NEGLIGENCE LAW".

Appendix II

Statement by the
National Conference of Commissioners on Uniform State Laws
Concerning the Uniform Motor Vehicle Accident Reparations Act

The fault system as an efficient means of determining who shall be compensated for injury has long been questioned. The original purpose for the fault system probably was to provide a kind of immunity against liability for the new industrial developments of the early and mid-nineteenth century. Railroads appear to have been the particular beneficiary. If the railroads had been liable for all the injuries they caused in their early history, they likely would not have made the economic gains that they did. The fault system replaced predecessor strict liability concepts. Its natural effect was to leave some people uncompensated, though injured. The gain to the national weal was an economic gain, and one open to challenge in human terms.

No judge, of course, foresaw the automobile and its impact during that early development of the fault system. Nobody knew that the automobile would be the dominant technological influence upon life in the United States, or that it would cause so much difficulty in the personal injury area. When the automobile appeared, the fault system was almost fully entrenched. Without estimating what they were doing, the courts simply applied the tort theories in automobile accident cases, and ultimately these cases became the overwhelming majority of tort cases. Little or no account was made in the law for the tremendous destructive capacity of the automobile, in terms of human lives and physical injury.

The toll in lives and injury, by the way, is overwhelming. There is no need to go over statistics. The National Safety Council readily provides them, and we are generally aware of their magnitude. It suffices to say that the automobile takes a toll unequaled by any war or series of wars entered into by this country. The problem is very rightly considered to be a national one.

Although the toll mounts, no answer to the compensation of the injured has been proposed until now, save through the fault system and the liability insurance system which has been grafted on to it. Liability insurance, as it presently is conceived, guarantees only that the injured party in an automobile accident has a possibility of some compensation. Even if there is compensation, nothing can be guaranteed about its adequacy. So, the prognosis after some years of experience indicates that the fault system, buttressed by the current liability insurance system, simply has not done a very good job of providing compensation to the multitude of the injured.

The result is a large social cost measured in terms of loss of productivity, and unnecessary transferral of economic burdens for those who are injured.

The specific criticisms have been distilled to the following:

1. A great many victims of automobile accidents are denied compensation entirely.
2. Compensation, when granted, is usually delayed.
3. Benefits are distributed capriciously, without regard for actual losses.
4. Benefits are malapportioned, with the lesser injured receiving overcompensation most often, and those injured more severely receiving undercompensation.
5. Benefits are allocated in a lump sum, the method least conducive to rehabilitation.
6. Benefits received are not coordinated to eliminate duplication.
7. There is inefficiency in the expenditure of the premium dollar, with the greater portion of it going to administration and litigation.
8. The system, with its fee arrangements, encourages overreaching for benefits and downright dishonesty.

To provide a remedy for the defects in the current system and to obtain value for the dollar of insurance premium paid, mere palliatives are not enough. A thoroughgoing reform is essential.

The Uniform Motor Vehicle Accident Reparations Act, as promulgated by the National Conference of Commissioners on Uniform State Laws, is the most thorough proposal for reform of the system yet made available. It provides a basis for administering comprehensive, first-party insurance coverage for insured victims of automobile accidents. The Act does not exclude the possibility of tort recovery entirely, but it limits that possibility to those parties with legitimate interest in recovery beyond the system of basic first-party benefits.

The insurance system established in the Uniform Motor Vehicle Accident Reparations Act is a compulsory one. Every motorist must have security for basic reparations benefits plus a minimum of $25,000 liability coverage per person per accident for bodily injury and $10,000 per accident for property damage. Insurers may also make available a range of optional coverages for added reparations benefits and for harm to vehicles and their contents. An insurer must offer collision coverage subject to a $100 deductible. An assigned claims plan is created for an injured party for whom no responsible source of benefits may be found. There is also an assigned risk program for those who have difficulty obtaining insurance. Other provisions relate to prompt payment of benefits, to reallocation of loss costs, and to cancellations or nonrenewals of insurance.

The Uniform Motor Vehicle Accident Reparations Act is a complete motor vehicle insurance Act. Any State adopting its provisions will be assured of having a system eliminating the defects of the fault system while simultaneously establishing a comprehensive insurance system. The National Conference of Commissioners on Uniform State Laws hopes that all States will give it serious consideration. Copies of the Uniform Motor Vehicle Accident Reparations Act are available from the Conference, 1155 East 60th Street, Chicago, Illinois 60637.

* * *

The following basic description of the key provisions of the Uniform Act is taken from the Prefatory Note which accompanies the official print.

Basic Reparation Benefits

Basic reparation benefits are the minimum benefits which, with few exceptions, are provided without regard to fault for all persons injured and the dependent survivors of persons killed in motor vehicle accidents. They are:

1. Payment of all reasonable medical and rehabilitative expenses without limit.

2. Reimbursement up to an aggregate of $200 per week:

a. For lost earnings from work the injured person would have performed but for the injury. In computing the amount of work loss benefits payable, earnings received from substitute employment and benefits received from social security, workmen's compensation, and state required non-occupational disability insurance would be subtracted as would an amount not to exceed 15 percent for actual income tax savings, and

b. Reimbursement for the reasonable expense of replacement services which the injured person would have performed for himself or his family but for the injury. For the first week after injury, such expenses are excluded from benefits.

3. In the case of death, payment up to $200 per week to those survivors who would be entitled to recovery under the State's wrongful death laws for the economic support and value of necessary replacement services which they would have received from the decedent but for the injury causing death, subject to subtractions and exclusions similar to those mentioned above.

4. In the case of death, payment of funeral or burial expenses not to exceed $500.

Losses to be reimbursed by basic reparation benefits are not limited either as to aggregate amount or as to time period over which incurred.

Optional Deductions and Exclusions from Basic Reparations Benefits

Insurers are required to offer, with appropriate premium reductions, certain specified optional deductions and exclusions from basic reparations benefits applicable only against benefits otherwise payable to the named insured and members of his family unit. These include:

1. Flat deductibles of $100, $300, and $500 from the total of all benefits payable on account of any one accident.

2. A flat deductible of $1,000 per accident from all benefits payable on account of injury to an operator or passenger on a motorcycle.

3. An exclusion of 10 percent of the benefits which would otherwise be payable for work loss and survivor's loss.

4. An exclusion of all replacement services loss.

In addition, insurers may, but need not, offer an optional contingent exclusion of benefits actually received from other specified sources of benefits.

Denial or Restriction of Benefits to Certain Persons

These persons who would otherwise be entitled to basic reparations benefits are excluded from or restricted in the recovery of benefits:

1. A person who intentionally causes or attempts to cause injury or death to himself or another is disqualified from all benefits for injury or death arising from his acts. In the event of death of a person who intentionally injures himself, his survivors are disqualified.

2. An intentional converter of a motor vehicle and, in the event of his death, his survivors, are excluded from all benefits for losses arising from use of the converted vehicle except under an insurance policy under which he is a basic reparation insured. However, a converter who is under the age of 15 may recover benefits through the assigned claims plan.

3. A person who has the legal responsibility (usually an owner) to maintain required security for payment of tort judgments and basic reparation benefits either by having insurance or by being an approved self-insurer and fails to do so is denied benefits from the assigned claims plan to the extent of $500 for each year of continuous noncompliance, and is subject to all optional exclusions and deductibles.

Tort Exemptions and Retained Tort Liabilities

Tort liability arising from ownership, maintenance or use of a motor vehicle is abolished, except as to:

1. Owners, including a government, who have not provided security for payment of basic reparation benefits and tort judgments as provided by the Act;

2. Intentionally caused harm to person or property;

3. Damages for work loss, replacement services loss and survivor's loss of support and services uncompensated by basic reparation benefits by reason of the standard weekly limit of $200 on such losses, but only if the injured person dies or is disabled for more than six months;

4. Damages in excess of $5,000, for noneconomic detriment (i.e., pain and suffering, etc., but not punitive damages) if there is permanent significant loss of body function or death or permanent serious disfigurement or more than six months of total disability;

5. Damage to property other than motor vehicles and their contents; and damage to motor vehicles caused by operators of parking lots and storage garages.

As the modification of the tort law is only in the form of an exemption from tort liability arising from ownership, maintenance or use of a motor vehicle and there is no tort liability created by the Act, tort liability is retained only to whatever extent it now exists. Auto manufacturers, repair shops, and railroads all remain potentially liable in tort under present law when they are causally involved in motor vehicle accidents.

As damage to motor vehicles or their contents is not covered by basic reparations benefits, the only source of recovery for damage to a vehicle and its contents resulting from an accident causally involving only motor vehicles would be optionally purchased first-party collision insurance on the vehicle. Insurers are required to offer various alternative forms of first-party collision coverage, including a limited form of collision coverage based upon fault.

Insurers providing basic or added reparations benefits have a right of subrogation to tort recoveries to the extent the damages recovered are of a type compensated for by the insurance. An insurer having paid medical expenses and wage loss under basic reparations benefits coverage is not entitled to subrogation to proceeds of a claim for pain and suffering damages.

Security for Basic Reparation Benefits and Tort Liability, Priority of Source, Assigned Claims Plan, Added Coverages, Assigned Risks

Every owner (including the State and its political subdivisions) of a motor vehicle registered or permissively operated in the State is required to provide and maintain security for the payment of basic reparation benefits and for the payment of tort liability judgments, the minimum required limit for the latter being $25,000 per person per accident for bodily injury and $10,000 per accident for property damage. Other governmental owners, including the federal government, may come under the Act by voluntarily providing security. As to private owners, security may be provided by qualifying insurance or approved self-insurance. A governmental owner may provide security by lawfully obligating itself to pay benefits as well as by insurance or approved self-insurance.

In general, the source of basic reparation benefits for a person incurring injury or loss in a motor vehicle accident would be as follows, in order:

1. for any occupant of a vehicle used in the business of transporting persons or property, including the driver, and for any employee or member of his family driving or occupying a vehicle furnished by his employer, the insurance on the vehicle;

2. for any person insured under a policy of basic reparations insurance, either as named insured or as resident member of his family unit, that policy of insurance, even if he is a pedestrian or occupant of a vehicle owned by another at the time of injury;

3. for any person not insured under a policy of basic reparation insurance but injured while occupying a vehicle, the insurance covering that vehicle;

4. for any person not insured under a policy of basic reparation insurance and not injured while an occupant of a vehicle (e.g., a pedestrian) the insurance covering any vehicle involved in the accident;

5. for any person for whom a responsible source of benefits does not exist or cannot be identified (e.g., uninsured occupant of uninsured vehicle; uninsured pedestrian injured by hit and run; insolvent insurer), the assigned claims plan which insurers are required to establish and operate under supervision of the insurance commissioner.

There are various provisions in the Act designed to achieve maximum compliance with the requirement that security be provided by insurance or self-insurance. Provision is also made for the administrative regulation of the terms of the insurance policies.

Insurers may offer a range of optional coverages and provisions referred to as "added reparations benefits" (e.g., additional work loss and survivor's loss protection, additional funeral expense coverage, pain and suffering coverage, etc.), subject to approval of the insurance commissioner who may require that certain optional coverages and provisions be offered.

To assure that the necessary insurance coverages will be conveniently afforded to all persons at reasonable rates, the Act provides for an assigned risk plan or comparable facility under the supervision of the insurance commissioner.

Territorial Reach of the Act

The Act applies to any motor vehicle accident occurring within the State without regard to where any involved vehicle is registered or how long it has been in the State. It converts any motor vehicle liability insurance policy, including one issued elsewhere, into a basic reparation policy while the insured vehicle is operated in the State. Also, the benefits provided by a policy of basic reparation insurance are applicable to injuries or losses occurring outside of the State to the insured and members of his family and to any occupant of the insured vehicle.

Payment of Benefits

Ordinarily, benefits are payable as economic loss accrues, rather than in a lump sum. Commutation of benefits, other than medical and rehabilitation expenses, by lump sum or installment award may be ordered by a court if the value of future benefits is not more than $1,000 or if the court finds that it will contribute to the health or rehabilitation of the injured person or if it is otherwise in the best interest of the injured person and the parties consent. Claims for benefits may be settled by agreement, but only with judicial approval if the amount of the claimed loss exceeds $2,500.

Benefits must be paid within 30 days after accrued and claimed. Overdue benefits bear interest at 18 percent.

