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plying with the provisions of this section. The person requesting such records and said sworn statement shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(d) The injured person shall be furnished upon request a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(e) Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured.

(7) Mental and Physical Examination of Injured Person; Reports.—

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him or his representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition. If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.

Section 5. Subsection (2) of section 627.737, Florida Statutes, is amended and subsection (3) is added to read:

627.737 Tort exemption; limitation on right to damages.—

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part in:

(a) loss of a body member, or

(b) permanent loss of a bodily function, or

(c) permanent injury within a reasonable degree of medical probability other than scarring or disfigurement, or

(d) significant permanent scarring or disfigurement, or

(e) a serious non-permanent injury which has a material degree of bearing on the injured person's ability to resume his normal activity and life-style during all or substantially all of the ninety day period after the occurrence of the injury, and the effects of which are medically or scientifically demonstrable at the end of such period, or

(f) death.

(3) when a defendant, in a proceeding brought pursuant to ss. 627.730-627.741, questions whether the plaintiff has met the requirements of s. 627.737(2), then the defendant may file an appropriate motion with the court and the court shall, on a one-time basis only, 30 days before the date set for the trial or the pre-trial hearing, whichever is first, by examining the pleadings and the evidence before it, ascertain whether the plaintiff will be able to submit some evidence that the plaintiff will meet the requirements of s. 627.737(2). If the court finds that the plaintiff will not be able to submit such evidence then the court shall dismiss the plaintiff's claim without prejudice.

Section 6. Section 627.739, Florida Statutes, is amended to read:

627.739 Deductible endorsement.—Each insurer providing security as required by ss. 627.730-627.741 to any owner shall, at the election of the owner, issue a policy endorsement, approved as to content by the Department of Insurance and subject to such other reasonable regulations regarding said endorsement as the department may make after appropriate hearing, which endorsement shall provide that there shall be deducted from personal protection benefits that would other-

wise be or become due to the policyholder alone or to the policyholder and relatives residing in his household an amount of either $250, $500, or $1,000, or $2,000 again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator, or occupant of a motor vehicle or any person or oganization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741.

Section 7. Section 627.7375, Florida Statutes, is created to read:

627.7375 Fraud.—

(1) Any insured party or insurer or insurance adjuster who, with intent, knowingly and willfully conspires to fraudulently violate any of the provisions of this part, or who, due to fraud on such person's part, does knowingly and willfully violate any of the provisions of this part is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or any other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this part or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor or practitioner is adjudicated guilty of a violation of this section, the State Board of Medical Examiners as set forth in chapter 458, the State Board of Osteopathic Medical Examiners as set forth in chapter 459, or the Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority, whichever is appropriate, shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this part or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this part. Any hospital administrator or employee who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this section, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this part is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to $5,000 by the licensing agency as set forth in chapter 395.

Section 8. Subsection (7) is added to Section 20.13, Florida Statutes, to read:

20.13 Department of Insurance.—There is created a Department of Insurance.

(7) There is created within the Department of Insurance a Division of Fraudulent Claims to enforce the provisions of s. 626.989.

Section 9. Section 626.989, Florida Statutes, is created to read:

626.989 Division of Fraudulent Claims; investigative powers; accident reports to division; personnel and expenses; division of costs.—

(1) The Division of Fraudulent Claims shall have authority to investigate allegedly fraudulent claims alleging loss or damages arising out of the ownership, operation, maintenance, or use of a motor vehicle, as defined in section 320.01, anywhere within the state, filed by a claimant against any person insured by an insurance company which has issued a policy of insurance providing protection or indemnity to the insured owner and to any other person operating, maintaining, or using such motor vehicle with the consent, expressed or implied, of the insured; and any other claim covered by insurance resulting from the ownership, operation, maintenance, or use of such motor vehicle.

(2) Any company which believes that such a fraudulent claim is being made shall, within 60 days of the receipt of such notice, send to the Division of Fraudulent Claims, on a form prescribed by the department, the information requested and such additional information relative to the accident and the parties claiming loss or damages because of the accident as the department may require. The Division of Fraudulent Claims shall review such reports and select such claims as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim. The Division of Fraudulent Claims shall report any alledged violations of law which its investigations disclose to the appropriate licensing agency and state attorney having jurisdiction with respect to any such violation as provided in s. 624.310.

(3) No insurer, nor the employees or agents of any insurer, shall be subject to civil liability for libel or otherwise by virtue of the filing of reports or furnishing other information required by this section or required by the Division of Fraudulent

Claims as a result of the authority herein granted.

(4) All costs of administration and operation of said Division of Fraudulent Claims shall be borne by the insurers licensed to write motor vehicle insurance in this state. The Insurance Commissioner shall equally divide such costs among all such companies, charging each such company an identical amount adequate to provide the total cost of each fiscal year of operation. Such costs as derived by said assessment shall be allocated to the State Treasurer's and Insurance Commissioner's Regulatory Trust Fund. The total number of positions to be allocated to the Division of Fraudulent Claims shall not exceed 25 employees and the total cost shall not exceed $500,000 for said fiscal year.

Section 10. Section 627.4132, Florida Statutes, is created to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist, personal injury protection, or any other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident; provided that if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles shall not be added to or stacked upon that coverage. This section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 11. Section 627.7377, Florida Statutes, is created to read:

627.7377 Physical Damage Deductibles.—In providing collision coverage for physical damage to an insured's motor vehicle, insurers shall make available upon request deductibles of $500 or any other amount for which the parties may contract, subject to the insurer's filed rating plan.

Section 12. Section 627.7262, Florida Statutes, is created to read:

627.7262 Non-joinder of insurers.—(1) No motor vehicle liability insurer shall be joined as a party defendant in an action to determine the insured's liability; however, each insurer which does or may provide liability insurance coverage to pay all or a portion of any judgment which might be entered in the action shall file a statement, under oath of a corporate officer, setting forth the following information with regard to each known policy of insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of liability coverage.

(d) A statement of any policy or coverage defense which said insurer reasonably believes is available to said insurer filing the statement at the time of filing said statement.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to said statement.

(3) If the statement or any amendment thereto indicates that a policy or coverage defense has been or will be asserted, then the insurer may be joined as a party.

(4) After the rendition of a verdict, or final judgment by the court if the case is tried without a jury, the insurer may be joined as a party and judgment may be entered by the court based upon the statement or statements herein required.

(5) The rules of discovery shall be available to discover the existence and policy provisions of liability insurance coverage.

Section 13. Sections 627.738, 627.740, and subsection (2) of section 627.741, Florida Statutes, are hereby repealed.

Section 14. Within 60 days after October 1, 1977, the Department of Insurance shall review the level of Florida automobile insurance rates for the purpose of insuring that premium or rate reductions resulting from the provisions of this act are being passed on to the insurance policy buyers.

Section 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, it is the legislative intent that the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 16. This act shall take effect October 1, 1976, and shall apply to all claims arising out of accidents occurring on or after said date.

Approved, June 27, 1976

1977, Senate Bill 1181*

Be it enacted by the Legislature of the State of Florida:

Section 1. Short Title.—This act shall be known and may be cited as "The Florida Insurance and Tort Reform Act of 1977."

Section 4. Subsection (3) is added to section 320.02, Florida Statutes, to read:

320.02 Application for registration; forms.—

(3) (a) Proof that personal injury protection benefits have been purchased when required under s. 627.733 shall be made by the applicant at the time of registration of any motor vehicle owned as defined in s. 627.732. The issuing agent shall refuse to issue registration if such proof of purchase is not made. Insurers shall furnish uniform proof

*NOTE: Only sections of bill dealing with no fault are reproduced here.

of purchase cards in such form as prescribed by the Department of Highway Safety and Motor Vehicles, and such card, or an insurance policy, an insurance policy binder, a certificate of insurance, or such proof as may be prescribed by the Department of Highway Safety and Motor Vehicles shall be accepted as such proof. As an aid in implementing Section 42 of this Act such cards shall also indicate the existence of any bodily injury liability insurance voluntarily purchased. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers providing such benefits. Any person altering such card or duplicating or counterfeiting such card in order to furnish such proof or to permit another person to furnish such proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) When an operator owning a motor vehicle or motor vehicles comes under the operation of the financial responsibility requirements of chapter 324, such operator shall provide proof of compliance with such financial responsibility requirements at the time of registration of any such motor vehicle through the use of a uniform proof of purchase of insurance card specifying such coverage, or an insurance policy, an insurance policy binder, a certificate of insurance, such other method of furnishing such proof as may be required by the Department of Highway Safety and Motor Vehicles. The issuing agent shall refuse to issue registration of a motor vehicle if such proof of purchase is not made. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers writing motor vehicle liability insurance in this state. Any person altering such card or duplicating or counterfeiting such card in order to furnish such proof or to permit another person to furnish such proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsections (1) and (2) of section 324.021, Florida Statutes, 1976 Supplement, are amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) Motor Vehicle.—Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or "moped," as defined in s. 316.003 (2). However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732 (1), when the owner of such vehicle has complied with the requirements of ss. 627.733-627.741, inclusive, unless the provisions of s. 324.051 apply, and in such case until January 1, 1979, such owner shall establish proof of compliance with such sections in the manner provided for evidence of insurance as set forth in s. 325.19 (7) at the time of inspection of any such motor vehicle, and after such date the applicable proof of insurance provisions of s. 320.02 shall apply.

(2) Department.—The Department of Highway Safety and Motor Vehicles Insurance.

Section 20. Present subsections (2), (3) and (4) of section 626.989, Florida Statutes, 1976 Supplement, are renumbered as subsections (4), (5) and (6), respectively, and new subsections (1), (2), (3) and (4) are added to said section to read:

626.989 Division of Fraudulent Claims; investigative powers; subpoena powers; accident reports to division; personnel and expenses; division of costs.—

(1) If, by its own inquiries or as a result of complaints, the Division of Fraudulent Claims has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates s. 627.7375 or s. 624.15, it may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence. The department shall not compel the attendance of any person or matter in any such investigation except pursuant to subsection (3).

(2) If matter that the division seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its representative to examine the matter at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf and it may respond to similar requests from officials of other states.

(3) The division may request that an individual who refuses to comply with any such request be ordered by the circuit court to provide the testimony or matter. The court shall not order such compliance unless the division has demonstrated to the satisfaction of the court that the testimony of the witness or the matter under request has a direct hearing on a violation of s. 627.7375 or s. 624.155 or is pertinent and necessary to further such investigation. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he is entitled by law may not be subjected to a criminal proceeding or to a civil penalty with respect to the act concerning which he is required to testify or produce relevant matter.

(4) The department's papers, documents, reports or evidence relative to the subject of an investigation under this section shall not be subject to public inspection for so long as the department deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, such papers, documents, reports or evidence relative to the subject of an investigation under this section shall not be subject to subpoena until opened for public inspection by the department,

unless the department consents; or after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena.

Section 30. Subsection (3) of section 627.727, Florida Statutes, is amended and subsections (6) and (7) are added to said section to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(3) For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle when the liability insurer thereof:

(a) Is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; or

(b) Has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist's coverage, applicable to the injured person.

(6) If an injured person or in the case of death, the personal representative, agrees to settle a claim with a liability insurer and its insured for the limits of liability, and such settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an uninsured motorist claim against the uninsured motorist insurer, then such settlement agreement shall be submitted in writing to the uninsured motorist insurer, which shall have a period of 30 days from receipt thereof in which to agree to arbitrate the uninsured motorist claim and approve the settlement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release. If the uninsured motorist insurer does not agree within 30 days to arbitrate the uninsured motorist claim and approve the proposed settlement agreement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release, the injured person or in the case of death, the personal representative, may file suit joining the liability insurer's insured and the uninsured motorist insurer to resolve their respective liability for any damages to be awarded; provided, however, that in such action, the liability insurer's coverage shall first be exhausted before any award may be entered against the uninsured motorist insurer, and any such award against the uninsured motorist insurer shall be excess and subject to the provisions of s. 627.727 (1). Any award in such action against the liability insurer's insured shall be binding and conclusive as to the injured person and uninsured motorist insurer's liability for damages up to its coverage limits. The provisions of s. 627.428 shall not apply to any section brought pursuant to this section against the uninsured motorist insurer.

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (f) of s. 627.737 (2).

Section 33. Section 627.736, Florida Statutes, 1976 Supplement, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(1) Required Benefits.—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled motor vehicle or motorcycle, all as specifically provided in subsections (2) and (4) (d), to a limit of $5,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.—Eighty percent of all reasonable expenses for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and necessary ambulance, hospital, and nursing services. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his religious beliefs.

(b) Disability benefits.—Eighty percent of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to 60 percent, from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

(c) Any insurer providing medical or disability benefits which have been reduced under this section shall also provide a corresponding rate reduction to the insured in proportion to reduction of benefits provided.

(d) Funeral, burial or cremation benefits.—Funeral, burial, or cremation expenses in an amount not to exceed $1,000 per individual.

(e) Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section and no such insurer shall require the purchase of any other motor vehicle coverage as a condition for providing such required benefits. Such insurers shall make such benefits available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state failing to comply with such availability requirement as a general business practice shall be deemed to have violated part VII of Chapter 626

and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance, and any such insurer committing such violation shall be subject to the penalties afforded in such part as well as those which may be afforded elsewhere in the insurance code.

(2) Authorized Exclusions.—Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;

2. Being convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;

3. While committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraphs 2. or 3., the 30-day payment provision of paragraph (4) (b) shall be held in abeyance, and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(3) Insured's rights to recovery of special damages in tort claims.—No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party who is entitled to bring suit under the provisions of s. 627.737, or his legal representative, shall have a right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(4) Benefits; When Due.—Benefits due from an insurer under ss. 627.730-627.741 shall be primary, except that benefits received under any workmen's compensation law or Medicaid as provided under 42 USC 1396 et seq. shall be credited against the benefits provided by subsection (1) and be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.741.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.741.

(b) Personal injury protection insurance benefits shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. However, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of 10 percent per annum.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state but within the United States of America, its territories or possessions, or Canada by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741, or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person the maximum payable shall be

as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(5) Charges for treatment of injured persons.— Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for the products, services, and accommodations rendered and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his guardian has countersigned the invoice or bill upon which such charges are to be paid as being actually rendered to the best knowledge of the insured or his guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(6) Discovery of facts about an injured person; disputes.—

(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.741 against whom a claim has been made, furnish forthwith, in a form approved by the Department of Insurance, a sworn statement of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for said treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or its records regarding such history, condition, treatment, dates, and costs of treatment. Said sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of physician-patient privilege or invasion of the right of privacy shall be against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and said sworn statement shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, and treatment, and dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(d) The injured person shall be furnished, upon request, a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(e) Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured.

(7) Mental and physical examination of injured person; reports.—

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled, upon request, to receive from the person examined every written report available to him or his representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have,

in relation to the claim for benefits, regarding the testimony of every other person who has examined, or may thereafter examine, him in respect to the same mental or physical condition. If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.

(8) With respect to any dispute under the provisions of ss. 627.730-627.741 between the insured and the insurer, the provisions of s. 627.428 shall apply.

Section 36. Section 627.7375, Florida Statutes, 1976 Supplement, is amended to read:

627.7375 False and fraudulent claims.—

(1) Any person who, with the intent to injure, defraud or deceive any insurance company:

(a) Presents or causes to be presented any written or oral statement as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

(b) Prepares or makes any written or oral statement that is intended to be presented to any insurance company in connection with or in support of any claim for payment in other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) All claims forms shall contain a statement in a form approved by the department that clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information is guilty of a felony of third degree."

(2) Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or any other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor, or practitioner is adjudicated guilty of a violation of this section, the State Board of Medical Examiners as set forth in chapter 458, the State Board of Osteopathic Medical Examiners as set forth in chapter 459, or the Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority, whichever is appropriate, shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor, or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this part. Any hospital administrator or employee who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this section, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this part is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to $5,000 by the licensing agency as set forth in chapter 395.

(5) Any insurance company damaged as a result of a violation of any provision of this section or where there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses including attorneys' fees at the trial and appellate courts.

(6) For the purposes of this section "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, or other evidence of loss, injury, or expense.

(7) The provisions of this section shall also apply as to any insurer or adjusting firm or their agents or representatives who with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this section.

(8) It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association to solicit any business in and about city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, municipal courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims. Any person who violates the provisions of this subsec-

tion is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) It is unlawful for any attorney to solicit any business relating to the representation of persons injured in a motor vehicle accident for the purpose of filing a motor vehicle tort claim. Any attorney who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court shall find probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward to appropriate state attorney a copy of the finding of probable cause and the report being filed in the matter.

Section 37. Section 627.739, Florida Statutes, 1976 Supplement, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles.—In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to such insurance or benefits, each insurer providing the coverage and benefits described in s. 627.736 (1) shall offer to the named insured's modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing such modified coverage or subject to such modified coverage as a result of the named insured's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator or occupant of a vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder upon the renewal of an existing policy, deductibles, in amounts of $250, $500, $1,000, and $2,000, $3,000 and $4,000 said amount to be deducted from the benefits otherwise due each person subject to the deduction and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

(2) Insurers shall offer coverage wherein at the election of the named insured all benefits payable under 42 USC 1395, the federal "medicare" program, or to active or retired military personnel and their dependent relatives shall be deducted from those benefits otherwise payable pursuant to s. 627.736 (1).

(3) Insurers shall offer coverage wherein at the election of named insured the benefits for loss of gross income and loss of earning capacity described in s. 627.736 (1) (b) shall be excluded.

(4) Insurers shall offer, at the election of the named insured, one of the following options:

(a) Either a direct payment to the policyholder or a payment to any person, corporation, association or other business entity which performs repair work upon the motor vehicle, or a combination of the foregoing; or

(b) A payment to any person, corporation, association, or other business entity performing repair work upon the motor vehicle, where the payee is under contract with the insurer to perform such work at stipulated rates which are no greater than eighty-five (85) percent of prevailing rates for similar work within the county where the payee performs the work upon the motor vehicle.

(5) Each insurer may prepare and distribute to each of its policyholders a listing of all business entities under contract with the insurer to perform motor vehicle repair work at the rates described in paragraph (1) (b) of this section. The listing shall include a clear and plain explanation of the options provided as required by this section, and shall further state that if the policyholder elects to have required motor vehicle repair work done by any such business entity, the rates stipulated in the contract with the insurer shall be all of the consideration which the business entity will demand for such work and shall be paid by the insurer.

(6) Insurers may offer coverage wherein at the election of the named insured medical services shall be limited to specified medical providers, including hospitals, which specified medical provider may be a health maintenance organization, as provided in chapter 641, part II, Florida Statutes.

Section 43: There shall be no private passenger motor vehicle insurance rate increases for bodily injury liability, personal injury protection benefits, or uninsured motorist coverage, excluding rates charged for coverage under the automobile joint underwriting association established under s. 627.351 (1), prior to January 1, 1978. The rate cap provided by this section shall take effect at 12:01 a.m., June 4, 1977. This shall not prevent rate reduction.

Section 44. If any provision of this act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are declared to be severable.

Section 45. This act shall take effect July 1, 1977, and shall apply to all claims arising out of accidents occurring after said date, except that: section 4 shall take effect January 1, 1978; sections 19, 21, 22, 23, 24, 25, 31, 32, 33, and 37 shall take effect September 1, 1977; and sections 43, 44, and 45 shall take effect upon becoming a law.

Became law July 5, 1977,
without governor's signature

Chapter 78-374, Laws 1978
Senate Bill No. 1308

An act relating to motor vehicle insurance; amending s. 627.727 (7), Florida Statutes; providing that uninsured motorist coverage shall not include damages for pain and suffering except for specified injuries or death; amending s. 627.732 (1), Florida Statutes; providing definitions of "motor vehicle", "private passenger motor vehicle", and "commercial motor vehicle"; amending s. 627.736 (1), Florida Statutes; providing for $10,000 in personal injury protection coverage; amending s. 627.737 (2), Florida Statutes; providing for limitations on rights to damages for pain, suffering, mental anguish, and inconvenience in tort actions arising out of use of a motor vehicle; amending s. 627.7372 (1), Florida Statutes; providing for the admission into evidence in certain actions the amount of all collateral sources paid or payable to the claimant, and prohibiting an award of damages which are otherwise paid or payable; amending s. 627.739 (1), Florida Statutes, relating to personal injury protection to revise amounts of deductibles; creating s. 627.7405, Florida Statutes; providing personal injury protection benefits for the insured, certain relatives, operators, and passengers of a commercial motor vehicle or other Florida residents struck by a commercial motor vehicle in Florida; repealing s. 627.735 (2), Florida Statutes, relating to the compliance of motor vehicle liability insurance policies with financial responsibility or compulsory insurance laws of other states; providing for review by the Department of Insurance of the rates of all licensed motor vehicle insurers; providing for issuance of orders by the Department of Insurance to require new rate schedules where existing rates are unfairly discriminatory; creating s. 627.343, Florida Statutes; requiring the Department of Insurance to promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating motor vehicle insurance rates, premiums, competition, and availability; requiring insurers to file annual statements with the department; providing that the department may require insurers to report certain loss and expense experience; repealing s. 627.342, Florida Statutes, which provides for annual risk classification reporting by insurers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 627.727, Florida Statutes, is amended to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (d) of s. 627.737 (2).

Section 2. Subsection (1) of section 627.732, Florida Statutes, is amended to read:

627.732 Definitions.—As used in ss. 627.730-627.741:

(1) "Motor vehicle" means any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semi-trailer designed for use with such vehicle, except mopeds, as defined in s. 316.003 (2), and includes:

(a) A "private passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon or jeep type vehicle not used at any time as a public or livery conveyance for passengers and, if not used primarily for occupational, professional or business purposes, a motor vehicle of the pickup, panel, van, camper or motor home type.

(b) A "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle.

The term motor vehicle, however, does not include any self-propelled vehicle with less than four wheels or a mobile home.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.—

(1) REQUIRED BENEFITS.—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, all as specifically provided in subsection (2) and paragraph (4) (d), to a limit of $10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

Section 4. Subsection (2) of section 627.737, Florida Statutes, is amended to read:

627.737 Tort exemption; limitation on right to damages; punitive damages.—

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

(a) Significant and permanent loss of an important bodily function.

(b) Permanent injury within a reasonable degree of medical probability, other than scarring or dis-

figurement.

(c) Significant and permanent scarring or disfigurement.

(d) Death.

Section 5. Subsection (1) of section 627.7372, Florida Statutes, is amended to read:

627.7372 Collateral sources of indemnity.—

(1) In any action for personal injury or wrongful death arising out of the ownership, operation, use or maintenance of a motor vehicle, the court shall admit into evidence the total amount of all collateral sources paid to the claimant, and the court shall instruct the jury to deduct from its verdict the value of all benefits received by claimant from any collateral source.

Section 6. Subsection (1) of section [illegible] Florida Statutes, is amended to read:

627.739 Personal injury protection; [illegible] limitations; deductibles; optional methods of repayment for repair work.—In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to such insurance or benefits, each insurer providing the coverage and benefits described in s. 627.736 (1) shall offer to the named insureds modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing such modified coverage, or subject to such modified coverage as a result of the named insured's election, shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator, or occupant of a vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, $1,000, $2,000, $3,000, $4,000, $6,000 and $8,000, said amount to be deducted from the benefits otherwise due each person subject to the deduction, and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans, they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

Section 7. Section 627.7405, Florida Statutes, is created to read:

627.7405 Subrogation.—Notwithstanding any other provisions of ss. 627.730-627.741, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

Section 8. Within 30 days after January 1, 1980, the Department of Insurance shall commence a review of the rates of all licensed motor vehicle insurers in effect at that time. If, after the review, the department finds on a preliminary basis that the rate may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer shall within 60 days file with the department all information which the insurer believes proves the reasonableness, adequacy, and fairness of the rate. In such instances, the insurer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate schedule be thereafter filed by the insurer and further specifying the manner in which noncompliance shall be corrected.

Section 9. Section 627.343, Florida Statutes, is created to read:

627.343 Uniform risk classification reporting system for motor vehicle insurance.—

(1) The department shall establish and promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating rates and premiums and for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The system shall divide risks into classifications based upon variations in hazards or expense of claims. The classification system may include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses, but in no event shall the system adopted by the department discriminate among risks based upon race, creed, color, or national origin. The classification system shall divide the state into geographical areas based upon hazards or expenses of claims.

(2) Each insurer shall annually file with the department a statement reflecting the total number of persons insured by the insurer within each classification by coverage, the premium volume in each classification by coverage, the paid and reserved losses incurred in each classification by coverage, the number of cancellations or nonrenewals by the insurer during the period and the number of new insureds during the period. This statement shall be filed annually on a date determined by the department and shall cover a 1-year period.

(3) The department may promulgate rules to require each insurer to report its loss and expense experience by classification in such detail and as often as may be necessary to aid the department in determining the reasonableness of rates, the validity of loss projections and the validity of the risk classification system.

Section 10. Section 627.342, Florida Statues, as created by chapter 77-468, Laws of Florida, is hereby repealed.

Section 11. Subsection (2) of section 627.735, Florida Statutes, is hereby repealed.

Section 12. This act shall take effect on January 1, 1979, and shall apply to all accidents occurring on or after the effective date.

Approved, June 20, 1978

COMMENTS ON THE FLORIDA LAW

The 1976, 1977, and 1978 amendments to the Florida no-fault law should improve it, althought the degree of improvement won't be known until several years of experience have been accumulated. The elimination of compulsory liability insurance, which is not directly connected with no-fault, is very controversial a..d was not advocated by insurance industry spokesmen.

The verbal tort limitation has proven to be more effective than the old $1,000 threshold in removing cases from the liability system. It is harder to abuse the law, since the threshold can no longer be reached by an artificial buildup of medical expenses.

The provisions against fraudulent claims represent a good step forward, one that legislatures in other states would do well to consider. The amendments make claim fraud activity by doctors, lawyers, claim adjusters, hospital officials, or insurance companies a felony. They also provide for a state agency to investigate claims that insurers suspect are fraudulent. Health care providers are required to sign sworn statements that the treatment rendered to accident victims was reasonable and necessary. If these provisions are vigorously enforced, they should prevent much of the claim fraud that allegedly has been so prevalent in south Florida.

Raising the no-fault benefit limit from $5,000 to $10,000 is a big step forward, although $10,000 may still be inadequate for today's inflated economy. The "co-insurance" type restrictions of 80 percent of medical and 60 percent of income coverage further reduces the value of the no-fault coverage. The legislature added these features to discourage overutilization and reduce costs. Again, this change was not suggested by the insurance industry. The amendments, to the extent that they reduce lawsuits, claims, fraud, and overutilization may well justify a still higher no-fault benefit level. An increase, to as much as $25,000, might be desirable if the reforms in the law continue to prove effective.

This is the supplement to the current financial responsibility law.

(d) The proposed schedules of operations between the municipalities or territories involved if such service is to be pursuant to schedules.

(e) An agreement on the part of the applicant to conform with and abide by all tariffs and classifications as to freight-forwarding services which may be prescribed by the commission from time to time.

(f) Any such application shall be accompanied by payment of a fee of five hundred dollars to be placed in the Florida Public Service Regulatory Trust Fund.

(3) Upon filing of said application and payment of said fee, the Florida Public Service Commission shall fix a time for hearing on said application which shall not be less than 20 days nor more than 60 days subsequent to the filing of said application, and no application shall be granted or certificate of public convenience and necessity issued without a hearing by the commission. Notice of such hearing shall be given to the applicant and to all certificated motor and rail common carriers serving any part of the route or territory proposed to be served by the applicant and to such other parties in interest as the commission may deem necessary. The commission shall also cause notice of the application to be published at least 14 days prior to the hearing in some newspaper of general circulation in the affected territory or territories.

(4) The commission may issue to the applicant a certificate of public convenience and necessity in a form to be prescribed by it or may refuse to issue the same or may issue it for only partial exercise of the operation sought or may attach to the exercise of the right granted by the certificate such terms, limitations, and conditions which it deems the public interest may require. The certificate shall include a description of the territory in which the freight-forwarding operation is to be conducted, extended, operated or acquired.

(5) In determining whether a certificate shall be issued, the commission shall take into consideration, among other things, the public need for the proposed service, the suitability of the applicant to conduct the proposed operations, the financial responsibility of the applicant and the ability of the applicant to perform efficiently the operations for which authority is requested; provided, that the commission in granting any such certificate shall take into consideration the effect that the granting of such certificate may have on transportation facilities within the territory sought to be served by said applicant, and also that effect upon transportation as a whole within said territory including the effect, if any, upon certificated motor and rail common carriers.

(6) Any certificate of public convenience and necessity issued under the provisions of this section shall contain, among other things, the following:

(a) The name of the grantee.

(b) The municipality or territory in which or between which the grantee is permitted to operate.

(c) A statement of the exact terminals or territories to be served including the specific points at which the forwarding operation is to be originated and the precise points or terminals at which the distribution under such operations is to take place.

(d) Such additional terms, conditions, provisions or limitations as the commission shall deem necessary or proper in the public interest or in the interest of transportation facilities already existing in the territory sought to be served.

(7) No such certificate of public convenience and necessity may be transferred, assigned, or encumbered unless such transaction is first approved by the commission consistent with the provisions of s. 323.041.

(8) The commission may revoke, suspend, or alter any such certificate of public convenience and necessity for the violation of any provision of this part or the rules and regulations or orders of the commission made under the authority of this part or for other reasonable cause.

(9) All certificates issued hereunder, including those certificates now in effect, shall be renewed annually by the payment of an annual certificate renewal fee of $500 per certificate, which shall be due on December 31 of each year. If the fee is not paid in advance of the due date, it must be received on or before January 31 of the next year in order for the renewal of the certificate to be effective. All moneys received hereunder shall be deposited in the Florida Public Service Regulatory Trust Fund and disbursed pursuant to s. 350.78(2).

History.—ss. 1, 2, ch. 67-358; ss. 5, 6, ch. 70-427; s. 3, ch. 76-168; s. 98, ch. 77-104; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]323.66 Allowance to shippers for transportation service.—If the owner of property transported in service subject to this part directly or indirectly renders any service connected therewith, or furnishes any instrumentality used therein, the charge and the amounts therefor, to such owner, shall be published in tariffs filed in the manner provided in this part and shall be no more than is just and reasonable, and the commission may, on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the freight forwarder or forwarders for the services so rendered, or for the use of the instrumentalities so furnished, and fix the same by appropriate order.

History.—ss. 1, 2, ch. 67-358; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 324

FINANCIAL RESPONSIBILITY

324.042 Administration.—The department shall administer and enforce the provisions of this chapter, and the department may make such rules

and regulations as may be necessary for its administration.

History.—s. 1, ch. 29963, 1955; s. 2, ch. 57-147; ss. 13, 35, ch. 69-106; s. 20, ch. 78-95.
Note.—Former s. 324.03.

324.051 Reports of accidents; suspensions of licenses and registrations.—

[1](1)(a) Every law enforcement officer who, in the regular course of duty either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, investigates a motor vehicle accident in which property damage exceeds $500 or in which bodily injury or death occurs shall forward a written report of the accident to the department within 24 hours of completing the investigation. However, when the investigation of an accident will take more than 7 days to complete, a preliminary copy of the accident report shall be forwarded to the department within 24 hours of the occurrence of the accident, to be followed by a final report within 24 hours after completion of the investigation. The report shall be on a form and contain information consistent with the requirements of s. 316.068.

(b) The department is hereby further authorized to require reports of accidents from individual owners or operators whenever it deems it necessary for the proper administration of this chapter, and these reports shall be made without prejudice and shall be for the confidential use of the department. No such report shall be used as evidence in any trial arising out of an accident, but the fact of such report or the failure to report may be certified by the department.

[1](2)(a) Thirty days after receipt of notice of any accident described in paragraph (1)(a) involving a motor vehicle within this state, the department shall suspend, after due notice and opportunity to be heard, the license of each operator and all registrations of the owner of the vehicles operated by such operator whether or not involved in such accident and, in the case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall, prior to the expiration of such 30 days, be found by the department to be exempt from the operation of this chapter, based upon evidence satisfactory to the department that:

1. No injury was caused to the person or property of anyone other than such operator or owner.
2. The motor vehicle was legally parked at the time of such accident.
3. The motor vehicle was owned by the United States Government, this state, or any political subdivision of this state or any municipality therein.
4. Such operator or owner has been finally adjudicated not to be liable for damages by a civil court of competent jurisdiction.
5. Such operator or owner has secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and has complied with one of the provisions of s. 324.031.
6. Such operator or owner has deposited with the department security to conform with s. 324.061 when applicable and has complied with one of the provisions of s. 324.031.
7. One year has elapsed since such owner or operator was suspended pursuant to s. 324.051(4), the owner or operator has complied with one of the provisions of s. 324.031, and no bill of complaint of which the department has notice has been filed in a court of competent jurisdiction.

(b) This subsection shall not apply:

1. To such operator or owner if such operator or owner had in effect at the time of such accident or traffic conviction an automobile liability policy with respect to all of the registered motor vehicles owned by such operator or owner.
2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident or traffic conviction an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him.
3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance or bond.
4. To any person who has obtained from the department a certificate of self-insurance, in accordance with s. 324.171, or to any person operating a motor vehicle for such self-insurer.
5. Such owner or operator was not charged with a moving traffic violation which caused or contributed to the cause of a motor vehicle accident, or such owner or operator was subsequently not found guilty of said moving traffic violation.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in s. 324.021(7).

(3) Any operator's license or registration certificate or certificates and registration plates which shall be suspended as provided for in this section, shall remain suspended for a period of 3 years unless reinstated as otherwise provided in this chapter.

History.—s. 1, ch. 29963, 1955; s. 2, ch. 57-147; ss. 1, 2, ch. 65-122; s. 6, ch. 65-190; ss. 13, 24, 35, ch. 69-106; s. 2, ch. 71-39; s. 2, ch. 76-266; s. 2, ch. 77-113; s. 1, ch. 77-174; s. 7, ch. 77-468; s. 1, ch. 78-83; s. 20, ch. 78-95.
[1]Note.—As amended by s. 1, ch. 78-83, effective October 1, 1978.
Note.—Former s. 324.04.

324.072 Proof required upon certain convictions.—

[1](1) Upon the suspension or revocation of a license pursuant to the provisions of s. 318.15, s. 322.26, or s. 322.27, the department shall suspend the registration for all motor vehicles registered in the name of such person, either individually or jointly with another, except that it shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give, and thereafter maintain, proof of financial responsibility with respect to all motor vehicles registered by such person, in accordance with this chapter.

(2) Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed, nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person, until permitted under the laws of this state, and not then unless and until he shall give and

thereafter maintain proof of financial responsibility as required by s. 324.071.

History.—s. 5, ch. 57-147; ss. 13, 24, 35, ch. 69-106; s. 8, ch. 77-118; s. 10, ch. 77-468; s. 2, ch. 78-82.

[1]Note.—As amended, effective October 1, 1978.

CHAPTER 325

VEHICLE EQUIPMENT SAFETY COMPACT; INSPECTION

PART II

SAFETY EQUIPMENT INSPECTION OF MOTOR VEHICLES

325.12 Safety equipment inspection required; exception.—Every motor vehicle, except ancient motor vehicles licensed under s. 320.086, registered or required to be registered within the state when operated upon any street or highway within the state shall at all times display a current approved certificate which shall be placed on the vehicle as may be designated by the department, indicating that it has been inspected in accordance with the provisions of this part and has been found to comply with the standards and requirements of this part for safety equipment.

History.—s. 1, ch. 67-307; s. 1, ch. 69-216; ss. 24, 35, ch. 69-106; s. 1, ch. 78-363.

[1]325.14 Inspection certificate required for sold vehicles; exemption.—

(1) It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person engaged in the business of buying or selling new or used motor vehicles to sell at retail any used motor vehicle which does not have affixed thereto a current approved inspection certificate as required under s. 325.12.

(2) Any motor vehicle, the sale of which constitutes an occasional or private sale, shall not be driven unless the vehicle has a current valid inspection certificate; however, in the case of a motor vehicle which has been stored or otherwise unused, during which time the inspection certificate has expired, the owner shall obtain authority from the nearest highway patrol station to drive the vehicle to the inspection station.

(3) Nothing in this chapter shall be construed to require a valid current inspection certificate for any motor vehicle owned by a motor vehicle dealer licensed under s. 320.27 and displaying a dealer tag thereon as authorized by s. 320.13(1)(a).

History.—s. 1, ch. 67-307; s. 1, ch. 74-275; s. 14, ch. 75-68; s. 2, ch. 76-164; s. 45, ch. 77-357; s. 10, ch. 78-412.

[1]Note.—As amended, effective October 1, 1978.

[1]325.141 Registration required prior to inspection; exception.—

(1) Except as provided in subsection (2), no inspection certificate shall be attached to any motor vehicle without the owner or operator of same first submitting proof to the inspector that the motor vehicle is currently registered under the provisions of chapter 320.

(2) Every vehicle not previously registered in this state but registered in another jurisdiction and subject to the registration requirement in this state shall be inspected prior to registration. In addition to performing the inspection of the vehicle as required by this chapter, the inspection station inspector shall record the motor and serial numbers of the vehicle on the motor vehicle inspection form prior to the attachment of an inspection certificate to the vehicle.

History.—s. 6, ch. 78-412.

[1]Note.—Effective October 1, 1978.

325.16 Defective vehicles; repair procedures.—When a motor vehicle required to be inspected under this part shall upon inspection fail to meet the safety requirements of this part, the safety equipment inspection station making such inspection shall issue an authorized receipt and statement for such vehicle indicating that it has been inspected and shall enumerate the defects found. The owner or operator shall have such defects corrected or repaired at any place he chooses. The authorized receipt and statement shall operate as a temporary valid inspection permit for 30 days after the defect is found, during which time the operator shall not be subject to the penalty provided in s. 316.610, for the purpose of allowing the owner or operator of such vehicle to repair the defect. In any case where a part must be ordered to correct a defect and the part cannot be received and installed within the 30-day period herein provided, the authorized receipt and statement, together with a dated copy of the order for the part, shall operate as a temporary valid inspection permit until the part is received, which time period shall not exceed 90 days. The vehicle may be reinspected one time for such defects within 30 days when the owner does not have to wait on a part to be received, or within 90 days when the owner has the authorized receipt and statement together with a dated copy of the order for the part, at the safety equipment inspection station first making the inspection, without additional charge; however, upon payment of the inspection fee, the vehicle may be reinspected at another safety equipment inspection station.

History.—s. 1, ch. 67-307; s. 3, ch. 69-216; s. 4, ch. 74-339; s. 1, ch. 77-11[illegible]

This is the current financial responsibility law except as noted.

CHAPTER 324

FINANCIAL RESPONSIBILITY

324.011 Purpose of chapter.—It is the intent of this chapter to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used with due consideration for others and their property, and to promote safety and provide financial security [1][requirements for] such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, it is required herein that the operator of a motor vehicle involved in an accident or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) shall respond for such damages and show proof of financial ability to respond for damages in future accidents as a requisite to his future exercise of such privileges.

History.—s. 1, ch. 29963, 1955; s. 5, ch. 77-468.

[1]Note.—Bracketed words substituted for "by" by the editors.

Note.—Former s. 324.001.

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or "moped," as defined in s. 316.003(2). However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732(1), when the owner of such vehicle has complied with the requirements of ss. 627.730-627.741, inclusive, unless the provisions of s. 324.051 apply, and in such case, until January 1, [1][1978], such owner shall establish proof of compliance with such sections in the manner provided for evidence of insurance as set forth in s. 325.19(7) at the time of inspection of any such motor vehicle, and after such date the applicable proof of insurance provisions of s. 320.02 shall apply.

(2) DEPARTMENT.—The Department of Highway Safety and Motor Vehicles.

(3) OPERATOR.—Every person who is in actual physical control of a motor vehicle.

(4) PERSON.—Every natural person, firm, copartnership, association or corporation.

(5) NONRESIDENT.—Every person who is not a resident of this state.

(6) LICENSE.—Any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(7) PROOF OF FINANCIAL RESPONSIBILITY.—That proof of ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle:

(a) In the amount of $10,000 because of bodily injury to, or death of, one person in any one accident;

(b) Subject to said limits for one person, in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one accident; and

(c) In the amount of $5,000 because of injury to, or destruction of, property of others in any one accident.

(8) MOTOR VEHICLE LIABILITY POLICY.—Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to s. 324.031, insuring said owner or operator against loss from liability for bodily injury, death and property damage arising out of the ownership, maintenance or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of s. 324.151, issued by

any insurance company authorized to do business in this state.

(9) OWNER.—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(10) JUDGMENT.—Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damage.

(11) REGISTRATION.—Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. *, ch. 71-89; s. 100, ch. 71-377; s. 1, ch. 72-237, ss. 1, 2, ch. 73-160; s. 1, ch. 76-266; s. 6, ch. 76-236; s. 1, ch. 77-118; s. 6, ch. 77-468.

*Note.—Bracketed date substituted for "1979" by the editors to correct an apparent error. See the effective date of the amendment to s. 320.02 and the effective date of the repeal of s. 325.19(7) by s. 12, ch. 77-468.

324.031 Manner of proving financial responsibility.—The operator or owner of a vehicle may prove his financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) and s. 324.151, or

(2) Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in s. 324.021(7), or

(3) Furnishing a certificate of the department showing a deposit of cash or securities in accordance with s. 324.161, or

(4) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.02.

324.042 Administration.—The department shall administer and enforce the provisions of this chapter, and the department may make such rules and regulations as may be necessary for its administration and shall provide for hearings before a referee upon request of persons aggrieved by orders or acts of the department.

History.—s. 1, ch. 29963, 1955; s. 1, ch. 57-147; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.03.

324.051 Reports of accidents; suspensions of licenses and registrations.—

(1)(a) Any sheriff, police department, or peace officer of this state shall, within 10 days following any accident within the purview of this chapter coming to its or his attention, report such accident in writing to the department. Such report shall contain the following information: Date and place of the accident, description of the cars involved, the names and addresses of owners or operators, the extent of the damage, and such other information as the department may require.

(b) The department is hereby further authorized to require reports of accidents from individual owners or operators whenever it deems it necessary for the proper administration of this chapter, and these reports shall be made without prejudice and shall be for the confidential use of the department. No such report shall be used as evidence in any trial arising out of an accident, but the fact of such report or the failure to report may be certified by the department.

(2)(a) Thirty days after receipt of notice of any judgment being rendered due to an accident involving a motor vehicle within this state which has resulted in bodily injury or death to any person, a judgment of liability for damage of $500 or more to property, or a traffic conviction for a violation of s. 316.027 or s. 316.0[illegible], the department shall suspend the license of the operator against whom such judgment or conviction applies and all registrations of the owner of the vehicles operated by such operator whether or not involved in such accident and, in the case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall, prior to the expiration of such 30 days, be found by the department to be exempt from the operation of this chapter, based upon evidence in its files satisfactory to the department that:

1. The motor vehicle was owned by the United States Government, this state, or any political subdivision of this state or any municipality therein.

2. Such operator or owner has been finally adjudicated not to be liable by a court of competent jurisdiction.

3. Such operator or owner has secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and '[has] complied with one of the provisions of s. 324.031.

4. Such operator or owner has deposited with the department security to conform with s. 324.061 when applicable and has complied with one of the provisions of s. 324.031.

5. One year has elapsed since such owner or operator was suspended pursuant to subsection 324.051(4), the owner or operator has complied with one of the provisions of s. 324.031, and no bill of complaint of which the department has notice has been filed in a court of competent jurisdiction.

(b) This subsection shall not apply:

1. To such operator or owner if such operator or owner had in effect at the time of such accident or traffic conviction an automobile liability policy with respect to all of the registered motor vehicles owned by such operator or owner.

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident or traffic conviction an automobile liability policy or bond with respect to his operation of motor

vehicles not owned by him.

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance or bond.

4. To any person who has obtained from the department a certificate of self-insurance, in accordance with s. 324.171, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than the limits specified in subsection 324.021(7).