Except for very limited purposes, rights to future benefits are not assignable. Benefits for work loss, survivor's loss and replacement service loss are exempt from execution or garnishment to the extent provided by applicable state or federal law dealing with wage exemptions. Benefits for allowable expense are, with one limited exception, exempt.

The Act prescribes necessary discovery procedures. Specific provision is made for the adjudication of disputes over costs of rehabilitative procedures. Also, the refusal of the injured person of reasonable rehabilitative treatment is a ground for limitation of benefits.

The Act provides a special statute of limitations, applicable to claims for basic and added reparation benefits.

Attorney's Fees

Reasonable attorney's fees are accorded for successful representation in the collection of overdue or disputed benefits, the fee to be paid by the insurer unless the claim was in some respect fraudulent or unreasonably excessive in which case part or all of the fee may be charged against benefits otherwise due the claimant. If the claim was fraudulent or so excessive as to have no reasonable foundation, the defending insurer may be awarded attorney's fees and offset them against benefits otherwise due.

Reallocation of Costs

The Act provides for reallocation of loss costs among insurers on the basis of the injury-causing potential of different kinds of vehicles according to rules formulated by the insurance commissioner or by agreement among insurers with the approval of the commissioner. If no other method is adopted, the Act requires the implementation of a reallocation system based on vehicle weight. Rates will then reflect the probability and magnitude of loss causation assuring, for example, that operators of heavy trucks will pay their fair share of accident costs.

Cancellation and Nonrenewal of Insurance

Except during an initial underwriting period, insurers are prohibited from cancelling or nonrenewing basic reparations and liability insurance contracts at less than annual intervals for any reason other than nonpayment of premium. At the request of the policyholder, the reason for any cancellation or nonrenewal of insurance at any time must be given.

Uniform Law Memo

FALL 1972

Published by the National Conference of Commissioners on Uniform State Laws

Pressure builds for uniform laws

Public pressure for new approaches to auto accident reparations and landlord-tenant law offers the best opportunity in NCCUSL's 82-year history for widespread and rapid enactment of uniform legislation.

There was unprecedented response to completion of the Uniform Motor Vehicle Accident Reparations Act (UMVARA) and the Uniform Residential Landlord and Tenant Act at the NCCUSL'S annual meeting in San Francisco in August. In September alone, more than 3,000 copies of UMVARA were distributed on request throughout the 50 states. The requests came from legislators, state executives, judicial administrators. "Watchdog" groups such as the Leagues of Women Voters asked to study the act. Those who would be most affected by UMVARA – representatives of the insurance and auto industries, lawyer organizations and consumer groups – also requested copies.

Legislative hearings on UMVARA already have been held in South Dakota – where NCCUSL's new legislative director, John McCabe, testified Sept. 13 – and in Arizona, where McCabe, Arizona commissioner James Bush and a representative of the U.S. Department of Transportation testified Aug. 29.

Landlord-Tenant Act

Meanwhile, more than half the states are expected to consider the landlord-tenant act during the next legislative season. These states will include California where Julian Levi, who served as reporter-draftsman for this act, and McCabe testified at hearings Oct. 12-13. Testimony revealed a wide range of support from tenants, the poor and the elderly, for the uniform act.

While Levi and McCabe were in California, William C. Hillman, a Rhode Island commissioner who served on the drafting committee, went to Columbus, Ohio, to meet with a state study commission drafting revisions to the state's landlord-tenant laws. A full-scale public hearing was scheduled in Ohio for Nov. 17.

Edward L. Schwartz, a Massachusetts commissioner and chairman of the drafting committee, also spoke on the landlord-tenant act at the Real Estate Law Institute in New York City, Nov. 3-4.

Three other acts completed

Other uniform acts completed during the annual meeting in August also are expected to be considered in many state legislatures next year. These were: Uniform Public Assembly Act, which received wide publicity through Associated Press coverage; Uniform Duties to Disabled Persons Act, which already has received favorable comment on NBC-TV's *Today Show*; and the Uniform Management of Institutional Funds Act which the *New York Times* indicates will be supported by most colleges and universities.

UMVARA Symposium Set for Arizona Dec. 1-2

A Study Symposium to explain the Uniform Motor Vehicle Accident Reparations Act (UMVARA) to legislative leaders of Southwest states has been scheduled for Dec. 1-2 in the San Marcos Hotel, Chandler, Ariz.

Key legislators from a dozen states have been invited to the sessions which will deal with the philosophy, policies and details of the most comprehensive approach to "no fault" auto accident reparations yet developed.

Participants in the program will include:

John Thomas Davies – a Minnesota commissioner on uniform laws, a state legislator, and a law professor at William Mitchell College of Law. A long-time supporter of "no fault" auto accident reparations systems, Davies was instrumental in launching the NCCUSL project to draft UMVARA and served on the drafting committee.

William Cohen – a professor in the Stanford University Law School who served as a reporter-draftsman for the UMVARA drafting committee.

Roger C. Henderson – a professer at the University of Nebraska Law School who also served as reporter-draftsman for the committee.

James Bush – a Phoenix lawyer and an Arizona

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Five New Uniforms Acts Now

Capsule descriptions of four of the five uniform acts completed in San Francisco and now being promulgated for possible adoption by the 50 states appear on these pages. A more detailed description of the fifth new uniform act – the Residential Landlord and Tenant Act – begins on page 4.

Uniform Motor Vehicle Accident Reparations Act

The act was designed to compensate motor vehicle accident victims for all economic loss. The "basic reparations" package which all insurers would be required to offer would include payment for:

(1) All medical and rehabilitation services.

(2) Earnings of up to $200 per week lost because of an accident. Such compensation also would be provided to dependents of breadwinners killed in accidents.

(3) "Ordinary and necessary services" which the accident victim would have provided "not for income but for the benefit of himself or his family," e.g. housework and child care in the case of an injured mother.

The basic benefits mandated by the act would be paid without limits on either the time period or the total amount.

To finance the unlimited coverages, the act would eliminate nearly all auto accident litigation. It would abolish the present system of placing the burden for auto accident reparations on the insurance company of the person found to be "at fault" in an accident.

The act limits the power to sue only in cases involving "ownership, maintenance, or use of a motor vehicle." Defective manufacture, or repair, of a vehicle still would provide a cause for suits as would accidents involving railroad trains, or occurring on commercial parking lots.

An accident victim insured under a basic reparations policy would receive his benefits from his own insurance company even if he was injured as a pedestrian, or while riding in another person's car.

The act calls for a series of deductibles which insurers would be mandated to offer in an effort to lower auto insurance costs. The act also would allow combinations of health and motor vehicle coverage to lower the total insurance bill.

Uniform Public Assembly Act

This act was "designed to facilitate the free and unrestrained exercise of the constitutional rights of free speech and peaceable assembly."

A public assembly is defined in the act as "a gathering in a public place of 50 or more individuals which the general public is permitted to attend, whether upon payment of an admission or not." A public place is defined as one where "federal or state government, a political subdivision, or government agency has authority to control or prohibit use by the general public," or a place where "a private person permits use by the general public."

The act imposes restraints only to protect "public health and safety" and to "prevent unreasonable impairment of the normal use of a public place." The act was drafted to allow organizers of a public assembly and a "permit officer" to work out the logistics of an assembly through negotiation.

To prevent a public assembly, a permit officer would seek a court injunction. Organizers of an assembly could seek relief from the permit officer's decision through an administrative reviewing authority such as a city council committee, or in the courts.

In either forum, the permit applicant would have a right to cross-examine witnesses. The act also instructs courts to "expedite the proceedings to afford timely relief."

Uniform Management of Institutional Funds

This act claifies the right of governing boards to invest funds of such institutions as hospitals and colleges for "total return." This means governing boards could, for example, invest in growth stocks paying low or no dividends but having a high potential for appreciation in long-term value, rather than concentrate entirely on investments with immediate high income yields.

The act also sets a standard of conduct for governing boards of institutions. This would require members to "exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision and . . . consider long and short term needs of the institution in carrying out its . . . purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions."

Ready for Adoption by States

Under the act governing boards would be allowed to retain professional investment counsel and managers, and to seek removal of restrictions on gifts which have become "obsolete, inappropriate, or impracticable."

The act defines an "institution" as "an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes."

Uniform Duties to Disabled Persons

Law enforcement officers and medical personnel would be required by this act to try to determine whether a person found unconscious, or dazed, is suffering from the effects of an accident or "illness." The illness involved could range from epilepsy and diabetes to intoxication or drug abuse.

The act calls on law enforcement officers to try to discover the cause of an unconscious, or dazed, state before arrest "wherever feasible." This requirement includes a search for an identification bracelet, necklace, card, or other device, bearing information needed in a medical emergency. It also requires a call for medical assistance if no identification device is located but there is a reason to suspect illness or injury has caused the disabled state.

In a prefatory note, the drafting committee made it clear that law officers and medical personnel could not be excused from seeking the cause of disability merely because no emergency identification device could be found. The committee reasoned that drug users, alcoholics, and others facing either penalties, or embarrassment, would not wear such identification, but that law officers and medical personnel should nevertheless try to determine whether emergency treatment was needed.

Key provisions of the act excuse both law officers and medical personnel from possible liability for invasion of privacy, illegal search, or larceny, while searching for an emergency tag on a disabled person.

Burdick cites NCCUSL ability to deal with consumer problems

There is "growing recognition" that NCCUSL possesses the ability to research and draft state legislation to deal with problem areas – especially those involving consumer interests – which otherwise might be preempted by Congress, Judge Eugene A. Burdick said as he began the second half of his two-year term as NCCUSL president.

The North Dakota judge said NCCUSL capabilities "will undoubtedly have profound effect upon the shape of federal legislation in those areas where lack of adequate state legislative action has been deplored.

"We are likely to see more federal legislation providing for disclaimer of federal preemption for states that enact substantially similar legislation, as well as federal legislation that provides general guidelines to be implemented by state legislation. I foresee a growing dependence on the Conference to assist the Congress in meeting the demands for nationwide legislation, particulary in the areas of consumer interest."

Burdick said the NCCUSL Committee on State and Federal Relations, chaired by U.S. Judge Charles W. Joiner of Detroit, has established liaison with Congress and federal departments to strengthen the role of the Conference in developing federal-state legislation.

UMVARA Symposium

(Continued from p. 1)

commissioner on uniform laws, also a member of the drafting committee.

Symposium topics will cover:

(1) UMVARA's limitations on tort liability in theory and practice.

(2) Benefits for accident victims under UMVARA.

(3) Coordination of UMVARA and collateral benefits.

(4) Unique provisions of UMVARA.

(5) An analysis of costs on the basis of value received for value given.

Similar educational sessions for legislative leaders have been offered before on the Uniform Consumer Credit Code and the Uniform Probate Code.

Uniform Residential Landlord

Both landlords and tenants stand to gain from enactment of the Uniform Residential Landlord and Tenant Act approved by the Commissioners at their annual meeting in San Francisco. A story appearing in *The Oregonian* on Sept. 12, 1972, said: "For the first time, a comprehensive landlord-tenant act has been produced, not one that is a piecemeal attempt by one side or the other to solve an isolated problem."

The act, in fact, both codifies existing law in an area undergoing extremely rapid change, and recognizes recent judicial decisions and their trends. The need for a uniform state law can readily be understood when one considers that in most places in this country a standard metropolitan area, which is one housing market, is no respecter of state lines. The Washington housing market, for example, includes Montgomery County, Maryland and Fairfax County, Virginia, as well as the District of Columbia; the Philadelphia housing market includes both Delaware and New Jersey; and the New York City market, Connecticut and New Jersey.

While the *Oregonian* article calls the act "a landmark piece of consumer legislation," it is important to recognize that it was not drawn only, nor even primarily, for poor tenants. The wealthy tenant living on the 40th floor of a luxury high-rise apartment filled with expensive works of art needs a remedy more significant than a claim of constructive eviction when central air-conditioning, humidity control, and elevator services fail to operate.

Offers relief

The act attempts to prevent or give relief from "unconscionable conduct" and pressure tactics caused by either landlord or tenant – they can be developed as easily from a rent strike against a landlord confronted with mortgage and tax obligations as from retaliatory eviction of an unsophisticated tenant. But because of the historic imbalance in bargaining positions of both sides, the tenants' position may appear more visibly improved by the act than that of the landlord.