(3)(a) The notices of accidents and orders of suspension required under this chapter as a result of accident or conviction cases shall be given to owners and operators either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice or order in an envelope with postage prepaid, addressed to such person at his address as shown by the accident report or records of the department.

(b) The giving of notice and order of suspension by mail is complete upon expiration of four days after deposit in the United States mail. Proof of the giving of notice or orders of suspension in either such manner may be made by the certification of the department by naming the person to whom such notice or order of suspension was given and specifying the time, place and manner of the giving thereof.

(4) Any operator's license or registration certificate or certificates and registration plates which shall be suspended as provided for in this section, shall remain suspended for a period of 3 years unless reinstated as otherwise provided in this chapter.

History.—s. 1, ch. 29963, 1955; s. 2, ch. 57-147; ss. 1, 2, ch. 65-122; s. 6, ch. 65-190; ss. 13, 24, 35, ch. 69-106; s. 2, ch. 71-59; s. 2, ch. 76-266; s. 2, ch. 77-118; s. 1, ch. 77-174; s. 7, ch. 77-468.

[1]Note.—Bracketed word substituted for "had" by the editors.

Note.—Former s. 324.04.

324.061 Security deposited with Department of Highway Safety and Motor Vehicles; release.—

(1) Security deposited pursuant to the provisions of s. 324.051(2)(a)[1][4.] with respect to claims for injuries to persons or properties resulting from an accident occurring prior to such deposit shall be in the form and amount determined by the department which, in its judgment, will be sufficient to compensate for all injuries arising out of such accident, but in no case shall the amount exceed the limits as specified in s. 324.021(7).

(2) Such security shall be deposited with the department and shall not be released except under one of the following conditions:

(a) A duly attested written statement of satisfaction by all parties shown to be injured in such accident has been received by the department, or

(b) In the event the depositor has been finally adjudicated by a court of competent jurisdiction not to be liable; or all judgments of liability against the depositor have been satisfied, or

(c) One year shall have elapsed after deposit and during such period the department has not been duly notified of any court action brought for damages.

(d) Upon receipt of an order from a court ordering that such deposit be paid to satisfy a recorded judgment, in whole or in part, resulting from an accident. If the department does not have sufficient funds on deposit to satisfy such judgment it shall forthwith call upon the judgment debtor for the balance, subject to the limits specified in s. 324.021(7). Upon failure of the judgment debtor to make the necessary deposit or to satisfy the judgment in full, the department shall revoke the driving privilege and all registrations of such judgment debtor within 10 days subsequent to notification to the judgment debtor by the department.

(e) In any case in which securities deposited under this section have remained unclaimed for 5 years or more such deposit shall be transferred by the department to the State School Fund, and all interest and income that may accrue from said deposits after the aforesaid period of time, shall belong to said fund.

(3) The department shall invest security deposits in its custody received under this section in excess of current needs in interest-bearing accounts. The interest earned from such investments shall be deposited in a department trust fund, and any security deposits remaining unclaimed after 5 years shall be transferred to the State School Fund as provided in paragraph (2)(e) above.

History.—s. 1, ch. 29963, 1955; s. 3, ch. 57-147; ss. 13, 35, ch. 69-106; s. 3, ch. 71-59; s. 3, ch. 77-118; s. 8, ch. 77-468.

[1]Note.—Bracketed subparagraph number substituted by the editors for "6." to conform to subparagraph renumbering required by s. 7, ch. 77-468.

Note.—Former s. 324.041.

324.071 Reinstatement; renewal of license; reinstatement fee.—Any operator or owner whose license or registration has been suspended pursuant to s. 324.051(2), s. 324.072, s. 324.081, or s. 324.121 may effect its reinstatement upon compliance with the provisions of s. 324.051(2)(a)[1][2., 3., or 4.], or s. 324.081(2) and (3), as the case may be, and with one of the provisions of s. 324.031 and upon payment to the department of a nonrefundable reinstatement fee of $15. Only one such fee shall be paid by any one person irrespective of the number of licenses and registrations to be then reinstated or issued to such person. All such fees shall be deposited to a department trust fund. When the reinstatement of any license or registration is effected by compliance with s. 324.051(2)(a)[2][3. or 4.], the department shall not renew the license or registration within a period of 3 years from such reinstatement, nor shall any other license or registration be issued in the name of such person, unless the operator is continuing to comply with one of the provisions of s. 324.031.

History.—s. 1, ch. 29963, 1955; s. 4, ch. 57-147; s. 6, ch. 65-190; s. 1, ch. 67-279; ss. 13, 24, 35, ch. 69-106; s. 4, ch. 71-59; s. 4, ch. 77-118; s. 9, ch. 77-468.

[1]Note.—Bracketed subparagraph numbers substituted by the editors for "4., 5., or 6." to conform to subparagraph renumbering required by s. 7, ch. 77-468.

[2]Note.—Bracketed subparagraph numbers substituted by the editors for "5." to conform to subparagraph renumbering required by s. 7, ch. 77-468.

Note.—Former s. 324.03.

not "c" — see the supplement

324.072 Proof required upon certain convictions.—

(1) Upon revocation of a license pursuant to the provisions of s. 322.26, by reason of conviction or forfeiture of bail, the department shall suspend the registration for all motor vehicles registered in the name of such person, either individually or jointly

with another, except that it shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give, and thereafter maintain, proof of financial responsibility with respect to all motor vehicles registered by such person, in accordance with this chapter.

(2) Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed, nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person, until permitted under the laws of this state, and not then unless and until he shall give and thereafter maintain proof of financial responsibility as required by s. 324.071.

History.—s. 5, ch. 57-147; ss. 13, 24, 35, ch. 69-106; s. 5, ch. 77-118; s. 10, ch. 77-468.

324.081 Nonresident owner or operator.—

(1) The department may establish reciprocal agreements with any other states for the purpose of fulfilling the provisions of this chapter and pursuant to such agreements may suspend the license and registration of a resident of this state involved in an accident in another state.

(2) When a nonresident's operating privilege is suspended pursuant to this chapter, the department shall transmit a certified copy of the record of such action to the appropriate official of the reciprocating state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (3).

(3) Upon receipt of such certification that the operating privilege of a resident of this state has been suspended or revoked in any such other reciprocating state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's operating privilege had the accident occurred in this state, the department shall suspend the license of such resident if he was the operator, and all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security.

(4) In the event such nonresident shall at the time have in effect an insurance policy or surety bond issued by any insurance company or surety company not authorized to do business in this state, the department may reinstate such nonresident upon said company furnishing it with power of attorney to accept service of process.

History.—s. 1, ch. 29963, 1955; s. 6, ch. 57-147; ss. 13, 35, ch. 69-106; s. 6, ch. 77-118; s. 11, ch. 77-468.
Note.—Former s. 324.06.

324.091 Notice to department; notice to insurer.—

(1) Each owner and operator involved in an accident or conviction case within the purview of this chapter shall furnish evidence of automobile liability insurance, motor vehicle liability insurance, or surety bond within 30 days from the date of the mailing of notice of accident by the department in such form and manner as it may designate. Upon receipt of evidence that an automobile liability policy, motor vehicle liability policy, or surety bond was in effect at the time of the accident or conviction case, the department shall forward by United States mail, postage prepaid, to the insurer or surety insurer a copy of such information and shall assume that such policy or bond was in effect unless the insurer or surety insurer shall notify the department otherwise within 20 days from the mailing of the notice to the insurer or surety insurer; provided that if the department shall later ascertain that an automobile liability policy, motor vehicle liability policy, or surety bond was not in effect and did not provide coverage for both the owner and the operator, it shall at such time take such action as it is otherwise authorized to do under this chapter. Proof of mailing to the insurer or surety insurer may be made by the department by naming the insurer or surety insurer to whom such mailing was made and specifying the time, place and manner of mailing.

(2) Each insurer doing business in this state shall immediately give notice to the department of each motor vehicle liability policy when issued to effect the return of a license which has been suspended under s. 324.051(2); and said notice shall be upon such form and in such manner as the department may designate.

History.—s. 1, ch. 29963, 1955; s. 3, ch. 65-122; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.08.

324.101 Compliance before license or registration allowed.—In case the operator or owner of a motor vehicle involved in an accident within the state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of this chapter to the same extent that would be necessary, if at the time of the accident he had held a license and registration.

History.—s. 1, ch. 29963, 1955.
Note.—Former s. 324.09.

324.111 Failure to satisfy judgment; copy to department.—Whenever any person fails within 30 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the department immediately after the expiration of said 30 days, a certified copy of such judgment.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 5, ch. 71-89.

324.121 Suspension of license and registration.—

(1) The department, upon the receipt of a certified copy of a judgment, as provided in s. 324.111, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section, and in s. 324.141.

(2) If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same

may be allowed by the department, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or any installments thereof prescribed in s. 324.141, provided the judgment debtor furnished proof of financial responsibility as provided in s. 324.031, such proof to be maintained for 3 years.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 6, ch. 71-59.

324.131 Period of suspension.—Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent of the limits stated in s. 324.021(7) and until the said person gives proof of financial responsibility as provided in s. 324.031, such proof to be maintained for 3 years.

History.—s. 1, ch. 29963, 1955.

324.141 Installment payments.—

(1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1), shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner, against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles, within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Each policy shall contain an optional provision for a deductible relating to property damage coverage in an amount not to exceed $500; provided, however, that such deductible provision in a policy shall not be required when the owner named in the policy specifically rejects the provision.

(b) An operator's motor vehicle liability policy of insurance shall insure the person named therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.

(c) All such motor vehicle liability policies shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, the limits of liability, and shall contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage or both and is subject to all provisions of this chapter. Said policies shall also contain a provision that the satisfaction by an insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and shall also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurance carrier of any of its obligations under said policy.

(2) The provisions of this section shall not be applicable to any automobile liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then only from and after the date said policy is so furnished.

History.—s. 1, ch. 29963, 1955; s. 24, ch. 57-1; s. 1, ch. 63-489; s. 1, ch. 71-325.
Note.—Former s. 324.10.

324.161 Proof of financial responsibility; surety bond or deposit.—The certificate of the department of a deposit may be obtained by depositing with it $25,000 cash or securities such as may be legally purchased by savings banks or for trust funds, of a market value of $25,000 and which deposit shall be held by the department to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages because of bodily injury to or death of any person or for damages because of injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.11.

324.171 Self-insurer.—Any person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department which may, in its discretion, upon application of such a person, issue

said certificate of self-insurance, when it is satisfied that such person is possessed of a net unencumbered capital of at least $40,000. The department may require annual reports from any self-insurer which reports must continue to show at least $40,000 unencumbered net worth. Whenever the department finds that any self-insurer does not possess $40,000 of unencumbered net worth it shall revoke the certificate of self-insurance.

History.—s. 1, ch. 29363, 1955; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.12.

324.181 Cancellation of liability policies; plan for apportionment of certain applicants.—No motor vehicle liability policy which is obtained to effect the return of any operator's license or registration shall be canceled by an insurer issuing the same unless 10 days' notice of such cancellation shall be given to the department on a form prescribed by it and to the insured, except that when evidence has been furnished of the holding of a motor vehicle liability policy, and subsequently evidence is furnished of the holding of such a policy subsequently procured, the later policy shall, on the date evidence is furnished, terminate the policy as to which evidence was previously furnished with respect to any vehicle designated in both policies.

History.—s. 1, ch. 29963, 1955; s. 1, ch. 61-62; ss. 13, 35, ch. 69-106; s. 12, ch. 77-468.
Note.—Former s. 324.13.

324.191 Consent to cancellation; direction to return money or securities.—The department shall consent to the cancellation of any bond or certificate of insurance furnished as proof of financial responsibility pursuant to s. 324.031, or the department shall return to the person entitled thereto cash or securities deposited as proof of financial responsibility pursuant to s. 324.031:

(1) Upon substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter, or

(2) In the event of the death of the person on whose behalf the proof was filed, or the permanent incapacity of such person to operate a motor vehicle, or

(3) In the event the person who has given proof of financial responsibility surrenders his license and all registrations to the department; providing, however, that no notice of court action has been filed with the department, a judgment in which would result in claim on such proof of financial responsibility.

This section shall not apply to security as specified in s. 324.061 deposited pursuant to s. 324.051(2)(a)6.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 7, ch. 77-118.
Note.—Former s. 324.14.

324.201 Return of license or registration to department.—Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, or who shall neglect to furnish other proof upon the request of the department shall immediately return his license and registrations to the department. It shall be unlawful for any person whose license has been suspended to operate any motor vehicle or for any person whose registrations have been suspended to obtain another motor vehicle for the purpose of circumventing this chapter. If any person shall fail to return to the department the license or registrations as provided herein, the department shall issue a complaint to a court of competent jurisdiction which shall issue a warrant charging such person with a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such person shall surrender to the court his driver's license, registration and plates for delivery to the department. For the service and execution of such warrant the sheriff shall receive the arrest and other fees authorized by law.

History.—s. 1, ch. 29963, 1955; s. 7, ch. 57-147; ss. 13, 35, ch. 69-106; s. 220, ch. 71-136; s. 95, ch. 73-333.
Note.—Former s. 324.16.
cf.—s. 30.231 Sheriffs' fees.

324.211 Sale by owner during suspension; rights of conditional vendors, mortgagees and lessors.—

(1)(a) If an owner's registration has been suspended hereunder, it shall be unlawful for him to transfer such registration or to have registered in any other name the motor vehicle in respect of which such registration was issued until the department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purpose of this chapter; provided, however, that any owner within the purview of this section may file an application for permission to transfer such registration, which application shall be accompanied by an affidavit of good faith showing that such transfer is not with the intent of defeating the purpose of this chapter. The department, within 10 days subsequent to suspension of the owner's registration, upon request shall furnish proper application and affidavit forms to each such owner along with the notice of suspension, and the owner shall have 15 days from receipt thereof to file such application, which application shall be either approved or rejected by the department within 30 days from the filing thereof.

(b) In addition to the penalties otherwise provided for violation of this section the department may suspend the registration of any vehicle transferred contrary to the provisions of this section.

(2) Nothing in this section or elsewhere in this chapter contained shall affect the rights of any conditional vendor, chattel mortgagee or lessor or any successor in interest of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this section; and in the event of the repossession or foreclosure of a motor vehicle by such conditional vendor, chattel mortgagee, or lessor, or any successor in interest, pursuant to the exercise of rights to such repossession under the terms of the lien instrument or contract involved, by operation of law or through legal proceedings, the lienholder or lessor repossessor shall have the right to have delivered to it the registration plates which shall have been surrendered.

History.—s. 1, ch. 29963, 1955; s. 8, ch. 57-147; ss. 13, 35, ch. 69-106; s. 7, ch. 71-59.
Note.—Former s. 324.15.

lties.--

son who violates any of the provisions of this act or ated hereunder shall be guilty of a felony of the nishable as provided in s. 775.082, s. 775.083, or s.

rson who interferes with, hinders, or opposes any or member of the department in the discharge of his his act shall be guilty of a felony of the third le as provided in s. 775.082, s. 775.083, or s.

rson who fails to comply with a lawful order issued act within the time fixed by the department or he r review under s. 290.151, whichever is longer, shall elony of the third degree, punishable as provided in 75.083, or s. 775.084.

rability.--

visions of this act are severable, and if any part of red invalid or unconstitutional, such declaration the part which remains.

is cumulative and is intended to supplement existing t shall be construed to repeal any existing law, acted for the protection of public health and safety on of those sections included in this act.

Section 290.32, Florida Statutes, is amended to read:

da participation.--

ard--member-from-Florida-shall-be-the-chairman-of-the and-Space-Council--when--approved--by--the--Governor; Governor shall appoint the board member from Florida. e Governor may designate another person as his deputy

pplementary agreement entered into under s. 290.31(6) penditure of funds shall not become effective as to e required funds are appropriated by the Legislature.

partment, agencies and officers of this state and its authorized to cooperate with the board in the any of its activities pursuant to the compact, pposed activities have been made known to, and have , either the Governor or the Department of Health and ervices Commerce.

Sections 290.01, 290.02, 290.03, 290.04, 290.051, 290.071, 290.08, 290.09, 290.10, 290.11, 290.12, 290.15, 290.16, 290.17, 290.18, and 290.19, Florida reby repealed.

This act shall take effect July 1, 1978.

Approved by the Governor June 20, 1978.

Filed in Office Secretary of State June 21, 1978.

These are the 1978 amendments to the no-fault law.

CHAPTER 78-374

Committee Substitute for Senate Bill No. 1308

AN ACT relating to motor vehicle insurance; amending s. 627.727(7), Florida Statutes; providing that uninsured motorist coverage shall not include damages for pain and suffering except for specified injuries or death; amending s. 627.732(1), Florida Statutes; providing definitions of "motor vehicle", "private passenger motor vehicle", and "commercial motor vehicle"; amending s. 627.736(1), Florida Statutes; providing for $10,000 in personal injury protection coverage; amending s. 627.737(2), Florida Statutes; providing for limitations on rights to damages for pain, suffering, mental anguish, and inconvenience in tort actions arising out of use of a motor vehicle; amending s. 627.7372(1), Florida Statutes; providing for the admission into evidence in certain actions the amount of all collateral sources paid or payable to the claimant, and prohibiting an award of damages which are otherwise paid or payable; amending s. 627.739(1), Florida Statutes, relating to personal injury protection to revise amounts of deductibles; creating s. 627.7405, Florida Statutes; providing personal injury protection benefits for the insured, certain relatives, operators, and passengers of a commercial motor vehicle or other Florida residents struck by a commercial motor vehicle in Florida; repealing s. 627.735(2), Florida Statutes, relating to the compliance of motor vehicle liability insurance policies with financial responsibility or compulsory insurance laws of other states; providing for review by the Department of Insurance of the rates of all licensed motor vehicle insurers; providing for issuance of orders by the Department of Insurance to require new rate schedules where existing rates are unfairly discriminatory; creating s. 627.343, Florida Statutes; requiring the Department of Insurance to promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating motor vehicle insurance rates, premiums, competition, and availability; requiring insurers to file annual statements with the department; providing that the department may require insurers to report certain loss and expense experience; repealing s. 627.342, Florida Statutes, which provides for annual risk classification reporting by insurers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 627.727, Florida Statutes, is amended to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.--

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (d) (f) of s. 627.737(2).

Section 2. Subsection (1) of section 627.732, Florida Statutes, is amended to read:

627.732 Definitions.--As used in ss. 627.730-627.741:

(1) "Motor vehicle" means a-sedan,-station-wagon,-or-jeep-type vehicle-not-used-as-a-public-livery--conveyance--for--passengers--and includes--any--other--four-wheel--motor--vehicle--used--as--a-utility automobile-and-a-pickup-or-panel-truck-which-is-not-used-primarily-in the--occupation,--profession,--or--business-of-the-insured, any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semi-trailer designed for use with such vehicle, except mopeds, as defined in s. 316.003(2), and includes:

(a) A "private" passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon or jeep type vehicle not used at any time as a public or livery conveyance for passengers and, if not used primarily for occupational, professional or business purposes, a motor vehicle of the pickup, panel, van, camper or motor home type.

(b) A "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle.

The term motor vehicle, however, does not include any self-propelled vehicle with less than four wheels or a mobile home.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority.--

(1) REQUIRED BENEFITS.--Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, all as specifically provided in subsection (2) and paragraph (4)(d), to a limit of $10,000 $5,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

Section 4. Subsection (2) of section 627.737, Florida Statutes, is amended to read:

Increased no-fault Limits

627.737 Tort exemption; limitation on right to damages; puni damages.--

(2) In any action of tort brought against the owner, regist operator, or occupant of a motor vehicle with respect to security has been provided as required by ss. 627.730-627.74 against any person or organization legally responsible for his or omissions, a plaintiff may recover damages in tort for suffering, mental anguish, and inconvenience because of b injury, sickness, or disease arising out of the owner maintenance, operation, or use of such motor vehicle only in event that the injury or disease consists in whole or in part of

(a)--Loss-of-a-body-member

(a)(b) Significant and permanent loss of an important b function.

(b)(c) Permanent injury within a reasonable degree of me probability, other than scarring or disfigurement.

(c)(d) Significant and permanent scarring or disfigurement.

(e)--A-serious-nonpermanent-injury-which-has-a-material-degr bearing-on-the-injured-person's-ability-to-resume-his-normal-act and--lifestyle--during--all-or-substantially-all-of-the-90-day-p after-the-occurrence-of-the-injury,-and--the--effects--of--which medically-or-scientifically-demonstrable-at-the-end-of-such-peri

(d)(f) Death.

Section 5. Subsection (1) of section 627.7372, Florida Stat is amended to read:

627.7372 Collateral sources of indemnity.--

(1) In any action for personal injury or wrongful death ar out of the ownership, operation, use or maintenance of a vehicle, the court shall admit into evidence the total amount o collateral sources which have been paid to the claimant, and court shall instruct the jury to deduct from its verdict the val all benefits received by the claimant from any collateral s prior--to--the-commencement-of-the-trial. The-court-shall-also-into-evidence--any--amount--paid--by--the--claimant--to--secure-collateral-sources

Section 6. Subsection (1) of section 627.739, Florida Stat is amended to read:

627.739 Personal injury protection; optional limitat deductibles; optional methods of payment for repair work.--In to prevent duplication with other private or governmental ins or benefits for senior citizens and others with access to insurance or benefits, each insurer providing the coverag benefits described in s. 627.736(1) shall offer to the named in modified forms of personal injury protection as described i section. Such election may be made by the named insured to appl the named insured alone, or to the named insured and depe relatives residing in the same household. Any person electing modified coverage, or subject to such modified coverage as a of the named insured's election, shall have no right to claim

recover any amount so deducted from any owner, registrant, operator, or occupant of a vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, $1,000, $2,000, $3,000, and $4,000, $6,000 and $8,000, said amount to be deducted from the benefits otherwise due each person subject to the deduction, and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans, they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

Section 7. Section 627.7405, Florida Statutes, is created to read:

627.7405 Subrogation.--Notwithstanding any other provisions of ss. 627.730-627.741, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

Section 8. Within 30 days after January 1, 1980, the Department of Insurance shall commence a review of the rates of all licensed motor vehicle insurers in effect at the time. If, after the review, the department finds on a preliminary basis that the rate may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer shall within 60 days file with the department all information which the insurer believes proves the reasonableness, adequacy, and fairness of the rate. In such instances, the insurer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate schedule be thereafter filed by the insurer and further specifying the manner in which noncompliance shall be corrected.

Section 9. Section 627.343, Florida Statutes, is created to read:

627.343 Uniform risk classification reporting system for motor vehicle insurance.--

(1) The department shall establish and promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating rates and premiums and for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The system shall divide risks into classifications based upon variations in hazards or expense of claims. The classification system may include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses, but in no event shall the system adopted by the department

discriminate among risks based upon race, creed, color, or natio origin. The classification system shall divide the state i geographical areas based upon hazards or expenses of claims.

(2) Each insurer shall annually file with the departmen statement reflecting the total number of persons insured by insurer within each classification by coverage, the premium volume each classification by coverage, the paid and reserved los incurred in each classification by coverage, the number cancellations or nonrenewals by the insurer during the period and number of new insureds during the period. This statement shall filed annually on a date determined by the department and shall co a 1-year period.

(3) The department may promulgate rules to require each insu to report its loss and expense experience by classification, in detail and as often as may be necessary to aid the department determining the reasonableness of rates, the validity of projections and the validity of the risk classification system.

Section 10. Section 627.342, Florida Statutes, as created chapter 77-468, Laws of Florida, is hereby repealed.

Section 11. Subsection (2) of section 627.735, Florida Statut is hereby repealed.

Section 12. This act shall take effect on January 1, 1979, shall apply to all accidents occurring on or after the effect date.

Approved by the Governor June 20, 1978.

Filed in Office Secretary of State June 21, 1978.

CHAPTER 78-375

Senate Bill No. 1357

AN ACT relating to the Department of Commerce; amending ss. 288.03(21)-(23) and 288.34(1)(k) and (l), Florida Statutes; providing for certain guidelines concerning per diem, travel, operational and promotional advancements and reimbursements; adding a subsection to s. 288.35, Florida Statutes, providing a definition; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (21), (22), and (23) of section 288. Florida Statutes, are amended to read:

288.03 Powers and duties of division.--The general purposes the Division of Economic Development of the Department of Comme shall be to guide, stimulate, and promote the coordinated, efficie and beneficial development of the state and its regions, counti and municipalities in accordance with present and future needs resources and the requirements of the prosperity, convenien comfort, health, safety, and general welfare of the people of

This is the original no-fault Law.

CHAPTER 71-252

Conference Committee Substitute for
House Bill No. 1821

AN ACT relating to motor vehicle insurance; providing definitions; requiring security by motor vehicle owners; requiring motor vehicle no-fault reparation insurance and liability insurance up to certain limits and limiting tort liability; providing penalties for failure to show proof of security; providing personal injury protection benefits; providing for priority of payment of benefits; providing for tort exemptions and limitation on damages; providing no-fault property protection; providing for certain deductibles; providing for subrogation; providing that the department shall adopt rules and regulations necessary to implement this act; providing rights of residents; providing that insurers file proposed manual, rules, rates and rating plans with the department for approval; providing that insurers shall make certain rate reductions; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.—This act may be cited and known as the "Florida automobile reparations reform act."

Section 2. Purpose.—The purpose of this act is to require medical, surgical, funeral and disability insurance benefits to be provided without regard to fault under motor vehicle policies that provide bodily injury and property damage liability insurance, or other security, for motor vehicles registered in this state, and with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish and inconvenience.

Section 3. Definitions.—As used in this act:

(1) "Motor vehicle" means a sedan, station wagon or jeep type vehicle not used as a public livery conveyance for passengers, and includes any other four-wheel motor vehicle used as a utility automobile and a pickup or panel truck which is not used primarily in the occupation, profession or business of the insured.

(2) "Owner" means a person who holds the legal title to a motor vehicle, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purposes of this act.

(3) "Named insured" means a person, usually the owner of a vehicle, identified in a policy by name as the insured under the policy.

(4) "Relative residing in the same household" means a relative of any degree by blood or by marriage, who usually makes his home in the same family unit whether or not temporarily living elsewhere.

Section 4. Required security.—

(1) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as required by subsection (3) of this section in effect continuously throughout the registration or licensing period.

(2) Every nonresident owner or registrant of a motor vehicle which, whether operated or not, has been physically present within this state for more than ninety (90) days during the preceeding three hundred sixty-five (365) days, shall thereafter maintain security as defined by subsection (3) of this section in effect continuously throughout the period such motor vehicle remains within this state.

(3) Such security shall be provided by one of the following methods:

(a) Security by insurance may be provided with respect to such motor vehicle by an insurance policy delivered or issued for delivery in this state by an authorized or eligible insurer as otherwise defined in this code, which qualifies as evidence of automobile or motor vehicle liability insurance under chapter 324, Florida Statutes, "the financial responsibility law", except as modified to provide the benefits and exemptions contained in this act. Any such policy of liability insurance covering motor vehicles registered or licensed in this state and any policy of insurance represented or sold as providing the security required

hereunder for registered and licensed motor vehicles under this act shall be deemed to provide insurance for the payment of such benefits; or

(b) Security may be provided with respect to any motor vehicle by any other method approved by the department of insurance as affording security equivalent to that afforded by a policy of insurance, provided such security is continuously maintained throughout the motor vehicle's registration or licensing period. The person filing such security shall have all of the obligations and rights of an insurer under this act.

(4) An owner of a motor vehicle with respect to which security is required by this act who fails to have such security in effect at the time of an accident shall have no immunity from tort liability, and be personally liable for the payment of benefits under Section 7. With respect to such benefits, such an owner shall have all of the rights and obligations of an insurer under this act.

Section 5. Proof of security; security requirements; penalties.—

(1) The provisions of chapter 324, Florida Statutes, which pertain to the method of giving and maintaining proof of financial responsibility, and which govern and define a motor vehicle liability policy, shall apply to filing and maintaining proof of security or financial responsibility required by this act. It is intended that the provisions of chapter 324, Florida Statutes, relating to proof of financial responsibility required of each operator and each owner of any motor vehicle, shall continue in full force and effect.

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false, or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall, upon conviction, be punished by fine not to exceed one thousand dollars ($1,000) or imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) This act does not apply to any motor vehicle owned by the state or by a political subdivision of the state, nor to any motor vehicle owned by the federal government.

Section 5A. Subsection (2) of section 5 of this act is created to read:

Section 5. Proof of security; security requirements; penalties.—

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a misdemeanor of the first degree, punishable as provided in sections 775.082 or 775.083.

Section 5B. In the event CS for HB 935, introduced in the 1971 regular session of the legislature is enacted into law, subsection (2) of section 5 of this act will stand repealed and be omitted from the Florida Statutes. In the event CS for HB 935 is not enacted into law, section 5A of this act will stand repealed and be omitted from the Florida Statutes.

Section 6. Operation of a motor vehicle illegal without security; penalties.—

(1) Any owner or registrant of a motor vehicle with respect to which security is required under subsection (1) or (2) of section 4 who operates such motor vehicle or permits it to be operated in this state without having in full force and effect security complying with the terms of said subsection (1) or (2) of section 4 shall have his operator's license and registration revoked.

(2) Any motor vehicle liability insurance policy which provides security required pursuant to subsection (3) of section 4 shall also be deemed to comply with the applicable limits of liability required under the financial responsibility or compulsory laws of any other state.

Section 7. Required personal injury protection benefits; exclusions; priority.—

(1) Every insurance policy complying with the security requirements of section 4 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital, nursing services, funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a motor vehicle or motorcycle, all as specifically provided in subsection (2) and paragraph (d) of subsection (4) of this section, to a limit of five thousand dollars ($5,000) for loss sustained by any such person as a result of bodily injury, sickness, disease or death arising out of the ownership, maintenance or use of a motor vehicle as follows:

(a) Medical benefits: all reasonable expenses for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital and nursing services. Such benefits shall include also, necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with his religious beliefs.

(b) Disability benefits: one hundred percent (100%) of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to eighty-five percent (85%), from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every two weeks.

(c) Funeral, burial or cremation benefits: funeral, burial or cremation expenses in an amount not to exceed one thousand dollars ($1,000) per individual.

(2) Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;

2. Convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;

3. While committing a felony.

(3) Insurer's rights of reimbursement and indemnity:

(a) No subtraction from personal protection insurance benefits will be made because of the value of a claim in tort based on the same bodily injury, but after recovery is realized upon such a tort claim, a subtraction will be made to the extent of the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurer or insurers. If personal protection insurance benefits have already been received, the claimant shall repay to the insurer or insurers out of the recovery a sum equal to the benefits received, but not more than the recovery exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurers or insurer. The insurer or insurers shall have a lien on the recovery to this extent. No recovery by an injured person or his estate for loss suffered by him will be subtracted in calculating benefits due a dependent after the death, and no recovery by a dependent for loss suffered by the dependent after the death will be subtracted in calculating benefits due the injured person except as provided in paragraph (c) of subsection (1) of section 7.

(b) The insurer shall be entitled to reimbursement of any payments made under the provisions of subsection (3) of this section based upon such equitable distribution of the amount recovered as the court may determine less the pro rata share of all court costs expended by the plaintiff in the prosecution of the suit to recover such amount against a third-party tort feasor, including a reasonable attorney's fee for the plaintiff's attorney. The proration of the reimbursement shall be made by the judge of a trial court handling the suit to recover damages in the third-party action against the tort feasor upon application therefor and notice to the carrier.

(c) Indemnity from one paying in tort without regard for rights of insurer having reimbursement interest.—A personal protection insurer with a right of reimbursement under this section, if suffering loss from inability to collect such reimbursement out of a payment received by a claimant upon a tort claim is entitled to indemnity from one who, with notice of the insurer's interest, made such a payment to the claimant without making the claimant and the insurer joint payees as their interests may appear, or without obtaining the insurer's consent to a different method of payment.

(d) In the event an injured party or his legal representative is entitled to bring suit against a third party tort feasor under the provisions of section 8, and fails to bring such suit against such third party tort feasor within one year after the last payment of any benefits under subsection (1) of section 7, the insurer of such injured party, upon giving thirty (30) days written notice to such injured party, shall have the right to bring suit against such third party, in its own name or in the name of the injured person or his legal representative, to recover the amount of the benefits paid pursuant to the provisions of section 7 of this act to or for the benefit of such injured person; provided, however, that the prosecution or settlement of such suit without the consent of the injured person or his legal representative shall be without prejudice to such person.

(4) Benefits due from an insurer under this act shall be primary, except that benefits received under any workmen's compensation law shall be credited against the benefits provided by subsection (1) of section 7, and be due and payable as loss

accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under this act.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by this act.

(b) Personal injury protection insurance benefits shall be overdue if not paid within thirty (30) days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within thirty (30) days after such written ntoice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of ten percent (10%) per annum.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a motor vehicle or motorcycle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state but within the United States of America, its territories or possessions or Canada by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1 or 2 of this paragraph (d), provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under this act.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a motor vehicle or motorcycle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under this act, or

b. Entitled to personal injury benefits from the insurer of the owner of such a motor vehicle.

(c) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person the maximum payable shall be as specified in subsection (1) of section 7, and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(5) Charges for treatment of injured persons.—Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for the products, services, and accommodations rendered. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(6) Discovery of facts about an injured person; disputes.—

(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under this act against whom a claim has been made, furnish forthwith, in a form approved by the department of insurance, a sworn

statement of the earnings since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, and dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(e) The injured person shall be furnished upon demand a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(7) Mental and physical examination of injured person; reports.—

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any

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, or other medical institu-
injury upon which a claim
ce benefits is based, any
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claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him (or his representative) concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(8) With respect to any dispute under the provisions of this act between the insured and the insurer, the provisions of section 627.0127, Florida Statutes, shall apply.

Section 8. Tort exemption; limitation on right to damages.—

(1) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury, sickness or disease arising out of the ownership, operation, maintenance or

use of such motor vehicle in this state to the extent that the benefits described in subsection (1) of section 7 are payable for such injury, or would be payable but for any exclusion or deductible authorized by this act, under any insurance policy or other method of security complying with the requirements of section 4, or by an owner personally liable under section 4 for the payment of such benefits, unless a person is entitled to maintain an action for pain, suffering, mental anguish and inconvenience for such injury under the provisions of subsection (2) of this section.

(2) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury under paragraph (a) of subsection (1) of section 7 or which would be payable but for any exclusion or deductible authorized by this act exceed one thousand dollars ($1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars ($1,000). Any person receiving ordinary and necessary services normally performed by a nurse from a relative or a member of his household shall be entitled to include the reasonable value of such services in meeting the requirements of this subsection.

Section 9. (1) The owner of a motor vehicle as defined in section 3 is not required to maintain security with respect to property damage to his motor vehicle, but may elect to purchase either full or basic coverage for accidental property damage to his motor vehicle.

(2) Every insurer providing security under this act shall offer the owner either full or basic coverage for accidental property damage to the insured motor vehicle as follows:

(a) Full coverage shall provide insurance without regard to fault for accidents occurring within the United States of America, its territories or possessions or Canada.

(b) Basic coverage shall be limited to insurance against damage caused by the fault of another resulting from contact between the insured vehicle and a vehicle with respect to which security is required under this act.

(3) The insurer may include within the terms and conditions applicable to full or basic coverage such other provisions as it customarily applies to collision coverage for private passenger automobiles in other states, including deductibles without limitation.

(4) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every other person or organization legally responsible for the acts or omissions of such an owner, registrant, operator or occupant, is hereby exempted from tort liability for damages because of accidental property damage to motor vehicles arising out of the ownership, operation, maintenance or use of such motor vehicle in this state, provided that a person shall not be exempt from such liability if he was operating the motor vehicle without the express or implied consent of its owner or an insured under the owner's policy or if his willful and wanton misconduct was the proximate cause of the accident. This exemption applies only with respect to property damage to motor vehicles subject to this act but shall not be applicable as to a motor vehicle damaging a parked vehicle.

(5) Notwithstanding paragraph (4) above, an owner who has elected not to purchase insurance with respect to property damage to his motor vehicle may maintain an action of tort therefor against the owner, registrant, operator or occupant of a motor vehicle causing such damage if such damage exceeds five hundred and fifty dollars ($550), and the insurer of an owner who has elected to purchase full or basic collision coverage for his motor vehicle shall have the right, if the damage to such

motor vehicle exceeds the above amount, to recover the amount of the benefits it has paid and, in behalf of its insured, any deductible amount from the insurer of the owner, registrant, operator or occupant of a motor vehicle causing such damage. The issues of liability in such a case and the amount of recovery shall be decided on the basis of tort law, and shall be determined by agreement between the insurers involved, or if they fail to agree by arbitration.

Section 10. Each insurer providing security as required by this act to any owner shall, at the election of the owner, issue a policy endorsement, approved as to content by the department of insurance and subject to such other reasonable regulations regarding said endorsement as the department may make after appropriate hearing, which endorsement shall provide that there shall be deducted from personal protection benefits that would otherwise be or become due to the policyholder alone or to the policyholder and relatives residing in his household, an amount of either two hundred and fifty dollars ($250), five hundred dollars ($500) or one thousand dollars ($1,000), again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator or occupant of a motor vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by this act.

Section 11. Notwithstanding any other provision of this act, the rights of residents of this state to claim damages in tort shall not be diminished when such residents are involved in motor vehicle accidents with persons not required to provide security under this act.

Section 12. Implementation of this act.—

(1) The department of insurance shall adopt rules and regulations necessary to implement the provisions of this act.

(2) Notwithstanding any other provision of law, all insurers

issuing insurance coverage under this act shall comply with the following provisions:

(a) Within sixty (60) days after the effective date of this act, each insurer shall file its proposed manual, rules, rates and rating plans with the department for approval. Rates for required financial responsibility coverage after the effective date of sections 1 through 11 of this act shall be reduced by each insurer by not less than fifteen percent (15%), calculated as a percentage of the combined required financial responsibility rate of such insurer in effect on June 7, 1971, or of the combined required financial responsibility rate of such insurer approved by the commissioner and in effect at the time of the filing of the new rates required herein. There shall be no exception to the requirements of this provision, unless the department shall find that the use of the rates required herein by any insurer will result in rates which are inadequate under Section 627.082, Florida Statutes, to the extent that such rates jeopardize the solvency, as defined in section 631.011, Florida Statutes, of the insurer required to use such rates. Notwithstanding the provisions of Chapter 71-3(B), Laws 1971, no rate for the insurance required by this act shall be increased prior to January 1, 1973, unless the insurer proposing such rate increase shall show that the rates required herein are inadequate as defined in Section 627.082, Florida Statutes.

(b) Within sixty (60) days from the date of filing by such insurer, the department may approve or disapprove the filing. If no action is taken by the department within sixty (60) days, the filing shall be deemed approved.

(c) If the department approves the filing or the filing otherwise becomes effective, the manual, rules, rates and rating plans shall take effect upon the effective date of sections 1 through 11 of this act. If the department disapproves the filing, the insurer shall revert to a rate level for required coverage which shall be lower, by not less than fifteen percent (15%), than the combined premiums for required financial responsibility coverage at the time such proposed new rates were filed.

(d) Upon complying with this subsection, any insurer appealing an order of disapproval may use the rates set forth in

the disapproved filing during the pendency of the appeal, so long as such rates do not exceed its rates for required financial responsibility coverage at the time of its rate filing required herein. As a condition to the use of such disapproved rates, the insurer must enter into a legally binding agreement with the department to secure the repayment to the insurer's policyholders of the difference between the insurer's proposed rate and that rate which would be lower, by not less than fifteen percent (15%), than the combined premiums for required financial responsibility coverage at the time such proposed new rates were filed. In addition to the repayment of the difference in premium, the company shall agree to pay to the insured the legal rate of interest on any money refunded.

(e) Any private passenger automobile liability policy in force on January 1, 1972 and thereafter, shall reflect by endorsement any reduction in rates for the required coverage under this act as filed by the insurer and such reduction shall be computed on a prorata basis for the remaining term of said policy. Such endorsement may be issued at the renewal date of the policy or the termination of the policy. Any return premium shall be credited to the renewal policy or if the policy is terminated the return premium shall be refunded to the insured.

(f) For the purposes of the implementation of this act, rating organizations as defined in chapter 627 shall be permitted until January 1, 1973, to develop and furnish rates and forms to their members or subscribers. Provided, however, that members and subscribers of rating organizations shall not participate in the decisions or deliberations of such organizations in the development of such rates under this act.

Section 13. If any provision of this act, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are declared to be severable.

Section 14. This act shall become effective July 1, 1971; provided, however the provisions of sections 1 through 11 of this

act shall not become effective until January 1, 1972, and shall not apply to accidents or injuries occurring before said date.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 24, 1971.

CHAPTER 71-253

Senate Bill No. 297

AN ACT relating to community colleges; requiring that teaching faculty members teach not less than fifteen (15) classroom contact hours per week; providing exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Each full-time member of the teaching faculty at any institution under the supervision of the division of community colleges of the department of education who is paid wholly from funds appropriated from the minimum foundation fund shall teach a minimum of fifteen (15) classroom contact hours per week at such institution provided, however, that the required classroom contact hours per week may be reduced upon approval of the president of the institution in direct proportion to specific duties and responsibilities assigned the faculty member by his departmental chairman or other appropriate college administrator, such specific duties to include specific research duties, or specific duties associated with developing television, video tape, or other specifically assigned innovative teaching techniques or devices, or assigned responsibility for off-campus student internship or work study programs. A classroom contact hour consists of a regularly scheduled one (1) hour period of classroom activity in a course of instruction which has been approved by the board of trustees of the community college. Any full-time faculty member who is paid partly from minimum foundation funds and partly from other funds or appropriations shall teach a minimum number of classroom contact hours per

INSURANCE INDUSTRY COMMITTEE ON MOTOR VEHICLE ADMINISTRATION
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March 27, 1981

Mr. Robert J. Rowan, Director
Division of Motor Vehicles
P. O. Box 960
Anchorage, Alaska 99510

Dear Mr. Rowan,

I have reviewed Senate Bill 287 and House Bill 346 and would like to make the following observations.

Both bills are very similar in content, the principal difference being that HB 346 provides for an ID card and further provides for penalties for violation of the law. Otherwise, my comments relate to both bills equally.

First, automobile insurance is made compulsory. A car owner must provide satisfactory evidence to the department of the existence of a motor vehicle liability policy as defined in Section 28.10.012. A very disturbing provision in that definition is contained in subsection (f):

> (1) The liability of the insurance carrier becomes absolute whenever injury or damage covered by the policy occurs. The policy may not be cancelled or annulled as to this liability after the occurrence of the injury or damage. No statement made by the insured or on his behalf and no violation of the policy defeats or voids the policy.

This provision in effect causes all auto liability policies to be certified - everything but the SR 22 itself. Experience in states that have adopted compulsory insurance shows that compulsory usually results in increased insurance rates. Providing for certified coverage creates even greater pressures on rates. Generally, a certified policy wherein all normal policy defenses are voided can be expected to cost at least 10 per cent more than an ordinary policy. When "no violation of the policy defeats or voids the policy" it is possible a car owner might be responsible through his insurance company for damage caused by his car while it is in the possession of a car thief.

Subsection (1) says:

> "The insurance carrier shall provide notice to the department of the termination of a policy issued under (a) of this section."

I am sure you are fully aware of the flood of termination notices your department will receive, particularly if "termination" is interpreted to include expirations. The inclusion of all types of terminations not only causes a heavy labor burden for the department but also needlessly harasses the vast majority of car owners who voluntarily carry insurance. It is not uncommon for people to be late in paying premiums or to change insurance companies. Handling a high volume of termination notices through the necessary contacts with car owners and the resulting activities required of the department will be extremely expensive for the state and will result in a lot of hard feeling on the part of law abiding citizens.

Section 2AS2810.011 requires a registrant to provide evidence satisfactory to the department of the existence of an insurance policy. Details are not spelled out. Therefore, it appears the department could establish the procedure. If compulsory insurance is inevitable, experience in other states has shown that simple self-certification is the most cost-effective means of providing evidence.