Some of the specific problems which the act deals with – often through totally new concepts of rental law – are:

- Absentee landlords living in another state from that in which the rental unit is located, and so not subject to the law of that state;
- "Invisible landlords" – whether owners, managers or agents – whose hidden identity gives no place for tenants to turn for satisfaction or fulfillment of the rental agreement;
- Abuse of access rights and privileges by both renters and landlords;
- Use of leases with illegal or unenforceable clauses to harrass tenants or scare them into giving up their legal rights;
- Retaliatory conduct of a landlord – ranging from rent raises or cutting off services to a tenant, to illegal eviction – for any tenant behavior or activity either guaranteed by the rental agreement or by his constitutional right of free speech (including membership or activity in a tenants union); and
- In a month-to-month or week-to-week rental agreement (no lease), inadequate notice of termination of the agreement by either landlord or tenant.

The act would protect a landlord against such tenant conduct as illegally withholding rent; failing to comply with the rental agreement in matters of cleanliness or maintenance, or abusive use of services or facilities; using the unit other than solely as his residence unless this is explicitly agreed to by the landlord; and refusal of reasonable access or, in an extended absence from the premises, inadequate notice of it.

Boat dwellers seek tenant protections

The committee of the California Legislature studying the Uniform Residential Landlord and Tenant Act has been asked to offer tenant protection to boat dwellers, even if they own their own boats.

The man who filed the statement at the recent Los Angeles hearing on the act alleged he was being evicted from his boat slip because he organized other boat dwellers in an attempt to deal with unsafe, unsanitary conditions of dock facilities for which he paid rent. The testimony said because of the increasing demand for live-in boat docks, tenant protection from retaliatory evictions was " more important to those of us who live on boats than to ordinary apartment tenants."

and Tenant Act Approved

The act specifies "Landlord Obligations" to:

- Fulfill requirements of building and housing codes "materially affecting health and safety;"
- Keep the dwelling unit "fit and habitable;"
- Insure that common areas are "clean and safe;"
- Operate and maintain "in good and safe working order" all landlord-supplied facilities and appliances. This includes wiring, plumbing, sanitary, heating, air-conditioning, and other equipment such as elevators;
- Provide for collection and removal of solid waste such as ashes and garbage; and
- Supply running water and adequate hot water and heat.

Among "Tenant Remedies" spelled out in the act are: termination of rental agreements for non-compliance with the agreement or for conditions "materially affecting health and safety." In such instances, landlords would return all prepaid rent, deposits, or security not applied to accrued rent.

The act also prohibits rental agreements or leases which state tenants must: waive their legislated rights; authorize confessions of judgement; agree to pay landlord attorney fees; or exempt, or limit, the legal liability of the landlord. Inclusion of these unenforceable clauses by landlords would allow tenants to receive up to three times the amount of their actual damages, plus court costs and attorney fees.

Self-help offered

Another tenant remedy of the act is a "self-help" provision. This would allow tenants to make minor repairs of defects (other than those they have caused), and to submit a bill to the landlord or deduct the cost from his rent if the amount is less than $100, or no more than half the monthly rent.

Remedies for a landlord's failure to supply heat, water, or hot water, would allow tenants to make other arrangements for these necessities and deduct the cost from the rent, or to procure substitute housing, paying for it out of their rent.

Other key rights of tenants under the proposal would include:

- Restricting security deposits:
- Mandating the disclosure of the name and address of the manager and owner of a dwelling unit; and
- Preventing landlords from forcing tenants to shoulder "Landlord Obligations."

The act provides that tenants may defend against eviction proceedings by demonstrating non-compliance by the landlord.

"Tenant Obligations" include: complying with housing and building codes; keeping individual units clean and sanitary; disposing of solid waste from the units; keeping plumbing clean; operating equipment and appliances in a "reasonable manner;" not deliberately nor negligently damaging the premises; and not disturbing neighbors.

Inspections allowed

Tenants must allow landlords to inspect their dwelling unit to make repairs or remodel, or to show the unit to purchasers, mortgagees, prospective tenants, workmen or contractors. The proposal recommends that landlords give tenants at least two days notice, and enter during normal business hours.

The act permits a landlord to set rules and regulations for the use of the premises and its facilities. But the rules could not be used to discriminate against individual tenants.

"Landlord Remedies" for tenant misconduct include termination of rental agreements for non-payment of rent, or recurring violations "materially affecting health and safety." But landlord liens on household goods or other possessions of a tenant would be prohibited.

The Uniform Residential Landlord and Tenant Act as approved at the August meeting represents more than three years of work by the Conference. In 1969 it authorized the appointment of a subcommittee chaired by Edward L. Schwartz, a practicing lawyer from Boston, to examine the problem. Julian Levi, a professor at University of Chicago Law School, was named reporter-draftsman.

First Reading in Vail

At the 1970 annual meeting in St. Louis, the Conference approved certain policy suggestions made by the subcommittee, and the following year at the Vail meeting, the proposed act went through its first reading.

The subcommmittee was aided and educated to all possible points of view by a 27-member advisory committee representing interests ranging from owners, managers, mortgagees and banks to tenants, tenant unions, legal aid and proverty law groups. Successive drafts were circulated and discussed with the advisory committee, and after the third draft

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Michigan enacts "no fault" law

Michigan has enacted "no fault" auto insurance legislation based in part on an early draft of the Uniform Motor Vehicle Accident Reparations Act. It is the most far-reaching state legislation yet enacted though the benefits it offers still fall short of those which would be provided by UMVARA.

For example, the Michigan law – which becomes effective Oct. 1, 1973 – limits recovery for work loss to a period of three years following an accident and includes no work loss compensation for families of breadwinners killed in auto accidents.

In contrast, UMVARA places no limits on the time period for payment for lost wages, and provides for benefits to be paid to surviving families of breadwinners.

Neither the Michigan law nor UMVARA impose any limits on the amount of payments for necessary medical and rehabilitation services.

Both the Michigan legislation and UMVARA place severe limitations on suits for "non-economic" losses such as "pain and suffering." The Michigan law allows such suits only in cases involving "death, permanent serious impairment of body function or permanent serious disfigurement." UMVARA's limitations in this area include "death, significant permanent injury, serious permanent disfigurement, or more than six months of complete inability of the injured to work in an occupation."

UMVARA also recommends that any judicial award for non-economic loss automatically be reduced $5,000.

Insurance magazine compliments UMVARA

Insurance Field, a national insurance industry magazine with a circulation of 10,000, commented on the completion of the Uniform Motor Vehicle Accident Reparations Act that NCCUSL was:

"the only group to attack the problem objectively and in an educated manner ... (UMVARA) remains as the only real hope for meaningful nationwide elimination of litigation arising from the pyramiding frequency of auto accidents. In the first five months of this year there were more than 1,700,000 accidents, an increase of about 143,000. So the national significance of reparations reform becomes more obvious with every passing day."

Some NCCUSL projects slowed by lack of funding sources

Though most Conference projects are being speeded by substantial funding, some still are becalmed by a lack of money, NCCUSL Executive Director William J. Pierce said in his report in San Francisco.

Pierce said the Special Committee on the Uniform Wholesome Environment Code had received preliminary funding of $15,000 from the Bush Foundation. But efforts to obtain major funding from government or private sources had "proved unfruitful." He said he hoped clarification of federal-state relationships in the environmental area would help clear the way for new funding efforts.

The executive director said he also was seeking funds for drafting a Uniform Extradition Act. The act will be drafted as a joint effort with the Association of Extradition Officials.

Exploratory discussions also have been held with representatives of the American Medical Association and the American Hospital Association on a health profession licensing project. Funding is being sought to support drafting of legislation that would deal with the problem on a uniform basis.

Legislative Director off to "flying start"

The new legislative director of the Conference, John M. McCabe, literally got off to a "flying start" after assuming his new duties shortly before the annual meeting.

In the past three months, McCabe – a law professor at the University of Montana Law School before joining NCCUSL – has flown to:

- A regional meeting of the Council of State Governments in the Ozarks, and also to CSG's Lexington headquarters for a round of meetings.
- Pierre, S.D., and Phoenix for UMVARA hearings. From Phoenix he returned through Texas and New Mexico for meetings with commissioners.
- Washington, D.C., for a presentation to the National Council of State Alcoholism Directors and a national conference on the Uniform Probate Code.
- New York City for a round of meetings on a variety of acts.
- Los Angeles for hearings on the Uniform Residential Landlord-Tenant Act.

Vestal elected vice president; Keely secretary

George C. Keely

Allan D. Vestal

Allan D. Vestal, Carver Professor in the University of Iowa College of Law, is the new vice president of NCCUSL. George C. Keely, a Denver lawyer, was elected secretary during the San Francisco meeting.

Vestal, who was appointed an Iowa commissioner in 1964, served as chairman of the NCCUSL committee which drafted the Uniform Alcoholism and Intoxication Treatment Act. He received his law degree from Yale in 1949 and joined the Iowa faculty the same year. His books include *Federal Courts, A Casebook*, which was published this year.

Keely, who was named a Colorado commissioner in 1967, organized and served as the first chairman of the Uniform State Laws Committee of the Colorado Bar Association. Since its formation in 1966, the committee has helped enact a number of uniform laws in Colorado including the Uniform Consumer Credit Code, Uniform Divorce Act, Uniform Jury Selection Act and Uniform Anatomical Gift Act.

Keely is a member of the Special Committee on the Uniform Land Transactions Code and has served on the NCCUSL Legislative Committee since 1967.

Vestal succeeded Robert E. Sullivan, dean of the University of Montana School of Law, as vice president; Keely succeeded Thomas H. Needham, a Providence, R.I., lawyer and state legislator, as secretary.

Boris Auerbach of Cincinnati was elected to his fifth one-year term as treasurer of the Conference.

Committee to explore corrections legislation

Acting on a recommendation of the Subcommittee on Scope and Program, NCCUSL president Eugene A. Burdick has appointed a new committee "to explore, study and report on the feasibility of drafting" a Uniform Corrections Act.

Wallace M. Rudolph, who asked the subcommittee to consider the need for such legislation, was named head of the Special Committee on Uniform Corrections Act. This new committee was directed to contact federal and state governments and the organized bar in its exploration and study of the "appropriate scope" and demand for uniform legislation in this area.

Other new special committees appointed during the past year include those on:

Uniform Procurement Code; R. Bruce Townsend, Indianapolis, chairman.

Uniform Recognition of Foreign Divorces Act; Maurice H. Merrill, Norman, Okla., chairman.

Uniform Factory-Built Modular Housing Act; Tom Downs, Lansing, Mich., chairman.

Uniform Health Profession Licensing Act; Douglas Keddie, Yuma, Ariz., chairman.

Volpe congratulates

Secretary of Transportation John A. Volpe telegraphed his congratulations on completion of the Uniform Motor Vehicle Accident Reparations Act to NCCUSL President Burdick. The telegram said:

"In voting approval of the Uniform Motor Vehicle Accident Reparations Act, the national conference has provided a superbly drawn legislative vehicle which can serve as a useful tool for the states. Not only has the conference given fresh vigor to the federal principle but it has given renewed confidence to those who believe that major social reforms can be effected without resort to preemption by the national government.

"The Department of Transportation has been pleased to be able to support the national conference's contribution toward auto insurance reform at the state level. Please extend my congratulations and thanks to your fellow commissioners."

DOT launched the UMVARA project with the help of a $100,000 grant to NCCUSL.

Commissioners preview drafts

A number of acts in the early stages of drafting were presented to the commissioners for preliminary consideration in San Francisco. These presentations ranged from "sneak previews" of portions of the acts to full debate on policy or technical points. Brief notes on these proposed uniform acts and codes are presented here:

Drug Dependence, Treatment and Rehabilitation Act

The drafting committee has dealt with drug dependence as a medical problem – "often an illness of the spirit" – which must be approached on a case-by-case basis. The committee draft would:

- **Recognize drug dependence as an illness requiring medical treatment.**
- **Eliminate prosecution of drug-dependent persons charged with "posession" for personal use.**
- **Allow drug-dependent persons charged, or convicted, in "non-violent" crimes to receive medical treatment rather than criminal penalties.**
- **Establish state networks of treatment facilities which whenever possible would be "community based."**
- **Authorize medical personnel to use a "full range" of treatment. This would include everything from maintenance prescriptions to job training.**
- **Stress the need for confidentiality in all phases of treatment.**

John W. Thomas, a Columbia, S.C., lawyer, chairs the drafting committee.

Rules of Criminal Procedure

An early draft of several rules of a proposed new process for seeking criminal justice was previewed in San Francisco. The preview revealed that the special drafting committee plans to minimize pre-trial detention and emphasize the substance rather than the technicalities of law.

The early draft stressed the use of "citation," rather than arrest, in most circumstances. A citation would be similar to a traffic ticket. The draft said citations should be used unless authorities believe that:

(1) The offense charged or the manner in which it is alleged to have been committed, involved violence, or threat of violence, to person;

(2) The person is committing an offense in the officer's presence, and will deliberately continue to commit the offense unless arrested;

(3) The person committed an offense punishable by incarceration and would not respond to a citation; or

(4) Arrest is necessary for the protection of the person arrested or to administer, or bring him to a source of, needed medical or other aid.

NCCUSL is formulating the new rules with the help of a $121,000 grant from the U.S. Law Enforcement Assistance Administration. These rules would replace the Rules of Criminal Procedure completed by the Conference in 1952.

Chairman of the drafting committee is Maynard E. Pirsig, retired member of the faculty of the University of Minnesota Law School.

Age of Majority Act

The committee draft would treat all persons reaching their 18th birthday anniversary as adults.

State Antitrust Act

The preliminary draft would declare "every contract, combination, or conspiracy in unreasonable restraint of trade or commerce in a relevant market in this state . . . unlawful." The draft also would prohibit combinations set up to create monopolies to limit competition, or to set prices, in a "relevant market," which would be defined as a "geographic area of effective competition" even though part of that area might be outside the state involved.

Chairman of the drafting committee is Ernest R. von Starck of Philadelphia.

Land Transactions Code

The comprehensive proposal being drafted by an NCCUSL committee to cover all phases of real estate transactions would provide extended protection for home buyers. The code would make a buyer of "residential real estate which . . . he occupies or intends to occupy as his own residence" a "protected party" whose lack of technical real estate knowledge could not be exploited.

The preliminary draft of the code places rigorous new responsibilities on "merchant-sellers" of real estate. For example, a merchant-seller who is in the real estate business would be required to assume an "implied warranty" covering any home he sells. He

during San Francisco meeting

would warrant both the quality of a house and its suitability for the specific use for which it is purchased.

The proposed code also would introduce the concept of "unconscionability" to all real estate transactions. This move would allow courts to remedy unfair contracts covering real estate.

The committee – in addition to protecting home buyers – is seeking to modernize and simplify real estate law, promote interstate flow of funds for real estate transactions, and establish uniform legislation for today's mobile society.

Chairman of the drafting committee is Allison Dunham, a professor at the University of Chicago Law School and a former executive director of NCCUSL.

Disclaimer of Bequests Acts

Drafts of the Uniform Disclaimer of Transfers of Will, Intestacy or Appointment Act and Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act are designed to allow a "disclaimer" to renounce all, or part, of the property he is entitled to receive. The mechanics of disclaimer, including time limits, disposition of property involved and rights of creditors and taxing bodies are unclear in most states. Uniform legislation should solve this problem.

Tom Martin Davis, a Houston lawyer, is chairman of the drafting committee.

Trade Secrets Act

The draft would provide for remedies ranging from payment of royalties to punitive damages in cases involving misappropriation of secrets which possess "either novelty or significant economic value." The committee is chaired by Joseph McKeown, a Coos Bay, Ore., lawyer.

Crime Victims Reparations Act

The preliminary draft proposed creating state crime victims reparations boards which would administer the limited economic benefits provided by the act to victims of crimes who were not compensated for their injuries, or property loss, through other sources – such as insurance. The committee is headed by Richard Cosway, a professor at the University of Washington Law School.

Legitimacy Act

A preliminary draft of this act would consider all children "legitimate." The draft states "a child is the legitimate child of his natural parents, regardless of their marital statue, and a legitimate relative of their relatives." It outlines various ways in which the father of a child can legally be determined – including litigation.

Eminent Domain Code

The proposed code would govern the procedures in all state condemnations of land for public use. The preliminary draft was designed to "encourage and expedite" real property acquisitions through negotiation in order to avoid litigation, assure consistent treatment and "promote public confidence."

John C. Deacon, a Jonesboro, Ark., lawyer, heads the drafting committee.

U3C variations report is published

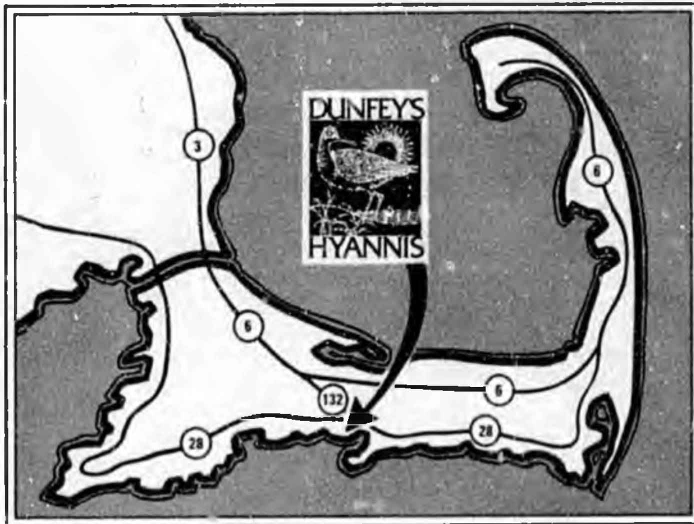
The Committee on the Uniform Consumer Credit Code has published a report on variations in the code as it has been enacted in six states.

The committee, chaired by New York commissioner Alfred A. Buerger, has noted and commented on changes from the official text of U3C as it was enacted in Colorado, Idaho, Indiana, Oklahoma, Utah and Wyoming.

The committee also said it is revising and updating the U3C. This revision will not only reflect the variations of the enacting states but similar legislation enacted in the District of Columbia and Wisconsin, reports of study commissions in California and other states, the National Consumer Act, and recommendations of representatives of consumer and credit industry groups.

Landlord-Tenant *(Continued from p. 5)*

was laid before a joint meeting of the two groups meeting in Chicago in March, they arranged for a public hearing on the act in San Francisco in June. Following the hearing, at which more than 30 witnesses testified and several hundred pages of statements were received, the fourth draft was circulated. This draft, as reviewed and modified after a line-by-line reading, became the final act.



NCCUSL to meet on Cape Cod in 1973

The 82nd annual meeting of the National Conference of Commissioners on Uniform State Laws will be held on Cape Cod, July 27 - Aug. 3, 1973.

The meeting site is Dunfey's Hyannis (Mass.) Resort. The meeting facility (see map left) is near Interstate 6, providing excellent access for motor vehicles. Frequent commuter air service also is available from both Boston and New York.

New Commissioners

The following commissioners on uniform state laws have been appointed by their states since January, 1972:

Alabama–Charles M. Crook, Montgomery
Alabama–J. Pelham Ferrell, Phenix City
Alabama–Richard L. Jones, Birmingham
Arizona–Edward F. Lowry, Jr., Phoenix
California–Craig Diddle, Sacramento
California–Theodore B. Olson, Los Angeles
Georgia–Morris W. Macey, Atlanta
Iowa–William C. Ball, Waterloo
Kentucky–Scott Miller, Jr., Louisville
Kentucky–Charles S. Wible, Owensboro
Michigan–Basil W. Brown, Lansing
Michigan–Donald E. Holbrook, Jr., Lansing
Michigan–Robert Richardson, Lansing
Michigan–J. Robert Traxler, Lansing
South Dakota–Donald Porter, Pierre
South Dakota–James M. Doyle, Pierre
Texas–Richard B. Amandes, Lubbock
Wyoming–Charles G. Kepler, Cody

Alcoholics lobby act

Alcoholics have demonstrated they can be the deciding factor in enactment of the Uniform Alcoholism and Intoxication Treatment Act.

Glee S. Smith, a Kansas commissioner on uniform laws and a state senator, reports that alcoholics mounted one of the most effective lobbying campaigns in his state's history to support the act which was completed only last year. At least two alcoholics from each legislative district visited their state senators and representatives to explain the importance of the law. The result was enactment, and Kansas is gearing up to implement the act which treats alcoholism as a medical problem.

Washington, which also enacted the uniform law shortly after its completion, is preparing to implement the law when it becomes effective in 1974. Reports from Washington indicate recovered alcoholics will play a decisive role in carrying out the program. For example, the recently-appointed director of a new treatment facility in Spokane once spent four years on "skid row." He will also oversee the paramedical patrol which will assume responsibility for persons who are intoxicated in public.

Uniform Law Memo is published by the National Conference of Commissioners on Uniform State Laws, 1155 East 60th St., Chicago, Ill., 60637; (312) 493-0533.

SUPPLEMENT ON INDIVIDUAL STATE ESTIMATES

(October 16, 1972)

Estimates of premium savings for individual states were provided only by the National Association of Independent Insurers. The American Insurance Association and the American Mutual Insurance Alliance calculated state savings estimates only for New York and Vermont. Both AIA and AMIA agree that the premium savings will vary among states, but AIA expects the variation to be substantially less than the NAII.

The attached estimates for individual states show the NAII estimates for a person currently purchasing the common package of coverages described in the basic report. They also show what the AIA and AMIA estimates would be if (1) the AIA and AMIA countrywide estimates were correct and (2) the variation among states were (a) that assumed by the NAII and (b) one-half that assumed by the NAII. For example, assuming 8.6 percent property coverage premium savings, AIA estimates 17 percent savings countrywide. NAII estimates a 10 percent premium increase. For a state in which NAII predicts an 18 percent increase the synthetic AIA estimate, assuming the NAII variation, would be

$$1 - (1.18/1.10)\ (1 - .17)$$

$$= 1 - (1.073)\ (.83)$$

$$= 1 - .89 = 11 \text{ percent savings}$$

Assuming one-half the NAII variation, the synthetic AIA estimates would be

1 - (1.036) (.83)

= 1 - .86 = 14 percent savings

Estimates are provided for (1) UMVARA (2) UMVARA with a $100 deductible on economic losses (3) UMVARA with a $300 deductible on economic losses and (4) UMVARA with a $500 deductible on economic losses.

The estimate countrywide premium savings used to calculate the state estimates were as follows:

Deductible	AIA	AMIA	NAII
None	17%	7%	- 10%
$100	20	11	- 4
$300	23	14	0
$500	25	16	2

ALASKA

Assumption	AIA	AMIA	NAII
1. UMVARA			
a. NAII variation among states	14 %	4 %	- 14 %
b. Half the NAII variation among states	16	5	- 12
2. UMVARA - $100 deductible			
a. NAII variation among states	17	8	- 7
b. Half the NAII variation among states	19	10	- 6
3. UMVARA - $300 deductible			
a. NAII variation among states	20	11	- 3
b. Half the NAII variation among states	22	13	- 2
4. UMVARA - $500 deductible			
a. NAII variation among states	23	13	- 1
b. Half the NAII variation among states	24	15	0

National Conference of Commissioners on Uniform State Laws

1155 East 60th St., Chicago, Illinois 60637 — (312) 493-0533

LIST OF PUBLICATIONS
1972 - 1973

Uniform Acts

Abortion Act	1971
Acknowledgment Act, Amended	1960
Act to Secure the Attendence of Witnesses from Without a State in Criminal Proceedings	1936
Adoption Act, Revised	1971
Aircraft Financial Responsibility Act	1954
Alcoholism and Intoxication Treatment Act	1971
Anatomical Gift Act	1968
Ancillary Administration of Estates Act, Amended	1953
Arbitration Act	1956
Certification of Questions of Law [Act] [Rule]	1967
Child Custody Jurisdiction Act	1968
Civil Liability for Support Act	1954
Commercial Code, Revised (Available from West Publishing Co, 50 W. Kellogg Blvd., St. Paul, MN 55102)	1962
Common Trust Fund Act, Amended	1952
Consumer Credit Code (Available from West Publishing Co, 50 W. Kellogg Blvd., St. Paul, MN 55102)	1968
Consumer Sales Practices Act, Revised	1971
Contribution Among Tortfeasors Act, Revised	1955
Controlled Substances Act	1970
Criminal Extradiction Act	1936
Criminal Procedure, Rules of	1952
Deceptive Trade Practices Act, Revised	1966
Declaratory Judgments Act	1922
Disposition of Community Property Rights at Death Act	1971
Disposition of Unclaimed Property Act, Revised	1966
Division of Income for Tax Purposes Act	1957
Divorce Recognition Act	1947
Duties to Disabled Persons Act	1972
Enforcement of Foreign Judgments Act, Revised	1964
Estate Tax Apportionment Act, Revised	1964
Evidence, Uniform Rules of	1953
Facsimilie Signatures of Public Officials Act	1958
Federal Tax Lien Registration Act, Revised	1966
Fiduciaries Act	1922
Foreign Money-Judgments Recognition Act	1962
Fraudulent Conveyance Act	1918
Gifts to Minors Act, Revised	1966