In terms of cancellation notices, again, experience has indicated that reporting only cancellations occurring within the first six months (not including expirations), is the most effective procedure at the least cost to the department. This goes a long way toward picking up those people who buy insurance only long enough to register a car and then promptly cancel the coverage.

HB 340 provides for an ID card. This is no problem for the companies, almost all provide cards routinely as part of their service. The problem lies in the belief that an ID card establishes that insurance is in force. The person who cancels his coverage still has an ID card. The only thing an ID card does is to demonstrate that on the day the card was issued a policy was in effect. It does nothing more.

This is the whole problem with compulsory and is indicative as to why compulsory insurance simply does not work. Generally, more than 80 per cent of the people in a state voluntarily carry insurance. The hard core remainder will never continuously maintain coverage in force no matter what the law says. We believe a far more effective approach at much less expense and trouble for the average citizen is a well-administered financial responsibility law which includes provision for uninsured motorists coverage available with excess limits. In every state starting with Massachusetts, New York, and North Carolina, more than 20 years ago, compulsory insurance has failed to solve the uninsured driver problem.

Attached is a set of the "Guidelines for the Enforcement of Compulsory Automobile Insurance by State Regulatory Authorities" published by the Insurance Industry Committee on Motor Vehicle Administration. If compulsory is inevitable, the Guidelines contain some ideas of what a law should contain.

You may also find of interest the attached brochure prepared by State Farm.

Very truly yours,

Robert H. Fitch

RHF:lf
Encs.
bcc - John Gordon

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Guidelines for the Enforcement of Compulsory Automobile Insurance by State Regulatory Authorities

The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) recognizes from past experience that no system of enforcement can achieve total compliance at all times by every motor vehicle registrant with the requirements of a compulsory automobile insurance law. Past attempts by the state regulatory authorities to enforce such all-inclusive compliance have proven to be exercises in futility.

Just as it is impossible at any point in time to guarantee that every motorist on the road is properly licensed, or that every motor vehicle is legally registered, so is it impossible to guarantee that every motor vehicle subject to a compulsory law is properly insured. Any system attempting to accomplish such all-inclusive compliance must be reckoned with in light of the law of diminishing returns. Such a system invariably attempts to track down the uninsured minority by keeping tabs on the insured majority, the returns of which do not justify the attendant administrative difficulties and expenses involved. An inevitable side effect of such a system is that the insured public becomes unnecessarily harassed.

The burden of compliance with the insurance requirements of a motor vehicle law should be directed at the uninsured registrant, backed up with an effective program of enforcement that does not harass the law-abiding citizens or otherwise involve the state regulatory authorities and insurance industry in administratively expensive, ineffective, and time-consuming reams of paper work.

The IICMVA furtner believes that in the security section of a compulsory law a general provision should be included by which the state regulatory authorities are empowered to promulgate whatever rules and regulations or administrative guidelines are necessary to enforce the intent of the law. This would permit flexibility in revising a system of enforcement, as experience dictates, without resorting to amendatory legislation.

As encountered in several states, specific enforcement procedures embodied in statutory provisions have not properly taken into account either the administrative difficulties involved or whether the regulatory authorities were equipped or even given sufficient funds to carry them out. As experience has proven, these difficulties can be avoided under a general enforcement provision which will enable the regulatory authorities to work out appropriate initial enforcement procedures, including any changes subsequently needed to fit changing circumstances, with the assistance made available by the IICMVA.

It has become apparent to the IICMVA that the Financial Responsibility Law is a beneficial part of the enforcement procedure. Many states have continued these FR Laws when compulsory or no-fault laws were passed, but some have not. The committee's views regarding the FR Laws are set forth ahead of the guidelines because these laws are the basis of an effective, reasonable enforcement program.

With the foregoing understood as the IICMVA's position in general regarding the enforcement of insurance requirements under motor vehicle laws, below is a list of recommended guidelines deemed desirable. These guidelines involve enforcement procedures relating to Evidence of Insurance, Verification of Insurance, and Termination of Insurance. As an additional matter that may be affected by whatever enforcement procedures are eventually adopted, a general guideline concerning Evidence of Mailing is also set out.

Regarding basic priorities in terms of the need for enforcement and its economical implementation, it is recommended that the Self-certification described under Evidence of Insurance be established as a minimum requirement for the enforcement procedures of a compulsory law. Should additional enforcement procedures be considered, it is recommended that Self-certification be combined with the Random Verification described under Verification of Insurance.

Following each of the guidelines are certain procedures which, deemed especially undesirable, should be discouraged. Experience has proven them to be generative in one or more respects of unnecessary public harassment, regulatory difficulties, and administrative expense. In the process, enforcement efforts and funds are dissipated on the insured majority of registrants who are in compliance with the law, rather than being concentrated more effectively on identifying the uninsured minority of registrants attempting to circumvent the law.

FINANCIAL RESPONSIBILITY LAWS

Upon the enactment of a compulsory automobile insurance law, the existing provisions of a Financial Responsibility Law regarding both security and financial responsibility for the future should be continued in effect. The procedures already established to enforce the requirements of these provisions will then serve to supplement whatever procedures--if any--are promulgated to enforce the compulsory law.

It should be noted that the number and types of motorists affected are not the same under both types of laws. Whereas a compulsory law is indiscriminate in application to motorists in general, the Financial Responsibility Law is selective in that it affects only certain motorists--those who have been involved in reportable accidents or convicted of traffic violations. Consequently, with the Financial Responsibility Law remaining in effect, the burden of compliance with the compulsory law can and should be more stringently imposed and enforced upon at least the motorists involved in accidents or otherwise convicted for violations.

Such motorists may not even be subject to the compulsory law. It then becomes of even greater importance for the Financial Responsibility Law to continue in effect. This is so that the traffic victims can be better protected from the financial loss caused by drivers, vehicle owners and nonowners alike, who are not only careless but also financially irresponsible.

EVIDENCE OF INSURANCE

Desirable - The registrant of a motor vehicle subject to the requirements of a compulsory automobile insurance law can be ordered to indicate compliance upon registration of the vehicle.

1. Self-Certification. A statement of self-certification by the registrant for an initial or renewal registration, indicating that he has and will maintain the insurance required by law throughout the period of registration, the violation of which will subject him to specified penalties. Also to be shown are the name of insurance company and policy number involved.

   It is recommended that effective penalties be imposed for false certification.

   It is also recommended that self-certification be established as a minimum requirement for the enforcement of a compulsory law, with such self-certification to serve as the foundation upon which to build any additional enforcement procedures that may be contemplated.

2. ID Cards. A requirement that insurance companies provide policyholders a nonprescribed insurance identification card as an aid for the insured in completing his statement of self-certification upon registration.

   If ID cards are to be prescribed in format and specifications, they should be issued on a permanent noncertified basis, valid so long as the policy remains in effect and the required data remains the same.

Undesirable - Certificates of Insurance, prescribed ID cards and insurance stickers should be discouraged as having no bearing on whether or not the insurance indicated is in effect, or otherwise has been and will be maintained throughout the period of registration. Routine cancellations by the registrant and submissions of fraudulent certificates and ID cards can be expected.

1. Certificates of Insurance. To be issued by the insurance company for submission by the insured upon registration. This inevitably generates a multiplicity of other certificates involving further communication between the public, the industry, and the regulatory authorities in a futile attempt to identify the uninsured registrant.

2. Prescribed ID Cards. To be provided upon the initial issuance of a policy and every renewal thereof. Because of the frequency in which payments of renewal premiums are delayed, requiring the issuance of prescribed ID cards is especially conducive to public harassment.

3. Insurance Stickers. To be provided by mass mailing to all existing policyholders, on all newly issued policies, and annually thereafter.

   Presence of a sticker on a vehicle supposedly means that the vehicle was insured at the time the sticker was issued. However, the sticker may have been fraudulently issued, may be a duplicate of a legitimate sticker or may have been placed on the wrong vehicle. Replacement of the sticker on an annual basis is a nuisance to all of the honest, law-abiding citizens, and is costly to the companies. Once a sticker is placed on a vheicle, the owner can get by without keeping his insurance in force.

VERIFICATION OF INSURANCE

Desirable - Should additional enforcement procedures be considered with self-certification established as a prerequisite to the registration of a motor vehicle, it is recommended that priority be given to a procedure for random verification of the insurance certified by registrants.

> Random Verification - Negative Basis. Statement of self-certification selected at random by the regulatory authorities for verification on a negative basis by the insurance companies involved. The negative basis of verification requires a response from the company regarding only the self-certifications which, based on the company name and policy number provided, indicates falsification. On this basis, enforcement efforts and attendant administrative expenses are further concentrated on the uninsured minority of registrants who are in violation of the law.
>
> Additional verification may be conducted in connection with accidents, moving traffic violations, and road spot checks. In such instances, however, the name of the insurance company and policy number involved must be provided as required for the random verifications pursuant to registration.

Undesirable - Verification procedures entailing correspondence that also involves the insured majority of registrants should be avoided to the extent possible. They are wasteful of the attendant administrative expenses that otherwise could be more efficiently applied in identifying the uninsured registrant.

> Positive Verification. A procedure which dissipates enforcement efforts by requiring the handling of responsive correspondence not only in negation of the uninsured minority of registrants, but also in positive verification of the majority of insured registrants.

TERMINATION OF INSURANCE

Desirable - If the regulatory authorities are to require insurance companies to notify them whenever an automobile policy is terminated, it is recommended that this requirement be qualified by making it apply only to bona fide terminations involving registrants newly insured by a company. Regulatory authorities will thereby avoid the futility of expending enforcement efforts on the many registrants who, although apparently terminated, have continued to maintain the required insurance in effect. Such registrants are frequently found either to have delayed their payment of premium or, in the case of reliable insureds, changed insurance companies.

> Limited Notice of Termination. Any requirement of companies to file a notice of termination with the regulatory authorities should be qualified to effect only those cancellations or terminations that are firmed up and take place within a limited period of time following issuance of the original policy. "Firmed up" means when the policy will not be reinstated to maintain coverage continuously in force.

Undesirable - To be discouraged is any unqualified requirement of companies to file with the authorities a notice of termination in disregard of commonly encountered circumstances that render the notice unnecessary. Such unrestricted notice should not be required when an insured is possibly dilatory in the payment of premium. Neither should it be required when an insured can be sufficiently relied upon to continue in effect the insurance he is required to have.

Unqualified Notice of Termination. A notice which is required to be filed on an unqualified basis, irrespective of whether or not the insured apparently being terminated is or will in fact be terminated. Affected by this type of notice are numerous embryonic situations which do not develop into effective terminations. Frequently involved are reliable insureds who, having kept their policies in effect with the company beyond a certain period of time, continue to remain insured without lapse of coverage. This is accomplished with either a delayed payment of premium or a change of insurance companies.

Prematurity is the most undesirable aspect of an unqualified notice which is not firmed up, but instead is required to be filed in advance of or immediately upon the indicated date of cancellation or termination. Such notices are very frequently invalidated by a belated payment of premium, as a result of which the policy in question is continued in force rather than terminated according to the premature notice.

Invariably involved with the filing of unqualified notices of termination is not only a waste of administrative expense but also, more significantly, the subsequent enforcement efforts which result in needless harassment of the public who are insured in compliance with the law.

EVIDENCE OF MAILING

Desirable - Should the insurance companies or regulatory authorities be required to show evidence of having mailed any documents required for the administration of a compulsory insurance law, it is recommended that the procedures currently established by them be recognized on the basis of their own merits.

Certificate of Mailing. If some uniform evidence of mailing is to be required, it is recommended that this be the U. S. Postal Service Certificate of Mailing, PS Form 3817.

Undesirable - Any required change in currently established mailing procedures should be discouraged as disruptive of procedures having been tested in court and continuing to be used successfully for the purposes intended.

Certified or Registered Mail. To be especially avoided because of the administrative expenses entailed is any requirement that mail be processed by certified or registered mail.

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The above guidelines are not intended to be descriptive of all the ramifications that may be involved with the enforcement of a particular compulsory law. Feasible

enforcement procedures depend on a variety of factors, some of which may be unique to a particular state. To be considered in any event, however, are not only the resources and facilities available to the regulatory authorities, but also the capability of insurance companies to comply with whatever procedures are contemplated.

Consequently, it is recommended that appropriate procedures and details involved be worked out in consultation with the IICMVA. To be of assistance in this regard, a mutually convenient meeting with representatives of the IICMVA can be arranged upon request.

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Guidelines originally issued February 20, 1974.
Additions to the Guidelines on March 27, 1979 indicated by asterisk (*).

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The Journal of Commerce

AND COMMERCIAL

NEW YORK, WEDNESDAY, NOVEMBER 19, 1980

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and commercial banks were the lowest with 4 percent.

The figures cited in the report represent both 1979 and 1978 statistics which the corporations used in their 1979 annual reports to shareholders. It should be noted, however, that since that statistical universe of companies changes from year to year, a comparison of percentages and dollars to previous reports is not necessarily exact.

Report highlights included.

— The Fortune 500 Industrial companies spent $20 billion in pension cost in 1979, up 15.9 percent. This is consistent with the 1978 pension cost increase of 15.7 percent. Pension cost of more than $6 billion for Non-Industrials in 1979 reflects an increase of 14.1 percent, as compared to a 1978 rise of 17.6 percent.

— Pretax profits of $163.9 billion were up by 20.6 percent for the Industrial group of companies (1978, 12.4 percent). Non-Industrials witnessed a 5.8 percent rise, on profits of $44.2 billion, down from a 16.6 percent increase in 1978.

— Pension cost as a percent of pretax benefits in 1979 was 12 percent for Industrial firms (1978, 12.5 percent); for Non-Industrials, that figure was 14.3 percent in 1979 (13.3 percent, 1978).

Insurers Agree It May Be Time to Review Compulsory Auto Liability Cover in NJ

By
ROBERT W. KIRSCHBAUM
Journal of Commerce Special

The insurance industry expressed guarded approval of New Jersey Insurance Commissioner James Sheeran's suggestion that compulsory auto liability coverage be eliminated in the Garden State.

He offered his view at a news conference in Trenton, thus adding a new ingredient to New Jersey's already overheated auto cover uldron. The press session followed a meeting with two state legislative leaders who had demanded an explanation from the commissioner of a $158 million auto rate increase approved last week.

The legislators — Assembly Speaker Christopher Jackman and Assemblyman James Bornheimer, the chairman of the Assembly Banking and Insurance Committee — had characterized the increase, which went into effect Nov. 18 for new business and on Jan. 1 for renewal policies, as a "rip-off."

They said if Mr. Sheeran didn't provide an adequate explanation for his action they would introduce legislation to repeal the hike. The commissioner apparently satisfied the legislators, who have said they will not seek to rescind the increase.

Meanwhile, the major automobile insurance companies operating in New Jersey have said that the rate increase granted is "inadequate, but better than nothing." The New Jersey Insurance News Service, an information group for the auto insurance industry, said the companies will ring up a $219 million deficit in this line of business by the end of the year.

The industry has charged the rate relief treats the symptom and not the illness. To this end they have gone on record strongly supporting the administration-backed auto insurance reform package which is scheduled to go to the Legislature Monday.

These bills include the creation of a Joint Underwriting Association to administer residual auto business, a fraud bill which would strengthen law enforcement in that area and a change in no-fault from a $200 to a verbal threshold.

The establishment of a no-fault bill with a verbal threshold has first priority among insurers in New Jersey. The reaction to Mr. Sheeran's suggestion that the Legislature should consider repealing the law that requires motorists to buy liability insurance would be affected by the outcome of the reform package and particularly no-fault.

Grover Czech, American Insurance Association regional vice president for the mid-Atlantic region, said that the first issue of the day was no-fault reform. He said "Our association supports and encourages dropping compulsory liability provided other safeguards are available to all drivers. However, he added, "the question of compulsory liability is big enough to be treated separately and should not be injected into the upcoming legislation."

Speaking for the Continental Ins. Cos., William Gibson, vice president and general counsel, said that "In a state where a first party benefit is mandated that is large enough to guarantee that persons injured on a highway are not economically distressed, it might well be appropriate to rethink the issue of compulsory liability insurance." He said that New Jersey is such a state, adding however, that Commissioner Sheeran's proposal would require additional review. Beyond that he said no specific legislative change has been recommended, therefore it might be premature to react at this time.

Donald Savage, public affairs manager for Allstate who has been active in the New Jersey auto insurance scene, said that Allstate is not adverse to the elimination of compulsory auto coverage but said that they did not necessarily see such a proposal as reducing the cost of insurance for everyone.

The Independent Insurance Agents of New Jersey allowed that it might be time to consider the question of compulsory liability, which has been on the books in New Jersey since 1972, but "this should come after no-fault reform," William Doyle, executive director of the association said.

The consensus of those commenting on the possibility of a change was that it could take the onus of buying liability insurance from drivers who have no assets to protect. In this sense, they said, it would relieve a burden. They also felt that it would answer — to some extent — the current problem of between a quarter and a half-million drivers who are operating without insurance in spite of the law.

While none suggested the compulsory liability measure should not be pursued, all urged the passage of the auto insurancereform bill as the most important item on the agenda for the New Jersey motorist and the insurance industry.

Fire Record

Pennsylvania

EAST McKEESPORT — Open Pantry, a convenience store, offices and apartments, 333 Lincoln Highway, destroyed. (Nov. 8).

HARRISBURG — Don's Commercial Plating, 628 S. 20th St., building owned by Emanuel Shapiro, business owned by Don Karnachak, $500,000 loss. (Nov. 13).

WC Data Methods Cut Costs

Journal of Commerce Staff

Insurers that change the way they report data — from using cards to using magnetic computer tape — are saving time and money and getting more accurate rates, accord-

Massachusetts Auto Insurance: Is There A Way Out?

Auto insurers and agents in the state of Massachusetts "have known for several years that a serious problem is brewing in the state auto insurance market," according to Richard R. DeMark, president of the New England division of Kemper Group. During the next few months, the public will also become increasingly aware of the problem, says Mr. DeMark in the following article prepared especially for The National Underwriter.

Here are some of the problems besetting automobile insurance sellers and buyers in Massachusetts:

- The majority of drivers in the state are subsidizing the drivers in the Reinsurance Facility to the tune of more than $200 million a year.
- While drivers with no accidents or serious driving violations received a $12 rebate on insurance in 1980, they, along with every other driver in the state, paid a hidden subsidy that averaged $65 a driver to help pay the expenses of insuring those in the Reinsurance Facility.
- Meanwhile, drivers with the most serious and flagrant driving violations or a serious at-fault accident pay a surcharge no higher than $375 the first year, when they would have to pay significantly higher premiums in other states. And in the most statistically documented accident-prone groups such as unmarried young males, most pay no more than other drivers.
- Automobile insurance companies had underwriting losses of approximately $100 million in 1979, and expect to take even bigger losses in 1980. Some companies already are taking steps to curtail writing automobile business in the state, including eliminating agents who represent them.

Some critics say we can ignore underwriting losses, because the companies make money on investing premium money before they pay losses. That just doesn't work when you are dealing with underwriting losses of this magnitude.

Looking at Kemper's experience in 1979, it should be noted that even after allowing for investment income, bottom line auto insurance losses for companies in the Kemper Group totaled almost $8 million in Massachusetts.

The losses had to be paid out of Kemper's capital, thereby reducing its ability to write new business in the future.

Such losses for companies don't translate into gains for auto insurance buyers in Massachusetts. The rates in Massachusetts are among the highest in the nation.

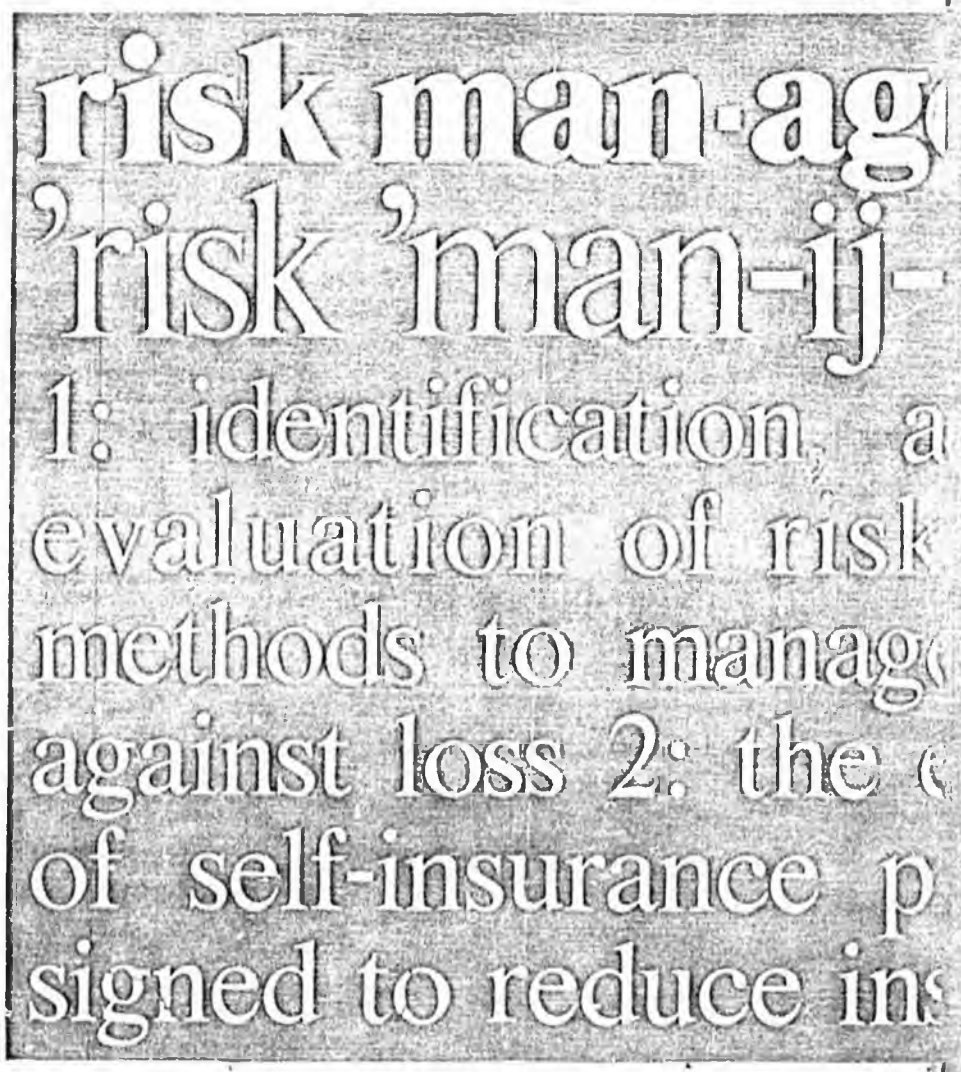
How did the Massachusetts auto insurance system arrive at the point where, as one observer has put it, it results in "premiums that are too high and rates that are too low?"