Interstate Arbitration of Death Taxes Act-- ----------------- 1943
Interstate Compromise of Death Taxes Act----- ------------- 1943
Interstate and International Procedure Act-------------------- 1962
Jury Selection and Service Act------------------------------ 1971
Juvenile Court Act-- 1968
Limited Partnership Act-------------------------------- 1916
Management of Institutional Funds Act--------------------- 1972
Mandatory Disposition of Detainers Act--------------------- 1958
Marriage and Divorce Act, Revised------------------------ 1971
Military Justice, Code of-------------------------------- 1961
Minor Student Capacity to Borrow Act--------------------- 1969
Motor Vehicle Accident Reparations Act-------------------- 1972
Motor Vehicle Certificate of Title and Anti-Theft Act--------- 1955
Partnership Act-- 1914
Paternity Act-- 1960
Perpetuation of Testimony Act---------------------------- 1959
Photographic Copies of Business and Public Records as
Evidence Act-- 1949
Post Conviction Procedure Act, Revised-------------------- 1966
Principal and Income Act, Revised------------------------ 1962
Probate Code-- 1969
(Available from West Publishing Co, 50 W. Kellogg Blvd.,
St. Paul, MN 55102)
Probate of Foreign Wills Act----------------------------- 1950
Public Assembly Act------------------------------------ 1972
Reciprocal Enforcement of Support Act, Revised----------- 1968
Recognition of Acknowledgments Act---------------------- 1968
Rendition of Accused Persons Act------------------------ 1967
Rendition of Prisoners as Witnesses in Criminal Proceedings
Act-- 1957
Residential Landlord-Tenant Act------------------------- 1972
Securities Act-- 1958
Simplification of Fiduciary Security Transfers Act----------- 1958
Simultaneous Death Act---------------------------------- 1953
Single Publications Act--------------------------------- 1952
Status of Convicted Persons, Act on----------------------- 1964
Statutory Construction Act------------------------------ 1965
Supervision of Trustees for Charitable Purposes Act---------- 1954
Testamentary Additions to Trusts Act---------------------- 1960
Trustees' Powers Act----------------------------------- 1964
Veterans' Guardianship Act------------------------------ 1942
Voting by New Residents in Presidential Elections, Act on--- 1962

Model Acts Promulgated by the Conference

Act	Year
Act to Provide for the Appointment of Commissioners	1944
Anti-Discrimination Act	1966
Anti-Gambling Act	1952
Blood Tests to Determine Paternity, Act on	1952
Choice of Forum Act	1968
Court Administrator Act, Amended	1960
Crime Investigating Commission Act	1952
Department of Justice Act	1952
Escheat of Postal Savings System Accounts Act	1970
Foreign Bank Loan Act	1959
Land Sales Practices Act	1966
Nuclear Facilities Liability Act	1961
Perjury Act	1952
Police Council Act	1952
Post-Mortem Examinations Act	1954
Public Defender Act	1970
Rules Governing Procedure in Traffic Cases	1957
Small Estates Act	1951
Special Power of Attorney for Small Property Interests Act	1964
State Administrative Procedure Act, Revised	1961
State Tax Court Act	1957
State Witness Immunity Act	1952
Unauthorized Practice of Law, Act Providing Remedies for	1960
Water Use Act	1958

Other Acts Promulgated by the Conference

Act	Year
Absence as Evidence of Death and Absentees' Property Act	1939
Composite Reports as Evidence	1936
Criminal Statistics Act	1946
Cy-Pres Act	1944
Death Tax Credit Act	1961
Estates Act	1938
Execution of Wills Act	1940
Expert Testimony Act	1937
Federal Services Absentee Ballot Act	1962
Insurer's Liquidation Act	1939
Interparty Agreement Act	1925
Joint Obligations Act	1925
Nonresidents' Individual Income Tax Deductions Act	1961
Powers of Foreign Representatives Act	1944
Power of Sale Mortgage Foreclosure Act	1940
Preservation of Private Business Records Act	1954
Reciprocal Transfer Tax Act	1928
Resale Price Control Act	1940

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Preservation of Private Business Records Act	1954
Reciprocal Transfer Tax Act	1928
Resale Price Control Act	1940

Reverter of Realty Act-- 1944
Rule Against Perpetuities Act-------------------------- 1944
Statute of Limitations on Foreign Claims Act------------ 1957
Trusts Act-- 1937
Vendor and Purchaser Risk Act------------------- ----- 1935
War Service Validation Act----------------------------- 1944
Written Obligations Act----------------------------------- 1925

PRICE LIST

Uniform and Model Acts (except those listed below) each------ ~~50¢~~ 60

Anti-Discrimination Act---------------------------- ~~75¢~~ 85
Evidence, Uniform Rules of------------------------ ~~75¢~~ 85
Juvenile Court Act------------------- ----------- ~~60¢~~ 70
Marriage and Divorce Act, Revised----------------- ~~75¢~~ 85
Military Justice, Code of-------------------------- ~~60¢~~ 70
Motor Vehicle Accident Reparations Act------------ ~~$1.50~~ 1.60
Securities Act--------------------------------------- ~~75¢~~ 85

Handbook and Proceedings of the National Conference of Commissioners on Uniform State Laws
1968 - 1970 volumes------------------------------ $ 8.00
All previous volumes---------------------------- $ 5.00

U.M.V.A.R.A.: Key to Reform of Accident Reparations

by Robert L. Bombaugh

The Uniform Motor Vehicle Accident Reparations Act, approved by the Uniform Law Commissioners for enactment by the states, offers the best way to attain reform of the motor vehicle accident compensation system and to avoid raising an unnecessary multitude of conflict of laws problems. The act minimizes the need for use of the tort system, but it does not have an arbitrary cut-off on benefit levels.

DURING DRAFTING of the Uniform Vehicle Accident Reparations Act those opposed to basic reform of the tort liability system in motor vehicle accidents frequently complained that the draftsmen were following a "radical" and "unprecedented" path. But the uniform act can trace its genesis at least back to 1925. The concepts encompassed in the act were proposed in the November issue of this *Journal* that year by a distinguished Ohio judge, Robert S. Marx, who was a judge of the superior court in Cincinnati, in an article "Compulsory Automobile Insurance" (page 731). In the intervening years this approach received frequent attention from legal scholars, but until recently little legislative action.

The prospects for legislative reform were materially advanced in 1968 when Congress authorized a two-year study by the Department of Transportation of the motor vehicle accident compensation system. The final report of the department, *Motor Vehicle Crash Losses and Their Compensation in the United States*, submitted to Congress in March of 1971, concluded that only a major reform of the system would serve the needs of the motoring public but that reform could best be effected at the state level.

To implement the report's recommendations, the D.O.T. and the Ford Foundation jointly funded a special project of the National Conference of Commissioners on Uniform State Laws. Beginning in June, 1971, a special committee of the conference undertook the complicated task of drafting an act to accomplish major reform of the system. Assisted by a staff of reporters, consultants, and a broadly based advisory committee, the special committee completed its work in August, 1972. At its annual meeting that month the conference approved the Uniform Motor Vehicle Accident Reparations Act and recommended it for enactment in all states. The official text of the act was published in November.

Basic Philosophy: Each Person Insures Himself

The act starts from the premise that the public will be best served by a reparations system in which each person insures himself against the risks incurred in operating a motor vehicle. This principle is essential to the full and efficient compensation of motor vehicle losses and rational allocation of the resulting costs.

Under the act almost all persons injured in automobile accidents are assured of benefits for their injuries without regard to fault. The cost of insurance to an individual will be a function of several factors, including his intensity of use of a motor vehicle, how he drives, the safety features of his vehicle, and the risk of loss he presents to the system when injured. People with high incomes to protect or who demand more expensive medical treatment will pay more than those with low incomes or more modest demands on medical care facilities. The system should encourage the development of features in vehicles that will enhance occupant protection in crashes, because lower losses can lower insurance premiums for the vehicle.

Basic Reparation Benefits Are Required

The act establishes certain compulsory minimum benefits, termed basic reparation benefits, which are to be paid without regard to fault to persons suffering loss from injury arising out of the maintenance or use of a motor vehicle. The only persons wholly excluded from any benefits are persons (and their survivors) who intentionally injure themselves or others. Converters are excluded except under their own basic reparation insurance or if under fifteen years of age. A person is not a converter if he uses a vehicle in the good faith belief he is legally entitled to do so.

Basic reparation benefits are payable to reimburse the recipient for "net loss" suffered through injury arising out of the maintenance or use of a motor vehicle. The terms "loss" and "net loss" refer to economic detriment. Basic reparation benefits are not payable to compensate noneconomic detriment, including pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage recoverable under the tort law of the enacting state.

The Uniform Motor Vehicle Accident Reparations Act was drafted by a committee of practicing lawyers, judges and law teachers, of which Lindsey Cowen, dean of the School of Law of Case-Western Reserve University, was chairman. The official text of the act, together with a prefatory note and commentary, may be obtained for $1.50 from the National Conference of Commissioners on Uniform State Laws, 1155 East 60th Street, Chicago, Illinois 60637.

There are three basic components of loss: (1) allowable expense; (2) income loss (termed "work loss" and "survivor's economic loss" under the act); and (3) replacement services loss.

Allowable expense means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. Not included are funeral, cremation, or burial expenses in excess of $500 or that portion of a charge in excess of a reasonable and customary charge for semiprivate accommodations, unless intensive care is medicaly required. There are no permitted exclusions with respect to allowable expense, although the act permits a limited number of deductibles. There are no monetary or temporal limits applicable to allowable expenses.

Work loss means loss of income from work the injured person would have performed if not injured and expenses incurred in obtaining services in lieu of those the injured person would have performed for income. Income actually earned from substitute employment or which could have been earned from available appropriate substitute work the injured person could have performed is deducted in calculating work loss.

Survivor's economic loss is the counterpart of work loss in fatal cases. It means loss of contributions or things of economic value to the decendent's survivor which would have been received, less expenses avoided by reason of the decedent's death.

If a benefit received to compensate for loss of income is not taxable income, the income tax saving that is attributable to the loss of income caused by the injury is subtracted in calculating net loss. This subtraction may not exceed 15 per cent of the loss of income and is reduced if the claimant furnishes reasonable proof of a lower value of the income tax advantage. Insurers must offer an option to exclude 10 per cent of work loss and survivor's economic loss in calculation of net loss. Additional exclusions of work loss are not permitted unless the insured has other protection from a source approved in advance by the insurance commissioner.

Replacement services loss means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family (or survivors in case of a decedent). All replacement services loss sustained on the date of injury and the first seven days thereafter is excluded in calculating basic reparation benefits, except in cases of death. Insurers must offer an option to exclude all replacement services loss and may offer any other exclusion of replacement services loss in calculating net loss, if approved by the insurance commissioner.

The act contains neither an over-all dollar nor temporal limit with respect to benefits for work loss, survivor's economic loss, and replacement services loss. Benefits are payable as long as loss accrues. There is, however, a weekly limit on the benefits. Basic reparation benefits payable for work loss, survivor's economic loss, and replacement services loss arising from injury to one person may not exceed $200 in any calendar week. Insurance of higher losses, which is voluntary under the act, is termed "added reparation insurance."

All benefits or advantages a person receives or is entitled to receive because of the injury from social security, workmen's compensation, and any state-required temporary, nonoccupational disability insurance are subtracted in calculating net loss. Benefits from other insurance sources are not subtracted unless the insured had purchased an exclusion of losses compensated by a specified insurance source, providing benefits for accidental injuries generally and approved in advance by the insurance commissioner.

Status of Basic Reparations Insurance Varies

These provisions make basic reparations insurance "secondary" to workmen's compensation, social security, and state-required temporary disability insurance, but "primary" to other sources. However, its status as "primary" to other insurance sources does not prevent an insured from purchasing other insurance to cover some or all of his losses when another insurer is prepared to cover motor vehicle losses within a general accident coverage, and a basic reparations insurer is willing to offer the exclusion. If the general accident insurer's coverage has terminated or is properly disclaimed at the time of accident, the basic reparation insurer must pay basic reparation benefits without subtraction. Presumably the exclusion will be attractive only to a basic reparation insurer that is reasonably assured of continuity in protection of the insured under the general accident insurance.

An insured may purchase a variety of deductibles that basic reparation insurers must offer. These include deductibles in the amounts of $100, $300, or $500 from all basic reparation benefits otherwise payable. Insurers must also offer a deductible of $1,000 per accident from all basic reparation benefits otherwise payable for injury to a person while he is operating or is a passenger on a motorcycle. The deductibles apply only against claims of basic reparation insureds under the insurance contract and their survivors and not to any

other person entitled to benefits under the contract. The deductibles reduce insurance costs in two ways—by avoiding the administrative expense associated with small claims and by allowing the insured to self-insure a part of his loss.

With two exceptions the basic reparation benefits of a basic reparation insured are always paid by his own insurance company. A basic reparation insured is a person identified by name as an insured in a contract of basic reparation insurance, his spouse, or other relative residing in the same household, and a minor in his custody or the custody of a relative residing with the named insured. An exception to the general rule is made for injuries to the driver or other occupant of a vehicle that occur while the vehicle is being used in the business of transporting persons or property. The other exception is an injury to an employee, his spouse, or other relative residing with him, if the accident causing the injury occurs while the injured person is driving or occupying a vehicle furnished by an employer. In both of these cases the insurance covering the vehicle is responsible for the benefits.

An injured person who is not a basic reparation insured recovers basic reparation benefits from the insurer of the vehicle he occupied or if a pedestrian from the insurer of any involved vehicle. The insurer paying basic reparation benefits to an uninsured pedestrian is entitled to contribution from the insurers of all involved vehicles. An unoccupied parked vehicle is not an involved vehicle unless it was parked so as to cause unreasonable risk of injury.

To assure universal protection, the act creates an assigned claims plan to pay benefits where coverage would not otherwise exist. A person entitled to basic reparation benefits may recover them from the assigned claims plan if (1) basic reparation insurance is not applicable to the injury for reasons other than intentional injury or conversion (by one fifteen years of age or over); (2) basic reparation insurance cannot be identified; (3) the basic reparation insurer is financially unable to pay the benefits; or (4) a claim is rejected by an insurer for any reason other than that the person is not entitled under the act to the basic reparation benefits claimed.

The claim of a person who fails to comply with the act's compulsory insurance requirements is reduced by $500 for each year of noncompliance and is subject to all the optional deductibles and exclusions required to be offered by basic reparation insurers under the act.

Basic reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs but when work loss, replacement services loss, or allowable expense is incurred. Benefits are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of loss. Overdue benefits bear interest at a suggested rate or 18 per cent per annum and entitle the claimant to recovery of his reasonable attorney's fees from the insurer.

Lump-sum settlements and judgments for future benefits under the act are not favored. If the reasonably expected net loss exceeds $2,500, any settlement requires court approval on a finding that the settlement is in the best interest of the claimant. In an action for benefits, at the instance of the claimant, the court may commute future losses, other than allowable expense, if the award will promote the health and contribute to the rehabilitation of the injured person, if the present value of all future benefits other than allowable expense does not exceed $1,000, or if the parties consent and the award is in the best interest of the claimant. Settlement agreements and installment judgments for future benefits are subject to liberal reopening rules.

► The Uniform Motor Vehicle Accident Reparations Act, which was adopted and promulgated by the Uniform Laws Commissioners in August of 1972, will be presented to the House of Delegates of the American Bar Association for consideration at the Cleveland midyear meeting in February of 1973. At its meeting in August of 1972, the House of Delegates went on record favoring state enactment of statutes extending first-party coverages for economic losses resulting from automobile accidents but retaining tort liability without abatement.

Added Reparation Insurance Also Is Available

The act relies on optional added reparation insurance as the primary source of benefits for losses not covered by basic reparation benefits. Except with respect to damage to motor vehicles, the act does not specifically define the coverages constituting added reparation insurance. It is expected that among the voluntary coverages that will develop in the marketplace are coverages of work loss and survivor's economic loss in excess of $200 per week, coverage of the exclusions that are required in basic reparation insurance, and coverage of noneconomic detriment.

Basic reparation benefits do not include benefits for harm to property. The act also abolishes the tort liability of a person for harm to a motor vehicle and its contents. Insurers must offer three added reparation coverages for physical damage to motor vehicles: (1) all collision and upset damage, subject to a deductible of $100; (2) all collision and upset damage if the insured has a valid claim in tort against another identified person or would have a claim but for abolition of tort liability for damages for harm to motor vehicles under the act; and (3) the same coverage as in (2) but subject to a deductible of $100.

ABOUT THE AUTHOR: Robert L. Bombaugh, who practices law in Chicago, served as project manager for the National Conference of Commissioners on Uniform State Laws in the drafting of the Uniform Motor Vehicle Accident Reparations Act. He is a graduate of Harvard College and the University of Michigan Law School (J.D. 1960).

Tort Liability Is Partly Abolished

Unlike many legislative enactments and proposals anointed as "no fault," the uniform act does not have any arbitrary cut-off of benefit levels. It solves the economic problems of the seriously injured by undertaking full compensation of medical expenses and substantial compensation of lost income, for life if necessary.[1] It is a truism that either insurance premiums must be increased to pay these benefits or savings must be effected elsewhere in the system. The uniform act adopts the latter solution. It effects system savings in two basic ways: the reduction of system operating expenses by minimizing the need for the use of the adversary system and the reduction of system expenditures for noneconomic detriment.

Section 5 of the act accomplishes both of these reductions by abolishing tort liability arising out of motor vehicle accidents with very few exceptions, and it is the key section of the act. Without Section 5, the act is unworkable. Tort liability is abolished with respect to accidents occurring in the enacting state and arising from the ownership, maintenance, or use of a motor vehicle. Not abolished are certain tort actions growing out of bodily injury or harm to property when a motor vehicle is involved. For example, neither the products liability of a manufacturer nor the liability of a railroad in a train-car collision is affected.

Section 5 also specifically retains certain tort actions arising from the ownership, maintenance, or use of a motor vehicle. Tort liability is retained for one who violates the compulsory insurance requirements of the act or who intentionally causes harm to person or property. Tort liability is not abolished for harm to property other than a motor vehicle and its contents. Persons in the business of repairing, servicing, or maintaining vehicles will continue to be liable in tort as at present for injuries caused by faulty repairs. Persons in the business of parking or storing motor vehicles will remain liable for harm to a motor vehicle and its contents.

For the average motorist, nonintentional tort liability arising from the ownership, maintenance, or use of a motor vehicle is abolished except for two minor exceptions. Insofar as economic or pecuniary losses are concerned, damages for work loss and replacement services loss not recoverable as basic reparation benefits by reason of the $200 weekly limit are recoverable if the injured person dies or is disabled for more than six months. Amounts not recovered because of the election of a deductible or exclusion by the injured person in his basic reparation insurance or amounts sustained prior to death or six months disability are not recoverable in the retained tort action.

Tort liability for damages for noneconomic detriment is preserved only if the claimant meets one of the threshold criteria. The accident must cause (1) death; (2) significant permanent injury; (3) serious permanent disfigurement; or (4) more than six months of complete inability of the injured person to work in an occupation. Damages recoverable by a qualifying claimant are subject to reduction by the suggested amount of $5,000. Recovery for noneconomic detriment is thus limited to persons who suffer very serious injury.

Solving the Conflict of Laws Problems

The conflict of laws problems that must be faced in drafting state legislation to reform the motor vehicle reparations system provide the most compelling reasons for the adoption of a uniform act.[2] The first issue to be faced is who must meet the compulsory insurance requirements. The act places the requirement on the owner of every motor vehicle registered in the enacting state or operated in it by the owner or with his permission. There is no waiting period when an out-of-state vehicle enters the enacting state.

Since the uniform act contains penalties for noncompliance with the security requirements, the act stretches the state's legislative power to its constitutional limit to protect out-of-state vehicle owners. The act converts every contract of liability insurance for injury, wherever issued, to a basic reparation insurance policy while the vehicle insured is in the enacting state. Given the ease of interstate operation of a motor vehicle, no insurer can reasonably argue it did not contemplate out-of-state use of the motor vehicle. Accordingly, the operation of the insured vehicle in the enacting state should be a sufficient contact to allow the state to impose its law on the out-of-state insurer.[3] The act makes doubly sure with respect to insurers authorized or doing business in the enacting state by prohibiting them from excluding the compulsory coverages in any contract of auto bodily injury liability insurance, wherever written.

Since the state cannot create liability against the United States, the act merely authorizes the United States to provide basic reparation benefits. If it does so, it has the benefit of abolition of tort liability, otherwise not.

Under the act basic reparation benefits are payable to any person suffering loss from injury when the accident causing injury occurs in the enacting state, whether the person is a resident or not. Benefits are also payable to any basic reparation insured and the driver or other occupant of an insured vehicle in accidents occurring outside the enacting state. Tort liability is abolished only for accidents occurring in the enacting state. Whether a forum in another state will follow the law of the enacting state in an action between residents of the forum state is a matter of some doubt, but there is, of course, no way the enacting state can conclusively control the choice of law rules of another state's courts.

1. For a discussion on the scope of the problem of serious injury, see U.S. Dep't of Transportation, Economic Consequences of Automobile Accident Injuries (1970).

2. That the conflict of laws problems are not just of interest to third-year law students is best evidenced by a D.O.T. study of personal injury claims. In a survey of claims settled by sixteen insurers in nineteen states during a two-week period, residents of every one of the fifty states and the District of Columbia were represented. In addition, insured vehicles from every state except Hawaii were included in the sample. U.S. Dep't of Transportation, 1 Personal Injury Claims 10-11 (1970).

3. *Cf. Clay v. Sun Insurance Office*, 377 U.S. 179 (1964).

Compulsory Insurance Is Required

Under the uniform act every owner of a motor vehicle registered or operated in the state must provide insurance (or self-insurance) for basic reparation benefits and for residual tort liability with limits of $25,000 per person for injury and $10,000 for property damage. (Self-insurance is subject to approval of the insurance commissioner.) The act has an optional provision requiring proof of insurance for registration of a motor vehicle.

The act limits the right of an insurer to terminate the contract and stabilizes the insurance relationship for annual periods. An enacting state also may require surrender of the registration certificate and license plates upon termination of insurance. An owner may not permit a vehicle to be operated after security has been terminated. An insurer must notify the registrar of motor vehicles of termination of insurance unless the registrar waives or modifies the requirement by rule.

The act grants the insurance commissioner of the enacting state authority to regulate policy terms and forms used to provide the liability and reparation coverages. He may limit by rule the variety of coverages available in order to give insurance purchasers reasonable opportunity to make price comparisons.

Both the assigned risk and assigned claims plans are subject to regulatory control of the insurance commissioner. He is also directed to create a plan for reallocation of losses so that their financial burden will be reasonably consistent with the propensities of different vehicles to affect the probability and severity of injury or physical damage to vehicles. This function is necessary to prevent a substantial decrease in the insurance burden of commercial vehicles at the expense of private passenger vehicles under a first-party insurance system.

U.M.V.A.R.A Is Best Vehicle for Reform

The Uniform Motor Vehicle Accident Reparations Act presents the best legislative vehicle to effect reform of the tort system at the state level. Unlike many recent legislative proposals, it is not directed just at defining first-party benefits and restrictions on tort liability. It deals with the many complicated issues that arise in a changeover from a third-party adversary system to a first-party insurance system. Its fate in state legislatures undoubtedly will decide whether the reform of the system will be accomplished by the states or the federal government. Inaction at the state level or widely varying reform legislation can only strengthen the case for congressional reform.