The state's auto insurance system has been unique ever since 1927 when the state legislature enacted the first compulsory auto insurance law in the nation. Since then, possession of an auto insurance policy has been a prerequisite for operating a motor vehicle. The rule established a tradition of political involvement in auto insurance that has lasted down to the present time. The state insurance commissioner was given sweeping powers, including the right to "fix and establish" rates.

The situation was complicated by tax filling procedures which have helped make Greater Boston the auto theft capitol of the nation. Massachusetts' rate of auto thefts per 100,000 people is more than one third higher than the next closest state and more than twice the national average.

An important development came in the early 1970s when no-fault was introduced, limiting an accident victim's right to recover for "pain and suffering" and providing coverages for medical expenses, wage loss and property damage. The system helped reduce the costs of compensating accident victims, but the losses for physical damage to cars kept soaring.

The decisions which resulted in the presently emerging crisis of 1980 came in 1976. The legislature removed property damage liability coverage from no-fault and made its purchase mandatory. More important, as part of the trend toward deregulation, it established a framework for competitive rate setting in 1977. However, the insurance commissioner retained the power to continue to "fix and establish" rates if it was found that competition wasn't working. And, a factor of crucial importance, the commissioner had the power to determine the details of any system of competi-



tive rating.

Then-commissioner James Stone went on to decree a form of competition that led to crushingly high premiums for a minority of particularly high-risk drivers in urban areas, despite objections from many insurers. The 1977 rate situation was complicated by a sudden conversion to competitive rates at a time when many insurance companies were recovering from disastrous underwriting losses. The legislature established a "date of return" to open competition that gave the insurance industry just a few months to implement the Stone-developed rating procedures.

If the time had been available for adequate analysis and planning, most insurance companies would probably have put a reasonable cap on increases—but there was no time. For example, Kemper's rate filing had to be flown out from the company's Illinois headquarters to make the deadline. As a result of this, most companies gave full effect to loss experience in every territory and class.

Over-all, the industry rate that resulted represented a 12% increase on average, relatively modest in light of the industry's need to catch up with the high inflation of the early to mid 1970s.

But such averages masked substantial rate increases for some people, especially young males in urban areas.

The result was a loud outcry from consumers who saw their insurance bills climb. The reaction was particularly strong from urban-based activists with access to the media and their political representatives. That set the stage for the insurance commissioner to decree a suspension of competitive rates for 1978, while the legislature mandated a rebate (which later amounted to about $45 million) on the 1977 premiums. What's more, Mr. Stone also decreed an end to traditional rating classifications, eliminating wide rate variances based on loss experience among urban, suburban and rural areas, and eliminating sex and age as rating factors, except for a discount to older drivers.

The biggest beneficiaries were young, urban male drivers who many studies show are responsible for three times as many accidents as adult drivers. The losers were suburban and rural, female and middle-aged drivers. However, the changes came at a time of improving results in auto insurance and against a background of double-digit inflation.

Commissioner Stone wielded his rate setting powers to lower over-all private passenger auto insurance rates by 12% ($81 million) in 1978 and another 2.4% in 1979 ($15 million). As a result, those who subsidized the higher risk drivers under the Stone plan hardly noticed it. And the insurance companies, still smarting from the competitive rating debacle, didn't take significant steps to tell their customers just what was happening.

What has emerged is a complicated and costly system.

The State Merit Rating Board was originally set up by the legislature in an attempt to penalize drivers with poor records. This body establishes a surcharge, based on experience in the preceeding year, which is levied on drivers who have had at-fault property damage accidents or serious moving traffic violations. The surcharges currently range from $25 to $200, depending on the seriousness of the violation(s).

Insurance companies collect this money from surcharged drivers, but do not retain it as premium. They merely act as administrative conduits, passing surcharge revenue along as credits to "clean drivers," those with no violations or at-fault accidents. The Merit Rating Board sets the amount of the credit. In 1979, it was $6. The amount for 1980 is $12. Any company that collect more in surcharges than it pays out in credits turns the money over to the Merit Rating Board for recycling to companies that paid out more than they collected.

Company expenses in administering this plan last year cost the insurance industry nearly $6.5 million. An additional $1.5 million went to pay for the operation of the Merit Rating Board. These expenses, totaling more than $2 per motorist, eventually are passed on the policyholders. By comparison, the cost of administering what are known as safe driving plans in other states cost the companies an average of from 20 cents to 40 cents per policyholder.

But the merit rating system is a relatively small flaw compared to the Reinsurance Facility. In fact, one editorial writer for a Boston newspaper last year described the Massachusetts Automobile Reinsurance Facility as a "Black Hole" that could end up engulfing the entire auto reparations system in the state. The result would be to drive private auto insurers out of the business and turn auto insurance into a state monopoly.

The Reinsurance Facility was established in 1974 to replace the assigned risk plan. The latter was a

plan operated by auto writers in the state that provided for basic auto insurance to drivers who couldn't find insurance in the voluntary market. Under the Massachusetts law, auto insurers must provide broad insurance to every driver who requests it and charge the state-mandated rates. However, if it chooses, the company can assign the policy to the facility.

Today, nearly 40% of Massachusetts drivers are insured by the facility, and the proportion is growing. Most drivers don't know their policy is assigned to the facility. In fact, it's against the regulations for the company to tell them.

The crucial point about the facility and what's happening to auto insurance in Massachusetts is that most of the policyholders in the facility aren't bad drivers, they are underpriced drivers.

Over the years, insurance underwriters have learned from experience that drivers with certain characteristics are riskier than others. These include such factors as driving record, age, sex, marital status, mileage driven, type of use and the area where the insured auto is garaged. Such factors are used to set rates in most other states. The rating system devised by Commissioner Stone eliminated or blurred many of these factors. As a result, some Massachusetts drivers are charged more than they should be, and some are charged far less.

In their attempts to reduce loss, the insurance companies pass on the underpriced driver to the facility. Losses in the facility are apportioned against all auto insurers in the state in proportion to their share of the total auto market. Last year's facility losses of more than $200 million created a crushing burden for insurance companies that makes profitable operation in Massachusetts impossible.

Significant Segment

As long as a significant segment of drivers in the state are paying rates that are too low because their rates do not reflect the true experience of their class or territory, the incentive will be strong for companies to put more and more drivers into the facility where losses are shared with their competitors.

As the facility grows, a higher and higher percentage of everyone's auto insurance bill will go to pay for the facility deficit. If the facility keeps growing at the current pace, it will only be a matter of a few years before there are just a few drivers left in the voluntary market to pay for the deficit. At some point, and not too far off, the private insurance market will simply disappear, and the state will have to start making up the deficits out of tax money, or, more likely, higher rates.

Several major companies have attempted to limit the amount of business they write in Massachusetts by terminating agents, even though state laws already make it difficult to withdraw from the Massachusetts auto insurance market. (Interestingly, State Farm, the largest auto insurer in the nation, while serving policyholders who move to Massachusetts, has not sought new business in the state.)

Is there a way out?

Commissioner Sabbagh has made a wise decision by permitting competitive rating for commercial auto insurance starting in mid-1981. This will enable companies to develop a phased-in approach to a responsible competitive rating system.

The Commissioner will fix and establish rates for 1981 for private passenger and commercial auto insurance. It is absolutely essential that these rates be adequate to pay for the operation of the auto reparations system in the state. If not, severe problems will intensify in the private insurance market in the state.

Costly and illogical elements in the current system should be eliminated. There's no reason why auto insurance in Massachusetts should cost so much more than it does in other states.

Companies should be allowed to use rating systems that fairly apportion losses among groups of drivers.

The problem of affordability for some auto insurance buyers is a problem that should be solved by recognizing it as a social problem, not an insurance problem. If auto insurance costs are to be subsidized, they should be subsidized in the open through taxes appropriated by the people's representatives, not by manipulation of the private insurance companies operating in the state.

It is unfair to shift costs from one group to another by state tinkering with auto rate classifications.

The private automobile insurance industry provides a vital service, jobs and investments to the people of Massachusetts. It's a system worth keeping in the private sector. But the Massachusetts motorist will continue to benefit from the current system only if the industry that serves him or her is permitted to operate efficiently and earn a reasonable profit.

Pricing Issues, ISO Programs Highlighted

"The insurance buying public, caught in the grip of recession, increasingly raises the issues of pricing equity and insurance affordability," Wayne G. Wickard, Midwestern vice president of Insurance Services Office (ISO) in Chicago, told independent insurance agents and company executives from several central and southwest states participating recently in the 1980 meeting of the Mid-America Conference Committee in Kansas City.

Increased Pressure

"Inflation, especially as it affects costs of insurance related items has also brought increased pressure on the insurance industry from government at all levels." He added, "the insurance industry must be prepared to defend its cost based pricing and underwriting practices, and to continue strong support of free enterprise. At the same time, we must work to ensure that the changes that are adopted are not destructive to our industry."

Wickard told the conference, sponsored by the Independent Insurance Agents of America, that ISO and other industry interests are continuing to work

(Continued on page 20)

Mass. Registry Fee Change Stirs Flap

Changes in automobile registration fees, implemented last week without any advance notice by the Massachusetts Registry of Motor Vehicles, caught the auto insurance industry by surprise, angering many producers.

The announcement of the new fee schedule for various types of plates was made abruptly on the afternoon of Sept. 23 in an internal memo to all Registry employees by Deputy Registrar Robert Capasso, who indicated the new fees were to be effective beginning with business conducted on the following day, Wed., Sept. 24.

Lack of time for implementation, in addition to creating confusion in the insurance industry, also adversely affected Registry branch offices as well, which were unaware of the new fees until Wednesday afternoon.

Expressing their concern over the lack of any advance notice, the Independent Insurance Agents of Massachusetts sent a letter to Registrar Richard McLaughlin. IIAM reminded the Registrar that both the Registry and the state's insur-

(Continued on page 12)

Heads Continental Re

Joseph L. Fox, CPCU

Joseph L. Fox, CPCU, has been appointed president and chief executive officer of Continental Reinsurance Corp. Continental Re, a subsidiary of The Continental Corp., is a treaty reinsurer, writing all kinds of property, casualty, marine and aviation covers outside the United States, both directly and through brokers.

Fox joins Continental Re from Swett & Crawford Group, another subsidiary of The Continental where he was vice president in charge of administrative operations and corporate planning. He joined Swett & Crawford as vice president for treaty underwriting in 1972 with many years of management experience in the insurance and reinsurance industry, and was appointed a Group vice president in 1976.

He is a graduate of the University of California.

Workers' Comp Rates Go Up 1.5% in N.H.

Workers' compensation rates have risen an average 1.5% in the state of New Hampshire.

The new rates are applicable to new and renewal policies with effective dates on or after Sept. 1, 1980.

The increase is the result of Commissioner Francis E. Whaland's approval of a filing made by the National Council on Compensation Insurance on behalf of Granite State compensation writers.

It reflects statutory changes including the increase in the state's average weekly wage effective July 1, 1980.

Because the higher compensation benefits have been payable prior to the effective date of the rate increase, the hike is also to be applied as a flat adjustment to all other policies as of Sept. 1 for their unexpired portion. Three-year fixed rate policies are excluded as are policies with an expiration date prior to Oct. 1, 1980.

Comml. Stat Plan Termed Effective Data Gatherer

First Year of Operation Analyzed At ISO Statistical Meet

A review of data from the first full year of operations for the Commercial Statistical Plan (CSP) shows that it is an effective data gathering organization.

This evaluation came during the ninth annual Statistical Seminar sponsored by Insurance Services Office.

Current Developments

The two-day seminars, covering current developments in property-casualty insurance statistics, progress in implementation of the CSP and new aspects of personal lines statistical plans, were held in both New York City and Chicago and also featured a discussion of the many services performed by the rating organization.

ISO Assistant Manager Wayne Lattuca chalked up the overall effectiveness of CSP to the basic principles followed during the plan's creation.

"Another major aid in the CSP effectiveness is company commitments," observed Lattuca who was one of several panelists discussing the plan. "Without

(Continued on page 22)

CAIR Charges Mass. Auto System Faltering

"The Massachusetts auto insurance system is faltering, failing, and, in the view of many, on the verge of full-scale crisis," Ann N. Kramer, executive director of the Coalition for Auto Insurance Reform (CAIR), told a meeting of the Independent Insurance Agents of Springfield last week.

Speaking with Kramer was CAIR Insurance Consultant, Donald Hillman of Peter Merrill Associates of Boston. A former deputy commissioner and chief counsel of the Massachusetts Division of Insurance, Hillman discussed those insurance laws which actually encourage theft and fraud in the present state insurance system.

He referred to a statistical analysis that he had completed which showed that, "in the first two years that the mandatory offer law and the Mass Motor Vehicle Reinsurance Facility went into effect, the rate of car thefts in Massachusetts soared." Both laws need closer scrutiny and revision, he said.

Kramer said that her organization is attempting to correct these problems

(Continued on page 12)

CAIR Charges Mass. Auto System Faltering

(Continued from page 5)

and other inequities within the current system. She explained that CAIR is a public education/information effort which is attempting to inform consumers of the abuses which have made Massachusetts the longtime car theft capital of America. By disseminating data through an organized statewide campaign, CAIR will explain the reasons for the high rate of theft and fraud which result in the highest premium rates in the nation.

Kramer summed up her remarks by saying: "We are going to tell the people of Massachusetts the truth about their auto insurance system and encourage them to demand from their legislators genuine reform of that system. Either the voters will rebel, or they won't — and if they don't, a full blown crisis is predictable and inevitable."

New Titles, More VIN Digits Loom in Mass.

Two major innovations loom for insurance companies writing automobile insurance in Massachusetts, according to the Registry of Motor Vehicles' Title Division. Both will more or less take place simultaneously.

The first involves the issuance, effective Oct. 15, 1980 of a new engraved certificate of title printed on banknote paper. The second involves, as previously reported, all motor vehicles of 1981 vintage which will bear a 17-digit vehicle identification number as mandated by the federal government. Also included in the new 17-digit certificate of origin are all 1980 vehicles purchased from Renault, Mercedes-Benz, and Subaru.

The new title will be blue and gold and embodies many anti-counterfeit measures heretofore not available as part of the Massachusetts title. All titles issued prior to the Oct. 15 date will be considered effective and may be transferred from one party to another.

Meanwhile, applications for title and registration on all 1981 vehicles (cars, trucks, etc.) must include the complete 17 digit vehicle identification number.

Continental Cos. Name Traynor Asst.-Secy.

The Continental Insurance Cos., have appointed John A. Traynor, CPCU, an assistant secretary at their New York home office. He is director of pricing and product development.

Before joining Continental, Traynor was product development manager with The Home Insurance Co. in New York City. A graduate of St. Peter's College in Jersey City, New Jersey, Traynor holds an MBA from the College of Insurance.

Traynor is also an adjunct assistant professor at the College of Insurance where he teaches courses in the evening division.

Mass. Registry Fee Change Stirs Flap

(Continued from page 5)

ance agents are in business to serve the public. The producer group complained that agents cannot do their job properly without Registry cooperation in informing the insurance community of such changes in advance.

The new fees are as follows:

	Old	New
Private passenger two-year plates	$14	$20
Vanity one-year plates	$17	$30
Reserved two year plates	$18	$40
Commercial plates per 1,000 lbs.	$ 5	$ 7
Title Certificate	$ 5	$10

MEMORANDUM State of Alaska

TO
Rod Betit
Director
Division of Public Assistance

DATE
May 25, 1983

FILE NO

TELEPHONE NO

FROM
Henry A. Jeske
Collections Manager
Medical Review

SUBJECT
Medical Assistance Required Because of Uninsured Motorists

In response to your inquiry of Medical Assistance needs related to uninsured automobile drivers and owners I am providing you with this report of the TPL office involvement within this area.

It has been the experience of the Public Assistance TPL office during the last four years that the State of Alaska does pay a significant amount of public assistance for individuals who have been injured by uninsured automobile owners or drivers who are determined to be liable to the injured recipient. A difficulty of providing statistics in this area, however, is inherent in that this office normally has not been made aware in the past of uninsured accident cases requiring medical assistance. As there was little probability of obtaining any recovery, they were never investigated. The current system, though, does investigate all injury related medical assistance over $500.00, for possible third party liability and statistics for automobile injury medical care needs will be available in the future.

There are enough past "vivid" examples of the need for public assistance brought about because of uninsured motorists, however, that they should be described in this report for purposes of providing evidence that there is significant cost to the public due to the State having inadequate requirements of liability and medical insurance for automobile owners and drivers. The cases listed below are accidents which have been investigated by this office within the last two years for third party liability.

1. Pedestrian hit and dragged by automobile. Driver of vehicle cited for DWI. No insurance. Cost to medical assistance was $30,000.00.

2. Taxi driver was hit head-on by uninsured driver and owner. Cost of medical assistance exceeds $120,000. Future cost of medical care and public assistance may be substantial.

3. An individual injured when his car was struck by another car which ran a stop light. Insurance was available for $50,000, but inadequate for $150,000 medical cost to date. Cost to public is $100,000 medical assistance plus substantial medical care and public assistance in the future.

4. Individual was passenger in a vehicle driven and owned by uninsured driver. An accident in which driver was cited resulted in injury leaving passenger paralyzed for life. Cost exceeds $50,000.

5. Teenager on motorcycle hit by camper truck pulling boat. Driver of the vehicle was uninsured. Due to no insurance, the accident was never properly investigated for possible liability. Injured party has been in a coma since July 5, 1980, accident. Medical assistance cost to date exceeds $100,000.

I regret not having a more comprehensive compilation of statistics in this area. Past concentration on recovery probabilities, though, precluded accumulation of information on Medicaid paid victims of uninsured motorists that were unrecoverable by this office.

Addendum:

A Mr. Donald Koch, Chief of Market Surveillance, Division of Insurance, came to my office May 23, 1983, to discuss a comment attributed to Jeff Day during legislative hearings on HB 7 that I had telephoned Jeff Day and informed him that there were one and a half million dollars of medical assistance provided parties injured by uninsured drivers and that a portion of that is to be recovered. Wrong! I telephoned Jeff Day with a question of whether the cost of medical assistance required because of uninsured motorists had been discussed in the deliberations of HB 7. He informed me that it had not and that he was glad to be aware of this cost area. The million and a half figure during our discussion pertained to my receivables in all areas of TPL when I described my job functions in response to his question of what I did for DPA. My original inquiry regarding HB 7 resulted from interest that passage of this bill would assist with medical assistance cost avoidance. I also informed Jeff Day that if he needed specific data that he would have to contact Bob Ogden and/or yourself for instructing the TPL office to extract this information from files.

cc: Karen Martz
Brent Miner

BODILY INJURY LIABILITY

The legal liability that may arise as a result of the injury or death of another person

PROPERTY DAMAGE LIABILITY

The legal liability that may arise as a result of damage to the property of another not in the care, custody, or control of a person with that liability

BODILY INJURY COVERAGE

Protection against liability for the injury or death of another person.

PROPERTY DAMAGE COVERAGE

Protection against liability for damage to the property of another not in the care, custody, or control of the insured, as distinguished from liability for bodily injury.

NOTE: Bodily injury coverage and property damage coverage are generally written on the same policy with the premiums and limits of insurance being distinct.

UNINSURED MOTORISTS COVERAGE

A coverage in an automobile insurance policy under which the insured's insurance company will pay damages for which another motorist is liable if that motorist is not insured.

UNDEFINSURED MOTORISTS COVERAGE

A coverage in an automobile insurance policy under which the insured's insurance company will pay those damages which exceed the coverage available to the other, inadequately insured, motorist.

PUBLIC LIABILITY INSURANCE

A general term applied to forms of "third-party liability insurance" with respect to both bodily injury and property damage. Sometimes used to indicate forms of bodily injury liability insurance as distinguished from property damage insurance; a more precise application is to designate them by their respective titles.

MOTOR VEHICLE LIABILITY INSURANCE

The same meaning as PUBLIC LIABILITY INSURANCE, or LIABILITY INSURANCE except that the kind of liability insurance is specifically related to automobiles or motor vehicles.

ter of luck and grace than an accomplishment, don't you think?

Christine Callahan
1421 N St.

vism and sarcasm

he seems to think he is a privileged individual and shouldn't have to pay school taxes for our "horrible" schools. How does he know they are so horrible if he doesn't have any children attending school now?

If having property is too much of a burden why doesn't he sell it all, like he did his plane and he would have very little to complain about, since he wouldn't be burdened with taxable items.

I wold love to see just one positive letter from him. Do you think he could manage that? After all, it is spring, the birds are singing, the trees are blooming and the grass is growing. Oh shucks, that means he is going to have to mow that darn lawn!

Floyd R. Dunn
P.O. Box 1072

rong with walking

through drifts up to my hips to make a path for others. These things only make my remembrances more interesting.

These very unusual happenings are not something I am exaggerating in order to get today's children to understand that it really is not so bad for them. Your remark about oldsters not really having gone through the experiences they tell their young students is an exaggeration on your part.

Others have told me they went through even more harrowing times and places. I have actually seen some of them, even as late as in the aerly '40s, who were eager for an education and welcomed a chance to get it.

The Golden Rule has been replaced by, "It is O.K. as long as you are not caught." Those few who give are too few and far between. Is this really progress? Is it really American?

Phyillis M. Lutter
Pioneer Home
Anchorage

in favor of competition which "instills good sportsmanship and builds character." However, a competition which features "close-up appraisal" of young girls sounds like a perverted meat market inspection. I'd like

when girls were judged solely by their appearance. Parents should teach their children how to become good citizens, not objects to be appraised.