PRIVATE PASSENGER PREMIUM COST ESTIMATES FOR UNIFORM MOTOR VEHICLE ACCIDENT REPARATIONS ACT

by

C. Arthur Williams, Jr.

August 6, 1972

PRIVATE PASSENGER
PREMIUM COST ESTIMATES FOR
UNIFORM MOTOR VEHICLE ACCIDENT REPARATIONS ACT

One factor affecting the acceptability of the Uniform Motor Vehicle Accident Reparations Act is the effect it will have on premiums paid by insureds. This report summarizes and analyzes the premium cost estimates (stated as "savings" from premiums) made by three major insurance trade associations at the request of the Special Committee on Uniform Motor Vehicle Reparations Act of the National Conference of Commissioners on Uniform State Laws. The three actuaries responsible for the costing were Paul W. Simoneau, representing the American Insurance Association (AIA), Clyde H. Graves, the American Mutual Insurance Alliance (AMIA), and Charles C. Hewitt, Jr., Allstate and the National Association of Independent Insurers (NAII). Preliminary estimates were presented in April, 1972; these "final" estimates were prepared in July, 1972.

This report is divided into four sections as follows:

I. Premium savings estimates for common package of coverages
   a. Countrywide estimates
   b. State estimates

II. Countrywide premium savings estimates on bodily injury coverages only

III. Why estimates differ

IV. Effect of variations in UMVARA provisions upon premium savings estimates

V. Some special assumptions.

I. PREMIUM SAVINGS ESTIMATES FOR COMMON PACKAGE OF COVERAGES

The premium savings estimates prepared by the three trade associations for a person currently purchasing a common package of coverages are presented on the following page. This commonly purchased package includes

the following coverages:

$25,000/$50,000 Bodily injury liability insurance
$10,000/$20,000 Uninsured motorists coverage
$ 1,000 Medical payments insurance
$10,000 Property damage liability insurance
$100 Deductible Collision insurance
Comprehensive insurance

Countrywide Estimates

In preparing their final estimates the AIA assumed that the insured would purchase insurance that would cover the entire damage to his own car if this damage was caused by someone else's negligence. Such an assumption erases expected premium savings under the property coverages which account for about 60 percent of the total premium cost of the package under the present system. The AMIA, on the other hand, assumed that property coverage premiums would be reduced 8.4 percent because the elimination of tort liability for damage to automobiles would subject all collision losses to a $100 deductible. The NAII prepared estimates using both assumptions on property coverage savings.

In order to place all three estimates on the same base, a second AIA estimate was recalculated assuming an 8.4 percent saving on property coverages. A second AMIA estimate was recalculated assuming no property coverage savings. The resulting estimated premiums savings on the commonly purchased package, under both property coverage savings assumptions, are as follows:

			NAII	
Base	AIA	AMIA	Guest Statute States	No Guest Statute States
8.4% property coverage savings	17%	7%	-12%	-8%
No property coverage savings	11	2	-17	-13

The AIA predicts the greatest premium savings, the NAII the least. The AIA and the AMIA predict premiums will decrease, though by different amounts. The NAII predicts a premium increase.

State Estimates

All three trade associations agree that the premium savings will vary among states. Factors affecting these relative savings are (1) whether the state has a guest statute, (2) whether the state is an urban or rural state, which affects the proportion of single-car accidents, (3) the proportion of tort liability settlements paid for general damages, (4) whether the state has enacted compulsory temporary disability insurance legislation, and (5) the mix of bodily injury and property coverage premiums.

The AIA and AMIA estimated premium savings only for New York and Vermont, the states identified by the NAII as likely to experience the greatest and the least premium savings. As was true for the countrywide estimates, the estimates for these two states are presented on two bases--with and without property coverage savings. NAII estimates are available for all states.

	New York			Vermont		
Base	AIA*	AMIA	NAII	AIA*	AMIA	NAII
Property coverage savings	17%	10%	2%	12%	9%	-26%
No property coverage savings	12	5	-2	6	4	-31%

*Assume the average AMIA-NAII property coverage savings which, although they are the same for the countrywide estimates, differ for these two states.

II. COUNTRYWIDE PREMIUM SAVINGS ESTIMATES ON BODILY INJURY COVERAGES ONLY

Because property coverage insurance premiums are about 60 percent of the total premium paid for the commonly purchased package and because the three associations have been assumed to agree basically on the property coverage premium savings, the estimated premium savings on the bodily injury coverages vary substantially more than the Section I estimates. For the person currently purchasing $25,000/$50,000 bodily injury liability insurance, $10,000/$20,000 uninsured motorists coverage, and $1,000 medical payments insurance, the three estimates are as follows:

		NAII	
AIA	AMIA	Guest Statute State	No Guest Statute State
31%	5%	-42%	-31%

For the person currently purchasing minimum bodily injury protection ($10,000/$20,000 bodily injury liability insurance and uninsured motorists coverage) the savings estimates presented below vary a bit more. Two of the associations predict substantial premium increases for insureds now purchasing only these minimum coverages.

		NAII	
AIA	AMIA	Guest Statute State	No Guest Statute State
4%	-28%	-85%	-71%

III. WHY THE ESTIMATES DIFFER

Clearly the three associations differ on the extent of the premium savings. This section explains the major reasons for these differences. Because the differences involve only the bodily injury coverages, the

discussion will be limited to an analysis of the estimates of (1) the minimum bodily injury protection and (2) the bodily injury coverages in the commonly purchased package.

Basic Differences

The AMIA estimates exceed the AIA estimates primarily for three reasons:

1. Higher permanent disability and survivorship costs.
2. 65 percent more claims under UMVARA compared with 27 percent more assumed by the AIA.
3. Assigned claims costs not specifically recognized by AIA

These factors which increase the cost are partially offset by lower estimated residual tort liability costs.

The NAII estimates exceed the AIA estimates for the following reasons:

1. Higher survivorship costs.
2. 80 percent more claims under UMVARA in guest-statute states.
3. Higher residual tort liability costs.
4. Assigned claims costs not specifically recognized by AIA.
5. No reduction in loss adjustment expenses relative to losses incurred.

The NAII estimates exceed the AMIA estimates primarily for three reasons:

1. 80 percent more claims under UMVARA in guest-statute states compared with 75 percent more assumed by AMIA in guest-statute states and 55 percent in other states or an average increase of 65 percent.
2. Higher residual tort liability costs.
3. Higher assigned claims costs.
4. No reduction in loss adjustment expenses relative to losses incurred.

Lower income loss estimates partly offset these factors producing the higher estimate.

Minimum Protection Estimates

The impact of these differing assumptions can be seen by using a common format to show how the three associations calculated the savings on the minimum protection package. Two steps are involved in this calculation. First, the loss or benefit costs under UMVARA are calculated as a percent of costs under the present system. Second, these loss costs are converted into premium savings. In calculating these premium savings the effect of UMVARA upon the expense portion of the premium dollar must be considered as well as the effect upon the loss portion.

Table 1 shows how the three associations derived different loss cost estimates. The economic losses and economic loss reductions were all calculated on the assumption that the AIA 27 percent increase in loss frequency was correct. The loss frequency adjustment adjusts the AMIA and NAII estimates up to that point for higher loss frequency assumptions. The residual liability section adds charges for this feature of the plan. Assigned claims costs are recognized by AMIA and NAII because of accidents involving uninsured cars, hit-and-run cars, and similar vehicles covered under UMVARA.

The most important differences involve (1) income losses incurred by persons disabled for a long time, (2) losses to survivors of deceased automobile accident victims, (3) the loss frequency adjustment--an extremely important factor, (4) residual liability costs, and (5) assigned claims costs.

AIA assumes that loss costs will remain about the same; AMIA assumes a 39 percent increase and NAII an 85 percent increase in guest statute states.

Table 2 converts these loss costs into premium savings assuming that

TABLE 1

LOSS COSTS UNDER UMVARA AS PERCENT OF COST UNDER PRESENT SYSTEM FOR PERSON CURRENTLY PURCHASING 10/20 BODILY INJURY LIABILITY INSURANCE AND 10/20 UNINSURED MOTORISTS COVERAGE

Economic Losses	AIA	AMIA	NAII Guest Statute States
Medical expenses	37.9%	40.7%	41.7 (net)
Income losses	32.2	37.2	22.3 (net)
Net survivors losses	11.5	24.3	21.9
Other expenses	5.7	5.3	9.0 (net)
Total	87.3	107.5	
Economic Loss Reductions			
Medical collateral sources	- 1.5	- 2.8	
15% income tax deduction	- 4.0	- 4.0	
Weekly income limit	- 1.3	- 1.7	
Income collateral sources	- 0.2	- 0.9	
Subrogation recoveries	- 1.7		
Total	- 8.7	- 9.0	
Net Economic Loss Benefit	78.6	98.1	94.8
Loss Frequency Adjustment*	78.6	127.5	134.6
Residual Liability			
In-state general damages and excess wage losses	14.5	6.0	33.1
Out-of-state	7.4	-	3.5
Uninsured motorists	-	-	2.2
Assigned Claims	-	5.3	11.1
Total Loss Costs	100.5	138.8	184.5

*Net economic loss benefit for AMIA multiplied by 1.30 to reflect AMIA loss frequency estimate 30 per cent greater than AIA estimate; multiplication factor for NAII is 1.45.

TABLE 2

CONVERSION OF LOSS COSTS INTO PREMIUM SAVINGS

	Proportion of Present Premiums Under			
		UMVARA		
	Present System	AIA	AMIA	NAII
Pure loss rates	.550	.550 x 1.005 = .553	.550 x 1.388 = .763	.550 x 1.845 = 1.015
Loss adjustment expense rates	.105	.553 x .130 = .072	.763 x .125 = .095	1.015 x .130 = .132
General administration expense rates	.065	.065	.065	.065
	.720	.690	.923	1.212

AIA:

$$1 - \frac{.690}{.720} = 1 - .958 = 4.2\%$$

AMIA:

$$1 - \frac{.923}{.720} = 1 - 1.282 = -28.2\%$$

NAII:

1. Based on above analysis which assumes that loss adjustment expenses will not increase as much as losses.

$$1 - \frac{1.212}{.72} = 1 - 1.683 = -68.3\%$$

2. Based on the assumption that expenses will increase the same percentage as losses, the actual NAII assumption.

-84.5%

under the present system 55 percent of the premiums is used to pay losses, loss adjustment expenses are 19 percent of losses or 10.5 percent of the premium, 6.5 percent is used to meet administrative expenses, and the remaining 28 percent used for acquisition costs, taxes, and profits. AIA assumed that loss adjustment expenses under UMVARA will drop to 13 percent of the dollar losses. AMIA assumed loss adjustment expenses under UMVARA equal to 12.5 percent of losses. Both AIA and AMIA assumed for costing purposes that general administration expenses would remain 6.5 percent of present premiums. Acquisition costs, taxes, and profits were set at 28 percent of the UMVARA premium.

NAII loss costs are converted into premium savings on two bases. Using AIA expense assumptions, premiums would be expected to increase 68 percent. NAII actually predicts an 85 percent increase because no loss adjustment expense savings are assumed.

Commonly Purchased Coverages

Because the UMVARA premiums will be the same for the person currently buying the minimum protection and the person currently buying the commonly purchased package, the savings will be greater for the person currently buying more complete protection. The UMVARA premium for the bodily injury coverages were calculated by applying the premium savings computed for the minimum protection to the present premium for that protection. The savings on the commonly purchased coverage were derived by comparing this UMVARA premium with the present system premium for this package. No new factors affect the variation in the association estimates.

IV. EFFECT OF VARIATIONS IN UMVARA PROVISIONS UPON PREMIUM SAVINGS

Variations in UMVARA provisions can increase or reduce estimated premium savings substantially. The effect on premiums is one factor to consider before amending the present version of UMVARA.

Table 3 shows how NAII and AMIA predict their premium savings estimates for the commonly purchased package of bodily injury and property coverages would be affected by various changes in UMVARA provisions. NAII estimates cover all possibilities; AMIA provided a complete set of estimates for the minimum bodily injury protection but only a few estimates for the commonly purchased package.

Of particular interest are the effects of eliminating tort liability, of imposing small dollar maximums, and of dollar deductibles.

Because the two associations differ significantly in their estimates of the cost of UMVARA, it is instructive to consider also how much their estimate for each of the variations differs from their UMVARA estimate. These differences are presented in parentheses to the right of the savings estimates.