Kathy Keisor Wisthoff
P.O. Box 104445

Anchorage Times June 2-83

Automobile insurance

Dear Editor:

The uninsured motoring population in Alaska is estimated at 40 percent of 400,000 registered vehicles. The Insurance Division's 1982 report firmly stated that this figure was the most accurate available. This number of uninsured is unacceptable.

The House recently passed legislation which would require drivers to have insurance. While I do not assume that a compulsory law will result in 100 percent compliance, I am certain it will go a long way towards reducing the number of uninsured drivers and providing the public with a greater chance of compensation from an accident.

Thirty-two states have enacted some form of compulsory insurance. North Carolina is a perfect example of where such a law is a success. That state has one of the oldest compulsory laws on the books. A study conducted by their Division of Motor Vehicles in the past year proved that 2 to 3 percent went uninsured out of 4.5 million vehicles. Some of the provisions of their law are incorporated into HB 7. North Carolina public safety officials are very pleased with the law. They say it works and has caused no problems in enforceability.

Oregon also has an effective compulsory law. Before it went into effect in 1979, 14 percent of the motor vehicles there were uninsured. The recent estimate is 6 percent. New York, even with enforcement problems has achieved a 6 percent uninsured population. Massachusettes has obtained a 6 percent uninsured population. Arizona just enacted a law because of a 27 percent uninsured rate.

The fact is that states with such laws are achieving a reduction of the uninsured population to near 5 percent. If Alaska could achieve that by implementation of such a law, I would consider it a success.

Some critics say such a law will cause premiums to rise. In the states surveyed in researching the legislation, not one would admit that the laws have directly caused premiums to rise. There are many factors, they said, which add to premium increases, from inflation to limitations on the assigned risk pool. In fact, with more of the population insured, some insurance specialists note that the uninsured premiums should decrease.

Ken Moore, insurance division director, has called our financial responsibility law perhaps the toughest in the nation. But it does not seem to have produced an acceptable decrease in the number of uninsured drivers. Nor has it done so in any other state and all have had similar laws.

The major problem with the current law is that it requires a person to have insurance only after being in an accident. It does nothing to try to prevent the injuries, damage and death caused by irresponsible drivers or ensure that victims of auto accidents are adequately compensated. Because of that failure, a majority of states now have compulsory laws as we are now considering.

After considering the options, I strongly believe this is the best approach to take to solve what is becoming a crisis situation. I hope the Senate will demonstrate its concern for this added protection of the public by taking quick action on this legislation.

Rep. Joe L. Hayes
Speaker of the House

the people did vote for increasi by $90 per month. ticle appeared st islative committe ommend a salar year for the legisl The legislators ries they would when elected and cient it was the stay out of the Leg I'm sure these

Dear Editor:

Regarding effo downtown parkin way to increase spaces: change parking from para An example: T provides 26 space mately 300 feet of between 6th and 5t 20 spaces in appr feet of curb. If converted to a you'd have 34 spac 20), 70 percent mo entail making G St probably from 3rd

Dear Editor:

It appears that minorities contin state Supreme Co looks like us nor like ours to qualify to see our points o 11 applicants — women — the A Council nominated males for the gove eration.

Women's groups appointments of j tices with Gov. She fore and after his found him eager need for represent Judicial Council has choice but to disapp

Only rarely can cupy the very low level afford the ter of thousands of d many years it takes cases all the long Supreme Court, judged by none of

MY DAD IS A GOOD SPOR

In view of the interest being expressed by a number of persons in reviewing the limits of liability required by the Alaska Safety Responsibility Act (financial responsibility law) the Division of Insurance has updated exhibits originally prepared when the limits were last revised in 1975.

EXHIBIT A reflects the purchasing power or value of the dollar based on the annual average value as measured by consumer prices. The base year utilized is 1959, the year of Alaska Statehood. The indices used were developed by the U. S. Bureau of Labor Statistics. Column (3) shows the limits of liability for bodily injury applicable to the particular year. Column (5) does the same for property damage. The figures for 1982 and 1983 are projections and are not firm.

EXHIBIT B is the same concept as EXHIBIT A except it uses the date of last change of limits as the base year and thus uses a shorter span of years.

EXHIBIT C is an excerpt from the FC&S BULLETINS published by the National Underwriter Company of Cincinnati, Ohio. It depicts the current (as of January 1983) limit of liability for each state of the United States and for each province in Canada.

March 1, 1983

Division of Insurance
Department of Commerce & Economic Development
State of Alaska

PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1959 (statehood) AS BASE YEAR

(1) Year	(2) Purchasing Power indx	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000)	(6) Purchasing Power of (5)
1959	1.000	10/20	10000/20000	5	5000
1960	.984	10/20	9840/19680	5	4920
1961	.975	10/20	9750/19500	5	4875
1962	.964	10/20	9640/19280	5	4820
1963	.953	10/20	9530/19060	5	4765
1964	.940	10/20	9400/18800	5	4700
1965	.924	10/20	9240/18480	5	4620
1966	.899	10/20	8990/17980	5	4495
1966	.899	15/30	13485/26970	5	4495
1967	.873	15/30	13095/26190	5	4365
1968	.838	15/30	12570/25140	5	4190
1969	.796	15/30	11940/23880	5	3980
1970	.751	15/30	11265/22530	5	3755
1971	.720	15/30	10800/21600	5	3600
1972	.698	15/30	10470/20940	5	3490
1973	.657	15/30	9855/19710	5	3285
1974	.587	15/30	8805/17610	5	2935
1975	.542	15/30	8130/16260	5	2710
1975	.542	25/50	13550/27100	10	5420
1976	.512	25/50	12800/25600	10	5120
1977	.481	25/50	12025/24050	10	4810
1978	.447	25/50	11175/22350	10	4470
1979	.402	25/50	10050/20100	10	4020
1980	.355	25/50	8875/17750	10	3550
1981	.325	25/50	8125/16250	10	3250
1982est.	.310	25/50	7750/15500	10	3100
1983est.	.295	25/50	7375/14750	10	2950
Proposals					
1983est.	.295	50/100	14750/29500	25	7375
1983est	.295	100/200	29500/59000	25	7375

Prepared by: Alaska Division of Insurance
Based on U.S. Bureau of Labor Statistics
Date: March 1, 1983

PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1975 (date of last change in financial responsibility law limits) AS BASE YEAR

(1) Year	(2) Purchasing Power Indx	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000)	(6) Purchasing Power of (5)
1975	1.000	25/50	25000/50000	10	10000
1976	.945	25/50	23625/47250	10	9450
1977	.887	25/50	22175/44350	10	8870
1978	.824	25/50	20600/41200	10	8240
1979	.742	25/50	18550/37100	10	7420
1980	.654	25/50	16350/36700	10	6540
1981	.599	25/50	14975/29950	10	5990
1982est.	.572	25/50	14300/28600	10	5720

Prepared by: Alaska Division of Insurance
Based on: U.S. Bureau of Labor Statistics
Date: March 1, 1983

Eighth Printing
January, 1983

TABLE OF LIMITS

Financial Responsibility and Compulsory Insurance Laws

The table that follows displays the minimum financial responsibility and compulsory Liability insurance limits for all states, the District of Columbia, and the Canadian provinces. (Limits are expressed in thousands.)

Alabama	$10/20/5	New Brunswick	100
Alaska	25/50/10	Newfoundland	75
Alberta	100	New Hampshire	25/50/25
Arizona	15/30/10	New Jersey	15/30/5
Arkansas	25/50/15	New Mexico	15/30/5
British Columbia	100	New York	10/20/5*
California	15/30/5	Northwest Territories	50
Colorado	15/30/5	North Carolina	25/50/10
Connecticut	20/40/5	North Dakota	25/50/10
Delaware	10/20/5	Nova Scotia	100
District of Columbia	10/20/5	Ohio	12.5/25/7.5
Florida	10/20/5	Oklahoma	10/20/10
Georgia	10/20/10	Ontario	200
Hawaii	25/Unlimited/10	Oregon	15/30/5
Idaho	10/20/5	Pennsylvania	15/30/5
Illinois	15/30/10	Prince Edward Island	100
Indiana	15/30/10	Quebec	50†
Iowa	20/40/15	Rhode Island	25/50/10
Kansas	25/50/10	Saskatchewan	100
Kentucky	10/20/5	South Carolina	15/30/5
Louisiana	5/10/1	South Dakota	15/30/10
Maine	20/40/10	Tennessee	10/20/5
Manitoba	50	Texas	10/20/5
Maryland	20/40/10	Utah	20/40/10‡
Massachusetts	10/20/5	Vermont	20/40/10
Michigan	20/40/10	Virginia	25/50/10
Minnesota	25/50/10	Washington	25/50/10
Mississippi	10/20/5	West Virginia	20/40/10
Missouri	25/50/10	Wisconsin	25/50/10
Montana	25/50/5	Wyoming	10/20/5
Nebraska	15/30/10	Yukon	75
Nevada	15/30/10		

*50/100 for wrongful death.

†Because Quebec has a complete no-fault system for bodily injury, the minimum limit applies only to property damage within Quebec and combined bodily injury and property damage outside Quebec.

‡Or, $30,000 combined single limit.

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INSURANCE, COMPETITION AND COST CONTAINMENT

WARREN GREENBERG

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Abstract—Most economists have suggested that the growing presence of insurance, including Medicare, Medicaid, Blue Cross and the commercial insurers, is largely responsible for the rapid rise of health care costs in the United States. It is the contention of this paper, however, that the insurance industry in the private sector in the United States may help in the effort to contain costs rather than solely stimulating rapidly increasing costs. A number of methods that insurers have employed to contain costs, including monitoring provider behavior and prospective reimbursement, are identified. It is cautioned, however, that although health insurer cost containment efforts will continue to expand in the future, perversities in the U.S. tax laws, potential provider opposition and the complexities of medicine will continue to make cost containment a difficult task.

Health care expenditures in the United States have been increasing at a rate of approx. 12.2% annually between 1965 (the year in which Medicare for the elderly and Medicaid for the indigent were enacted into law) and 1979 [1]. During this same period the Gross National Product increased only 9.2% per year which resulted in health care expenditures as a percent of Gross National Product increasing from 6.1% in 1965 to the 9.0% level in 1979 [2]. Total health care expenditures in 1979 were $212.2 billion compared to $42.0 billion in 1965 and 12.7 billion in 1950 [3].

Most economists have suggested that the increasing presence of insurance, both public and private, is largely responsible for the rapid rise in health care costs [4]. The percentage of health care expenditures paid by third party insurers, including Medicare and Medicaid, Blue Cross/Blue Shield and commercial carriers such as Aetna and Prudential, has increased from 34.5% in 1950 to 51.6% in 1965, to 68.2% in 1979 [5].

The presence of insurance, it is said, leads patients to seek more health care at every possible price in addition to reducing the net price of health care. The prices of, for example, physician visists and hospital stays, to the extent they are insured, cease to become a factor in a consumer's decision to purchase these services. It is therefore possible that the cost to society in terms of resources utilized in health care is greater than the benefit to consumers. In addition, the non-insureds will pay more for health care services since the existence of insurance will increase costs to everyone. Second, higher health care prices can lead to additional insurance so that the cycle is a continuing one [6].

It is the contention of this paper, however, that the insurance industry in the United States may also help in the effort to contain costs rather than act solely to stimulate rapidly increasing costs. First, the structure of the insurance market in the United States is examined. Second, the various ways that insurers have attempted to contain costs will be identified. Third, current public policy alternatives will be interpreted in light of insurer cost containment efforts. Finally, it is suggested, that insurer cost containment efforts will continue to expand in the future. The complexities of medicine are such, however, that health care cost increases will only be dampened, but not entirely controlled, by active health insurer involvement.

STRUCTURE OF THE HEALTH INSURANCE INDUSTRY

Of the $139.7 billion in personal health care expenses that are paid by third party insurers $85.2 billion are public expenditures, primarily Medicare and Medicaid [7]. Although the public programs include cost sharing as well as other forms of cost containment, this paper will focus primarily on the private segment of the health insurance industry. Not only do private firms serve as fiscal intermediaries on Medicare and Medicaid programs but it is the private sector segment of the industry which has experienced a degree of cost containment in the past and has the most potential for increased cost containment in the future. It is in the private sector that Blue Cross/Blue Shield and the commercial insurers must compete, based on total premium costs, to be included in the employer's health care package that is offered to employees [8]. More than three quarters of Americans with non-Medicare and non-Medicaid coverage have group policies which are offered by the employer [9].

The data in Table 1 show the total claims expense and total claims incurred by the 69 Blue Cross Plans and the 70 Blue Shield Plans and the twenty largest commercial insurers on a national basis. Table 2, which is derived from Table 1, contains the market shares of the largest firms as well as the market shares for the 4, 8 and 20 largest firms. In 1978, Blue Cross/Blue Shield paid out more than 46% of total claims expense and total claims incurred. The 4, 8 and 20 largest commercial insurers accounted for 12.0, 22.0 and 31.0% of the total claims respectively. It is clear that on a national basis Blue Cross/Blue Shield is in a dominant market position relative to the position of

Table 1. Total claims expense of Blue Cross Blue Shield and total claims incurred by twenty largest commercial insurance companies, 1978

Third party payer	Total claims expense/total claims incurred* (000 omitted)
Blue Cross/Blue Shield†	$19,406,109
Prudential Insurance of America	$1,781,589
Travelers Insurance Company	$1,481,991
Aetna Life Insurance Company	$1,449,754
Connecticut General Life	$1,193,142
Four largest commercial Insurance companies	$5,906,476
Equitable Life Assurance	$1,025,569
Metropolitan Life Insurance Company	$862,652
Mutual of Omaha Insurance Company	$775,020
John Hancock Mutual Life Insurance	$481,682
Eight largest commercial Insurance companies	$9,051,399
Occidental Life Insurance, California	$453,626
Continental Assurance Company	$441,728
Lincoln National Life Insurance	$405,691
Provident Life and Accident Company	$380,494
New York Life Insurance Company	$309,752
Great-West Life Assurance Company	$296,696
Massachusetts Mutual Life	$278,026
Bankers Life and Casualty	$255,339
Pacific Mutual Life Insurance	$241,680
Union Labor Life Insurance Company	$228,288
Allstate Insurance Company	$221,846
Bankers Life Company	$218,628
Twenty largest commercial insurance companies	$12,783,193
Total claims incurred, All commercial insurers‡	$21,787,939

* Blue Cross Blue Shield data are expressed as 'total claims expense'; commercial insurer data are expressed as 'total claims incurred'.

† Blue Cross Blue Shield data exclude duplication and other hospitalization and medical-surgical companies and associations.

‡ *Argus Health Chart*, 1979, p. 3.

Source: *Argus Health Chart*, 1979; Blue Cross Blue Shield data, p. 3; "other hospitalization and medical-surgical companies, pp. 164–165; commercial insurance companies, pp. 168–169.

the individual commercial health insurers. In addition, the relative position of Blue Cross/Blue Shield and the commercial insurers has changed only slightly in the past twenty-five years. While the commercial firms' share of premium income and benefit expenditures grew slowly during the late 1960's (Table 3) it receded during the early 1970's leaving the commercial insurers with approximately the same market shares in 1950 and 1977 [10, 11].

It is clear that unlike the national health insurance schemes of many Western nations, there appear to be a large number of firms that an employee or individual can choose among when purchasing health insurance coverage. This is even the case when firms such as Blue Cross/Blue Shield may dominate particular areas as they do in the Northeast and Midwest areas in the United States. In addition, there are 215 health maintenance organizations (HMO's) in 35 states which, within their geographic regions, compete for the business of the employer and the employee [12]. Most health maintenance organizations (such as the Kaiser plan in California) pay physicians on a capitation basis, thereby eliminating any economic incentives for excessive tests and hospitalization.

Table 2. Shares of total claims expense of Blue Cross/Blue Shield and total claims incurred by all commercial insurers, 1978

Total claims expense and total claims incurred = $41,194,048 (000 omitted) Entity	Share of total
Blue Cross/Blue Shield	46.3%
Four largest commercial insurance companies	12.0%
Eight largest commercial insurance companies	22.0%
Twenty largest commercial insurance companies	31.0%

Source: Table 1.

Table 3. Blue Cross/Blue Shield and commercial insurer market shares of premium income and benefit expenditures selected years, 1950–1977*

	Premium income		Benefit expenditures	
	BC–BS	Commercial insurers	BC–BS	Commercial insurers
1950	44.5%	46.9%	49.5%	40.3%
1955	41.0	51.7	45.2	46.5
1960	42.5	51.8	45.8	47.8
1965	41.7	52.2	44.8	48.9
1966	41.0	53.0	43.5	50.2
1967	41.0	52.8	42.8	50.7
1968	40.2	53.8	42.7	51.1
1969	42.0	51.6	45.2	49.3
1970	42.9	50.9	44.8	48.6
1971	44.7	48.8	46.2	47.1
1972	43.7	50.0	46.3	47.0
1973	43.3	48.6	45.7	45.5
1974	42.6	48.2	45.0	45.1
1975	42.7	47.4	44.5	45.5
1976	42.6	47.6	42.2	47.8
1977	41.4	48.7	42.3	46.9

*The remainder of the premium income and benefit expenditures accrued to 'independent plans' (plans which provide for administrative services only) or pre-paid plans.

Source: Data calculated from Carroll M. S. and Arnett III R. Private health insurance plans in 1977: coverage, enrollment, and financial experience. *Hlth Care Financ. Rev.* Table 9. 19, 1979.

HEALTH INSURER COST CONTAINMENT ACTIVITIES

There are two advantages that health insurers have in cost containment that individual purchasers of health care lack. The first advantage is the amount of information available to the health insurer. It has been suggested that the biggest difference between health care and other industries is the absence of information on the appropriate price-quality level of various types of medical care services [13]. Health insurers, however, may have the capability to add increased amounts of information to the buyer's side. Health insurers can compile data on their insureds concerning hospital lengths-of-stay, physician visits, number of ancillary tests, physicians fees, prices of services, etc. Therefore, when claims are filed, insurers may have parameters in which to measure the appropriateness, within limits, of price and quality. Given the lack of information that any single individual has about the price and quality of health services (except for those medical services which may involve repeated visits to the physician) there may be a large number of instances in which the individual cannot make informed judgments.

The second advantage that health insurers have in cost containment is their potential ability to offset any rents that providers may make due to the asymmetry of information that exists between provider and patient. A health insurer with a large number of insureds might represent a consequential portion of the provider's income, and therefore be in a position to negotiate equally with the provider.

Insurer cost containment efforts may, of course, vary depending on employee and employer desires. In the following section, a number of instances will be described where health insurers have attempted to contain costs. First, in order to put medical insurance into perspective, a description of cost containment in the less complex specialty of dentistry is depicted. An analysis of dental insurance should remove any doubt that insurers have incentives to contain costs. Second, cost containment by an insurer with a small market share and small number of enrollees will be shown [14]. Third, in contrast, cost containment efforts of the largest private insurer in the United States (in terms of benefits paid), Blue Cross and Blue Shield of Michigan, are briefly described.

COST CONTAINMENT BY DENTAL INSURERS

Dental insurance has grown enormously in the past decade. In 1965, only 3.3 million people were enrolled in prepaid dental plans. By 1978, however, 67.9 million people had dental coverage with more than 23,000 employer groups [15]. Similar to health insurance, dental insurance plans vary in coverage, but may include comprehensive benefits such as diagnostic and preventive services, general services, and prosthodontics.

In many dental plans, insurers review dental claims in two stages [16]. In the first stage, 'predetermination', the insurance carrier will review a proposed treatment, which is expected to cost in excess of a certain dollar value, for necessity and appropriateness [17]. This review attempts to eliminate misunderstandings among the patient, the dentist, and the insurance firm before work is performed. Second, under the Alternative Course of Treatment (A.C.T.) program, dental consultants on the insurer's staff suggest alternatives to the work plan of the patient's dentist, if necessary. In addition, contracts might utilize investigatory procedures such as:

(a) discussion with the attending dentist;
(b) examination of dental X-rays, study models, etc.
(c) case review by an insurance dental consultant when professional judgment is required;
(d) oral examination of the patient by insurance dental consultant;
(e) referral to the local Dental Society Review Committee [18].

The behavior of dental insurers appears to indicate that insurers, like other firms, have incentives to minimize costs. With competition and potential competition from other insurers, insurers must compete, in part, on a price basis to employer groups where the cost of insured health care services is yet another element of the employer's total payroll. In dental services where the costs of the insurance firm of monitoring fees and procedures appear to be somewhat lower than in medical services, there is active competition to contain costs.

COST CONTAINMENT BY A THIRD PARTY WITH A SMALL MARKET SHARE AND SMALL NUMBER OF ENROLLEES

U.S. Administrators (USA) is a small third party administrator, based in Los Angeles, with 374,000 subscribers in 1978, or less than two percent of California's population. As a third party administrator it

incurs the administrative expenses of paying medical care bills without providing any type of insuring function. USA was begun in 1963 to administer pharmaceutical coverage, expanded into the administration of prepaid dental plans, and since 1972 has administered medical-surgical-hospital plans as well as vacation trusts, pensions, and worker's compensation plans [19].

An important element of USA's cost containment efforts is its highly computerized claims review process. A Model Treatment Profile computer tape specifies parameters for the ambulatory treatment for the 4000 diseases under the standard I.C.D.A. (International Classification of Diseases, Adopted, 8th edition) in which the number of office visists, radiologic and laboratory tests, and injections for a particular condition for a particular period are specified. A Diagnosis File computer tape specifies maximum hospital lengths-of-stay with and without surgery. Parameters for both the Model Treatment Profile and the Diagnosis File have been designed by the USA medical director and USA's council of physicians, a group of 23 mostly university-based physicians of various specialities which consults with USA. If parameters are exceeded by attending physicians, procedure and fee data may be referred to USA's medical director and finally to USA's council of physicians. If necessary, the medical director and council may ask for additional records from the attending physician or suggest fees appropriate (in their opinion) for the physician. Payment is denied if the physician cannot justify his procedures or the price for his services. In a recent article it was shown that USA's cost containment measures resulted in slightly lower costs compared to traditional measures, but the complexities of medicine were a substantial obstacle to a complete solution to rising costs [20]. Furthermore, third parties must be cognizant of a certain trust that might exist between a physician and his patient, and a destruction of that relationship might annoy the patient to the detriment of the third party insurer.