TABLE 3

SAVINGS ESTIMATES FOR COMMONLY PURCHASED PACKAGE UNDER VARIOUS VERSIONS OF UMVARA

	NAII Guest Statute State	AMIA
UMVARA	-12%	7%
No change in existing tort liability system re property damage	-17 (-5)	2 (-5)
Elimination of tort liability for excess income loss	-11 (1)	7 (0)
Elimination of tort liability for non-economic detriment	-3 (9)	8 (1)
Elimination of tort liability for both excess income loss and non-economic detriment	-1 (11)	9 (2)
Dollar maximum on each type of loss (medical expenses, work loss, survivors loss, etc.) of $250,000. Assume no tort liability on excess medical expense loss, tort liability as prescribed in Act on other losses	-12 (0)	7 (0)
Dollar maximum on each type of loss (medical expenses, work loss, survivors loss, etc.) of $100,000. Assume no tort liability on excess medical expense loss, tort liability as prescribed in Act on other losses	-10 (2)	7 (0)
Dollar maximum on each type of loss (medical expenses, work loss, survivors loss, etc.) of $50,000. Assume no tort liability on excess medical expense loss, tort liability as prescribed in Act on other losses	-5 (7)	8 (1)
Dollar maximum on each type of loss (medical expenses, work loss, survivors loss, etc.) of $10,000. Assume tort liability as prescribed in Act for excess medical expense loss as well as for other types of losses	3 (15)	11*(4)
Dollar maximum on each type of loss (medical expenses, work loss, survivors loss, etc.) of $5,000. Assume tort liability as prescribed in Act for excess medical expense loss as well as for other types of losses	6 (18)	12*(5)

	NAII	AMIA
Dollar maximum on combined loss of $250,000. Assume no tort liability on excess medical expense loss, tort liability as prescribed in Act on other losses	-8% (4)	7 (0)
Dollar maximum on combined loss of $100,000. Assume no tort liability on excess medical expense loss, tort liability as prescribed in Act on other losses	-6% (6)	8 (1)
Dollar maximum on combined loss of $50,000. Assume no tort liability on excess medical expense loss, tort liability as prescribed in Act on other losses	-2 (10)	9 (2)
Dollar maximum on combined loss of $10,000. Assume tort liability as prescribed in Act for excess medical expense loss as well as for other types of loss	6 (18)	12* (5)
Dollar maximum on combined loss of $5,000. Assume tort liability as prescribed in Act for excess medical expense loss as well as for other types of loss	8 (20)	14* (7)
Time limitation on work loss, survivors loss, etc. (but not on medical expense loss) of 10 years. Assume tort liability as prescribed in Act for excess losses	-6 (6)	9* (2)
Time limitation on work loss, survivors loss, etc. (but not on medical expense loss) of 5 years. Assume tort liability as prescribed in Act for excess losses	-3 (9)	10* (3)
Time limitation on work loss, survivors loss, etc. (but not on medical expense loss) of 3 years. Assume tort liability as prescribed in Act for excess losses	-1 (11)	10* (3)
Time limitation on work loss, survivors loss, etc. (but not on medical expense loss) of 1 year. Assume tort liability as prescribed in Act for excess losses	2 (10)	12* (4)
$100 deductible on economic loss	-6 (6)	10 (3)
$300 deductible on economic loss	-2 (10)	14 (7)
$500 deductible on economic loss	0 (12)	16 (9)
One week waiting period on income loss	-11 (1)	8 (1)
Two weeks waiting period on income loss	-10 (2)	9 (2)

*AMIA assumed with respect to these dollar maximums and time limitations that tort liability was not limited to threshhold requirements in Act.

V. SOME SPECIAL ASSUMPTIONS

Some special assumptions made by the three associations in costing UMVARA should be noted.

1. No provision was made for potential annual increases in earnings lost by long-term disabled or deceased persons. On the other hand, no allowance was made for increases in social insurance benefits.
2. Rehabilitation service costs were expected to be offset by decreases in other costs.
3. No allowance was made for the fact that the savings might be less for an insurer with selective underwriting standards.
4. No allowance was made for savings resulting from the allocation of burdens among insurers of vehicles of different weight, etc.

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Article 1

AUTO INSURANCE SYSTEM HAS FEW SUPPORTERS

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on Uniform State Laws

Experts describe the present U.S. auto insurance system as "inequitable... unresponsive...wanton...inefficient...overly costly...slow."

These experts tell us auto insurers must pour six dollars into the motor vehicle accident reparations system in order to provide one dollar to pay the medical expenses and lost wages of crash victims. These figures do not include payments for insurance to cover damages to cars and trucks.

The present system has been condemned by Congress, the U.S. Department of Transportation, the State of New York Insurance Department, associations of insurance firms, consumer groups and most individuals who have suffered serious injuries in a smashup.

Congress found "the existing system of compensation is inequitable, inadequate and insufficient and is unresponsive to existing social, economic, and technological conditions."

DOT — in a study which began under Secretary Alan S. Boyd and was completed in 1971 under Secretary John A. Volpe — concluded that "the existing system ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation and overburdens the courts and legal system."

The New York study completed in 1970 found "the profligacy of the operating costs of the fault insurance system, and its wantonness in mismatching limited resources with serious human needs, would be enough to bring down the whole system someday, even if there were nothing else wrong with it."

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The only support which the present system musters comes from those who acquire 85½ cents of each premium dollar as it filters through the system to shrink to 14½ cents before it reaches the needy pocket of an accident victim.

Official reports tell us an auto accident bodily injury insurance premium dollar is divied up this way:

* 33 cents goes to salesmen, administrators, taxes and profits.
* 23 cents is eaten up in claims administration. This figure includes legal costs.
* 8 cents amounts to additional payments for accident victims who already have been reimbursed from another source.
* 21½ cents goes for "general damages" which have no economic value. Such "damages" usually are referred to as payments for "pain and suffering."
* That leaves only 14½ cents to help victims pay their medical bills, feed and house their families while not able to work, and cover out-of-pocket expenses such as lawn-mowing or baby-sitting.

How do these costs compare with those of other systems which provide for the payment of accident injuries? Consumers Union contrasts the 56 cent per dollar administrative cost of auto accident insurance with the 3 cents per dollar for social security; 7 cents for Blue Cross; and 17 cents for other health and accident plans.

But these statistics do not even hint at the plight of the seriously injured auto crash victim. Such a victim learns that the present system overpays a small claim—which may have no merit—while shortchanging the seriously injured crash victim.

Figures can help reveal this basic flaw in the present system. DOT found that in 1967 those sustaining economic losses of up to $2,500 in motor vehicle

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accidents—not including property damage—suffered 55 per cent of the total dollar loss, but received 69 per cent of the"benefits" paid out by auto insurance companies. Those with losses of more than $2,500 suffered 45 per cent of the total loss but received only 31 per cent of the "benefits."

DOT also found those who sustained less than $500 in economic loss recovered about 4½ times their loss. Those with between $500 and $999 in losses recovered 2.6 times their average loss. But the seriously injured who sustained economic losses of more than $25,000 managed to recover only 30 per cent of their outlay.

These figures demonstrate that those who suffer most, recover least under our present auto accident reparations system.

The next article in this series will explore why such bizarre results are produced by the chaotic "fault" system of motor vehicle accident reparations.

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National Conference of Commissioners on Uniform State Laws
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Article 2

AUTO INSURANCE WAS CREATED TO HIRE LAWYERS

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Auto liability insurance was created to hire lawyers to defend law suits against owners of horseless carriages.

"No consideration of the adequacy, the timeliness or the assurance of compensation for the injured person played any part in the matter," the Department of Transportation found in a study completed in 1971.

DOT passed no judgment on the original "need" for such a system which was set up to defend alleged wrongdoers. Perhaps liability insurance prevented those shouting "get a horse" from postponing the ascendancy of the auto in the U.S. If there was a need for a minority of pioneers to band together to defend their autos against die-hard horsemen that time has past.

The concept of "fault" now used in auto liability insurance developed in the 19th Century which also brought forth the concept of "survival of the fittest." Earlier law had placed the burden for righting wrongs caused by "inherently dangerous instruments" on the owners of such equipment. Early industrialists felt this could shackle development of their "inherently dangerous instruments," such as railroad trains. They sought and created new law which placed the blame for an accident on an individual found to be "at fault" instead of the system which produced the accident-prone environment.

The concept of individual fault has been banished from factories and "no fault" systems of workmen's compensation now are the rule. But the case-by-case settlement of claims on the basis of fault in an adversary system still flourishes in the $15 billion a year auto insurance business.

The auto insurance system now is based on lawyers for the accident victims fighting with lawyers for the insurance companies for compensation for economic and other alleged losses, usually called "general damages" or "pain and suffering." The expense of the system eats up more than half of each premium dollar, and the compensation is allocated in what a law school dean has described as a "cumbersome, time-consuming, expensive, and almost ridiculously inaccurate" way.

DOT, the State of New York Insurance Department and unofficial studies have found that even when a "wrongdoer" can be established, too often the innocent person is again punished by the system. As an example:

Mr. Jones on a clear day and dry pavement waits for a traffic light to turn green and then drives into the intersection. Mr. Smith does not notice his signal turn red and his car hits the Jones car broadside. Mr. Smith is jolted but apparently unhurt. Mr. Jones is thrown from his car, his body is crushed, and he faces a lifetime in a wheelchair.

The police and courts find Mr. Smith clearly was "at fault" in the accident. In theory, this meant Mr. Smith, or his insurance company, would pay for all of the medical expenses, lost wages and out-of-pocket expenses of Mr. Jones plus thousands of dollars for the obvious "pain and suffering" of Mr. Jones. In practice, Mr. Smith may be an example of the one in five motorists which DOT found had no auto insurance despite widespread "compulsory insurance" laws. Unless Mr. Smith is rich, no lawyer would take the case and Mr. Jones would absorb his losses.

In most cases, Mr. Smith would have insurance. But DOT found most drivers insure for liability only up to $10,000 per injured person and $20,000 per accident. This would mean maximum compensation for Mr. Jones of $10,000 to go

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toward payment of expenses which could amount to more than a million dollars. The innocent Jones and his family could become paupers under the present system.

Even if Mr. Smith had extremely high limits on his liability coverage — such as $250,000 and $500,000 — Mr. Jones probably still would face years of litigation and haggling followed by a settlement amounting to a fraction of his medical expenses and wage loss. Of that settlement, about a third would go to his lawyer.

DOT found insurance companies consistently settle small, questionable claims quickly because it is the "economical" way to handle such nuisances. In our example, this practice might even allow Mr. Smith, the driver "at fault", to recover general damages from the insurance company of Mr. Jones. However, insurance company lawyers battle to decrease large claims — even if justified — in order to increase profits or maintain "low" rates.

"The delays and bargaining postures which the fault insurance system encourages favor the strong over the weak," the State of New York Insurance Department found. "A personal injury case often pits an injured individual against a multi-million dollar insurance company. Too often, especially where injuries are serious, the insurer can simply wait out the injured victim to obtain a more favorable settlement."

The courts, legislatures and many insurance companies have tried to right the obvious wrongs of a system which depends on the "other guy's" insurance company for payment of a claim. The definition of fault has been stretched to the point where many one-car accidents result in liability payments. Assigned claims plans, compulsory insurance and uninsured motorist funds have been developed.

In addition, auto insurers now offer some coverages which compensate

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their clients directly on a first-party, no-fault basis. These include collision and medical coverages which are paid even if a driver is "at fault."

Such measures are designed to shore up the rickety insurance system. But until a claimant deals in nearly every case with his own insurance company on a "no fault" basis, no real progress can be made.

A popular television show dramatized the faults of the present "fault" insurance system. The episode was based on an accident involving an old pickup truck driven by a black man. The truck was "rearended" at a stoplight by a Cadillac driven by a white man.

The white man fled and throughout the episode the black man was assured that he was "sitting on a gold mine." The catch in the final scene was the revelation that the white man was driving a stolen car. There was no gold to mine.

Americans involved in auto accidents usually find they are sitting on booby traps, instead of El Dorados.

The New York auto insurance study found "the highly abstract standard of liability called 'fault' and the indeterminate measure of damages called 'general damages' or 'pain and suffering' offer rich rewards to the claimant who will lie, the attorney who will inflame, the adjuster who will chisel and the insurance company which will stall or intimidate."

To deal with this problem, official studies have called for enactment of laws creating "no fault" auto insurance plans. Such a plan, which was developed by a team of experts in law and insurance, will be explored in the next article.

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