COST CONTAINMENT BY A THIRD PARTY WITH A LARGE MARKET SHARE AND LARGE NUMBER OF ENROLLEES

In contrast to cost containment at the individual physician level by USA, Michigan Blue Cross/Blue Shield, the largest non-public insurer in terms of claims paid ($1.6 billion in 1977) in the country and with 58% of the population in Michigan [21] attempted a number of techniques which are feasible only by a large insurer with a large market share. For example, in 1978, in 11 experimental hospitals Michigan Blue Cross/Blue Shield instituted a new prospective reimbursement system which was designed to reduce the rate of increase in aggregate expenditures for hospital care. Prospective reimbursement techniques have recently been established in a number of states and by a number of Blue Cross plans under Blue Cross initiative. A central aspect of the Michigan Blue Cross/Blue Shield prospective reimbursement system was the establishment of a percentage screen to be applied to a hospital's prospectively determined budget with incentives for underspending the prospectively determined limitation [22]. The theory behind most prospective reimbursement is that hospitals will have incentives to economize on the year's expenses since Blue Cross payments are essentially fixed (there may be case-mix adjustments) for the year regardless of additional expenses by hospitals. [23].

In addition, in an overbedding program of Blue Cross/Blue Shield of Michigan, hospitals which were defined as 'low occupancy' were to undergo mandated budget review [24]. Finally, in programs similar, but not equivalent to direct physician-monitoring USA, Michigan Blue Cross/Blue Shield instituted a Concurrent Utilization Review Program which would review specific admissions for medical necessity [25]. Under this program the length-of-stay at the time of admission is estimated and automatically reviewed at various intervals during the hospital stay. Moreover, Blue Cross/Blue Shield of Michigan attempted to institute a new reimbursement policy for physician services. The most important element of such a program was to establish a uniform maximum payment regardless of geographic area of practice and regardless of whether a physician is a specialist or generalist. It was hoped that this payment method would encourage physicians to practice in areas which are underserved because of traditional low reimbursement as well as put a lid on physician payments [26].

An examination of these programs suggests that it was in the economic interest of Michigan Blue Cross/Blue Shield to implement cost containment measures beyond physician monitoring since their large market share and large number of enrollees enabled them to accrue most of the cost containment benefits, if any. The 'public good' nature of these efforts, for example, virtually precludes their use by small firms such as USA, since they must incur the costs of implementing a cost containment program, yet any benefits would accrue to all insurers.

There have been additional health insurer cost containment efforts. For example, the Blue Shield Association has informed physicians that they will no longer pay for 18 surgical procedures and 10 diagnostic procedures on a routine basis. Written justification by the physician will be necessary before payment can be authorized for such procedures as hysterectomies and certain types of angiocardiograms [27]. In addition, Blue Cross and Blue Shield Associations have suggested to their member plans that they pay for routine hospital admission tests for surgical patients only when tests are specifically ordered by physicians [28]. The commercial insurers, in contrast, have generally offered to employees benefit packages which have included large deductibles and substantial copayments [29].

It is of interest to observe that cost containment by small and large insurers have similar counterparts in the public sector. Utilization review, as carried out by the Professional Standards Review Organization, is not unlike aspects of physician review by U.S. Administrators. Prospective reimbursement as carried out by many states is not unlike prospective reimbursement conducted by Blue Cross/Blue Shield of Michigan [30]. There is one difference in both of these programs, however. Under private sector auspices there are incentives to contain costs, in order to maximize profits (or, in the case of Blue Cross, to avoid losing enrollees), where no such incentives exist under a regulatory framework.

IMPEDIMENTS TO HEALTH INSURER COST CONTAINMENT

In spite of the cost-conscious behavior of many insurers, there are a number of impediments which limit the ability of insurers to contain costs. The U.S. tax treatment of health insurance paid by employers is such an impediment. Since health care premiums paid by employers are exempt om U.S. and local income taxes, as well as from social security taxes, there are incentives for employers to provide employees with increased health care coverage relative to increases in wages. In addition, individuals can deduct from their income tax up to $150.00 of the premiums they pay for health insurance [31]. These incentives for increased health insurance coverage make it increasingly unlikely that employers will offer health benefit packages with ample copayments and high deductibles which allow for greater consumer awareness of health care prices. Changes in the tax laws to make health care premiums paid by employers subject to income and other taxes have been suggested by many observers [32].

A second impediment may be the threat of physician boycott or physician retaliation to insurer cost control efforts. In a well-documented case, Aetna Insurance Company, in the early 1970s, attempted to monitor closely physician fees [33]. Physicians began writing letters to medical journals urging boycott of Aetna for the alleged interference with fee-setting perogatives of physicians. If a firm were to question further a physician's judgment on particular procedures, one might expect even greater opposition from physicians. In another matter involving professionals, the U.S. Federal Trade Commission recently secured a consent agreement with the Indiana Dental Association whose dentists object to insurer interference into the dentist patient relationship. In the settlement, the dentists agreed not to engage in collective action against third party insurers [34]. Finally, in Michigan, a number of physicians objected to the above-mentioned reimbursement policy. Numerous resolutions were passed by the Michigan State Medical Society urging its physicians to withdraw their participation in Blue Cross/Blue Shield of Michigan [35].

A third impediment is the difficulty in curtailing a large number of medical procedures which engender some positive benefits (medical efficacy) but are outweighed, to some degree, by their costs (economic efficiency) [36]. Suppose a new procedure cost, say, $1000.00 and yet the benefits (if they could be ascertained) were miniscule. Most insurers have generally allowed the medical procedure to proceed, but if the insurer is to become involved in these cases in the future it will be a complex task. Moreover, it has been suggested that a substantial portion of increasing costs in health care stem from new technological advances that hospitals are compelled to introduce under request from physicians [37].

CURRENT PUBLIC POLICY ALTERNATIVES IN COST CONTAINMENT

A number of cost containment strategies have recently emphasized the role of the insurer in cost containment. Proposals by Havighurst and Hackbarth have stressed the need for tax incentives to encourage employees to select insurers which contain costs [38]. Professor Enthoven's Consumer Choice Health Plan (C.C.H.P.) envisions employers offering an array of competing health maintenance organizations as well as health insurance plans to employees [39]. Enthoven suggests that consumers will generally select 'limited provider' plans in which consumers would receive care only from participating physicians or from traditional health maintenance organizations.

Each of these public policy alternatives treat the health insurer, be it the traditional health insurer or the health maintenance organization, as the pivot from which cost containment will evolve. The proposals suggest that cost containment will take place upon the insistence of the employee and employer who are both concerned with rising costs. Employers already have incentives to contain costs since in most cases they are responsible for the full costs of the health care premium.

FUTURE ROLE OF HEALTH INSURER COST CONTAINMENT

There appear to be good reasons to expect insurer cost containment to be a growing factor in the future in the United States. Some of the reasons why one would expect increasing third party activity would include:

(1) Cost containment by the public sector has not been found to be a success. A number of recent studies have shown that both prospective reimbursement and certificate-of-need regulations, two of the most common forms of public regulation, have not made a significant difference in curbing rising costs [40]. New initiatives such as the Carter Administration's hospital cost containment bill which sets a lid on increases in hospital costs are also not expected to be effective in cost containment. If opposition to the regulatory programs results in a removal of some of the regulatory bodies, entry might be easier for cost-conscious insurers as well as HMO's. For example, a number of states now regulate the rates which hospitals can charge. If the states are successful in regulation, hospital rates may be kept artificially low. Since traditional fee-for-service enrollees experience greater hospitalization utilization than alternative delivery system enrollees, regulation of hospital rates benefits fee-for-service disproportionately more than the HMO enrollees. Entry of HMO's and alternative delivery system may therefore be discouraged. If state hospital rate regulations are lifted, one might expect greater entry of HMO's and alternative delivery systems.

(2) Increasing costs of health care should lead to new entry of alternative delivery systems which should increase the degree of competition among plans. In the last few years as health care costs have increased most rapidly a large number of new HMO's and new initiatives by Blue Cross have been developed.

(3) As health care costs increase employees might rationally desire to substitute increased wages for

comprehensive health care plans. One might also expect to observe an increasing number of cost-conscious insurance plans to be offered to employees by employers.

(4) To the extent that providers are able to shift costs to the less vigilant insurers, relative costs of the less vigilant insurers will rise relative to the more active insurers. This may put more pressure on the less active insurers to increase their cost consciousness.

(5) A predicted 'oversupply' of physicians might induce providers to enter into contractual relationships with cost-conscious insurers or HMO's. Relationships of this sort might provide competitive advantages to these insurer groups.

Nevertheless, even with active third party involvement in cost containment, it would be unduly optimistic to believe that the problems of rising health care costs have been solved. It seems certain, however, that as the costs of health care escalate both private and public health insurers will be forced to reconsider the costs and benefits of cost containment procedures.

REFERENCES

1. Gibson R. M. National Health Expenditures, 1979. *Hlth Care Financ. Rev.* 1, 1980.
2. *Ibid.*
3. *Ibid.*, Table 1, p. 16.
4. Feldstein M. S. The welfare loss of excess health insurance *J. Polit. Econ.* 251–280, 1973; Feldstein M. S. *The Rising Cost of Hospital Care*, 1971.
5. Gibson R. M. National Health Expenditures, 1979. *Hlth Care Financ. Rev.* Table 4, 24, 1980.
6. Feldstein M. S. The welfare loss of excess health insurance. *J. Polit. Econ.* 251–280, 1973; Newhouse J. P. The erosion of the medical marketplace. The Rand Corporation, Santa Monica, R-2141-HEW, 1977.
7. Gibson R. M. National Health Expenditures, 1979. *Hlth Care Financ. Rev.* Table 2A, 17, 1980.
8. More than three-quarters of the total health insurance premiums paid to commercial insurers and Blue Cross/Blue Shield are from group contracts which originate with employers. See Gibson R. M. and Fisher C. R. National Health Expenditures, Fiscal Year 1977. *Soc. Secur. Bull.* 8, 1978; Blue Cross Association. *Blue Cross/Blue Shield Factbook* 6, 14, 1979.
9. *Blue Cross/Blue Shield Factbook* 4–6, 1980; Health Insurance Association of America. *Source Book of Health Insurance Data* Table 1–2, 13, 1980–81.
10. Frech and Ginsburg have initially made this point. See Frech III H. E. and Ginsburg P. B. Competition among health insurers. In *Competition in the Health Care Sector: Past, Present and Future* (Edited by Greenberg W.), pp. 170–171, 1978.
11. Data were unavailable on a claims expense and claims incurred basis for state-by-state calculations.
12. National HMO Enrollment Hits 8, 226, 053 in 1979. *Group Health News* 1, 4, 1980.
13. See Pauly M. V. Is medical care different? In *Competition in the Health Care Sector: Past, Present, and Future* (Edited by Greenberg W.), pp. 11–36, 1978.
14. Some observers have suggested that small insurers do not have the leverage to contain costs. See, e.g. Anne Somers. Negotiated rates: one road to strengthening the private sector and cost containment in health care. Paper presented at Duke University Medical Center, 30 September, 1977.
15. American Dental Association. *Dental Prepayment* 6, 1980.
16. U.S. Council on Wage and Price Stability. *The Complex Puzzle of Rising Health Care Costs: Can the Private Sector Fit It Together?* p. 116. Washington, 1976.
17. See Reisine S. T. and Bailit H. L. History and Organization of pretreatment review, a dental utilization review system. *Publ. Hlth Rep.* 282–290, 1980.
18. See Praiss I. L. Quality of dental care—the role of third party payers: a literature review. *Med. Care Rev.* 1211–1233, 1978.
19. See Goldberg G. A. and Greenberg W. Third party cost containment and the physician-patient relationship. *J. communit. Hlth.* In press.
20. *Ibid.*
21. Blue Cross Association. *Blue Cross Blue Shield Factbook*, 4, 7, 1979.
22. See Dowling W. Prospective reimbursement of hospitals *Inquiry* 163–180, 1974.
23. See Greenberg W. The large insurer and cost containment activity. Blue Cross/Blue Shield of Michigan mimeograph.
24. *Ibid.*
25. *Ibid.*
26. *Blue Cross/Blue Shield of Michigan News Release*, 11 August, 1977.
27. See Ayer N. W. Public Relations Services. *Fact Sheet, Blue Shield Association Medical Necessity Program*, 18 May, 1977.
28. See *Blue Cross and Blue Shield News Release* 30, April, 1979.
29. See Health Insurance Association of America. *Highlights of the Group Health Insurance Cost Containment Survey*, May 1977.
30. See Sloan F. A. and Steinwald B. Effects of regulations on hospital costs and input use. *J. Law Econ.* 81–110, 1980.
31. More than two-thirds of employees in the private sector have their health care premiums paid for entirely by their employers. See Enthoven A. Consumer-centered vs job centered health insurance. *Harv. Bus. Rev.* 142, 1979.
32. See Havighurst C. C. Controlling health care costs: strengthening the private sector's hand. *J. Hlth Polit. Policy Law* 471–498, for a number of such proposals.
33. See Goldberg L. G. and Greenberg W. The effect of physician-controlled health insurance. U.S. v. Oregon State Medical Society. *J. Hlth Polit. Policy Law* 48–78, 1977.
34. See FTC charges Indiana dental groups with restricting insurers' cost-containment efforts. *FTC News* 15 November, 1978.
35. *Am. med. News*, 7 November, 1977. Eventually an agreement was reached between Blue Cross/Blue Shield of Michigan and the Michigan State Medical Society. See Michigan M.D.s Settle Dispute with Blue Plans, *Am. med. News*, 21, 1978. The U.S. Federal Trade Commission is currently investigating the actions of the Michigan State Medical Society for unlawfully reducing or eliminating price competition among physicians in Michigan. See *FTC News* 31 July, 1979.
36. See Schwartz W. B. and Joskow P. L. Medical efficacy versus economic efficiency: a conflict in values *New Engl. J. Med.* 1462–1464, 1978.
37. Feldstein M. D. *Rising Cost of Hospital Care*, 1971.
38. Havighurst C. C. and Hackbarth G. M. Private cost containment *New Engl. J. Med.* 298–1305, 1979.
39. Enthoven A. C. Consumer-choice health plan. *New Engl. J. Med.* 650–658, 709–720, 1978.
40. Sloan F. A. and Steinwald B. Effects of regulation on hospital costs and input use. *J. Law Econ.* 81–109, 1980.

Department of Commerce & Economic Development / POSITION PAPER

May 24, 1983

CSSSHB 7 (FIN): An Act relating to motor vehicles; and providing for an effective date.

The Administration is not in favor of a mandatory automobile liability insurance system such as proposed in CSSSHB 7 (FIN). The principal reasons for this position are:

1. Administration of the program is expensive and would necessitate a substantial bureaucracy to administer and enforce.

2. The cost of insurance is higher in a mandatory system. This is due to elimination of exclusions in the policy, elimination of defenses available to an insurer, and increased insurer administrative expense.

3. Mandatory systems do slightly increase the insured population, but do not produce a commensurate reduction in loss caused by the uninsured operator.

4. The economically disadvantaged have less real personal need for liability insurance from a protection of assets viewpoint and this acts as a disincentive for compliance with a mandatory system.

The North Carolina/Virginia experience suggests that comparable, if not superior, inroads can be made on the uninsured population through a strong financial responsibility law and a mandatory offering of uninsured motorists coverage. Last year, a number of impediments to the smooth working of our law were corrected, but it is too soon to say how effective those changes will be in this State.

What is more to the point is not how many drivers are insured, but how many people are experiencing uncompensated loss caused by an uninsured motorist. Accordingly, we recommend as an alternative to the proposed legislation, a substitute that would mandate an offer by every insurer writing automobile liability insurance in this State, of uninsured and underinsured motorists coverage, bodily injury and property damage in an amount at least as great as that purchased voluntarily for bodily injury and property damage liability. The offer currently exists only for basic limits uninsured motorists bodily injury coverage. This would allow the insured motorist to protect himself from losses caused by uninsured or underinsured drivers. These recommendations have been incorporated in this bill as Sections 14, 18, and 19. We suggest all other sections be removed.

5/26/83

Richard A. Lyon, Commissioner

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Insurance
BACKGROUNDER

Background information on insurance topics for the news media
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Should Auto Liability Insurance Be Required By Law?

It's become part of the folklore of our motorized society. A responsible citizen is driving down the street when an aging clunker roars past a stop sign and slams into Mr. Citizen's car, sending it to the junkyard and its owner to the hospital. The driver of the clunker has no assets, little income, and—of course—no liability insurance.

Stories about uninsured drivers usually bring expressions of outrage from listeners, along with comments like: "There oughta be a law!" In several states there are laws that make it a crime to drive without liability insurance. This type of law has been on the books more than 50 years in Massachusetts and more than 20 years in New York and North Carolina. Whether these laws are in the best interest of the public, however, is a subject of great controversy.

No one doubts that uninsured drivers are a widespread problem in the United States. The actual number of these drivers is not known, however, and estimates vary considerably. Many observers would agree that somewhere around 20 percent of the automobiles on the road are not covered by liability insurance, with the percentage differing sharply from one state to another. There are indications that the number has been growing recently, perhaps because inflation is putting a squeeze on the pocketbooks of more car owners, who gamble on not having an accident rather than pay the price of insurance.

Historical Background

Uninsured motorists weren't a serious problem during the first decades of the automobile. The new motor cars were playthings of the affluent, who had the assets to pay for any harm caused by their negligence. By 1920, car ownership had spread to many low-income families with little property that could be seized to pay for damages they caused in accidents. Liability insurance seemed to offer the only solution to this problem.

As early as 1919, proposals were made in Massachusetts for a law requiring all drivers to carry liability insurance. By 1925, compulsory insurance bills were introduced in half of the nation's state legislatures. Massachusetts enacted a compulsory bodily injury liability insurance law that took effect in 1927.

Revised November 10, 1982. Since events move rapidly, you may want to check to see if the information is still current—particularly if you're using this as a reference some time after the date of revision. Call the number above.

Most states, however, took a different approach to the problem. A proposal for a financial responsibility law had been included in the Uniform Vehicle Code adopted in 1924 by the National Conference on Street and Highway Safety. Instead of requiring all drivers to carry liability insurance, this proposal would require motorists who were in an accident to show that they had the financial means to compensate their future victims. In practice, most drivers could demonstrate the required financial means only by carrying a liability insurance policy. In 1928 the American Automobile Association issued a model financial responsibility bill, which was endorsed by many insurance companies and other groups. Instead of taking the compulsory insurance route, the other states enacted financial responsibility laws.

Three decades passed before another state followed Massachusetts' lead. In 1956 a compulsory insurance system was established in New York and in 1957 North Carolina became the third state with a compulsory system.

Today some 30 states have compulsory liability insurance laws and one state, Florida, requires personal injury protection (no-fault) coverage without requiring liability coverage. Many of these laws were passed in the 1970s as part of some type of no-fault package; many legal authorities believed no-fault laws would have a stronger constitutional footing if they compelled motorists to buy auto insurance.

How Are Compulsory Insurance Laws Designed to Operate?

Compulsory insurance laws provide that driving a car without the required amount of liability insurance is a criminal offense—a misdemeanor, like battery or driving while intoxicated. In theory, conviction of violating the law can result in a fine or even a jail sentence in many states, although in reality jail sentences are extremely rare.

Some compulsory insurance laws require motorists to show evidence of insurance to public authorities at least once a year before their vehicles can be registered and license tags issued. Usually the proof of insurance is in the form of an identification card or sticker from the insurance company. Most compulsory states use a self-certification procedure in which motorists are required to sign affidavits attesting that they have, and will maintain, liability insurance coverage. The state may verify a random sample of these affadavits with the insurance companies that issued the policies.

But either system causes problems. Even though a motorist has liability insurance when he gets his license plates, he can still drop the coverage later. In an attempt to prevent this, some compulsory laws require insurance companies to send a notice to state regulatory authorities when a policy is cancelled or not renewed. The state then sends a notice to the motorist asking for an explanation of the cancellation. If the motorist doesn't respond within the required time, the state sends a notice suspending his license after a certain date. Failure of the motorist to respond by the effective date causes his license tags to be subject to seizure by any police officer. In theory, a state police officer will be sent to pick up the tags. In practice, because of manpower shortages, tags are seized in most states only when the motorist commits other traffic offenses that bring him to the attention of the police.

Compulsory insurance laws usually provide harsher penalties for uninsured motorists found to be at fault in an accident and for motorists who drive after their licenses are suspended.

Arguments For Compulsory Insurance Laws

Advocates of compulsory liability laws base their case on the concepts of fairness and justice. Their attitude is rooted in traditional tort liability legal doctrine, which holds a person financially responsible for any harm that his negligence may cause to others. Since liability insurance offers the only practical way for most drivers to pay compensation, advocates of compulsory insurance believe the state should force motorists to buy liability coverage by making it a criminal offense to drive without it.

Proponents of compulsory insurance argue that it is unfair to expect people to pay for uninsured motorist coverage to protect themselves from irresponsible drivers who are at fault in accidents. They also point out that a portion of the collision coverage on automobiles goes to pay for vehicle damage caused by uninsured drivers. On a national average, each insured driver may be paying somewhere around $20 a year to protect himself from uninsured motorists. If these uninsured motorists are compelled to buy liability coverage, proponents say, responsible drivers won't have to pay that extra money.

Arguments Against Compulsory Insurance Laws

Those who oppose compulsory liability insurance laws tend to base their opposition on pragmatic grounds, although they may also use ethical or philosophical arguments.

Opponents' main arguments are that compulsory insurance laws: (1) can't be enforced well enough to remove uninsured drivers from the roads, (2) are costly to administer, and (3) increase insurance premiums for responsible drivers. Many opponents of compulsory insurance also argue that the state has no right to force low-income motorists, who have no assets to protect, to buy liability insurance merely for the benefit of more affluent drivers.

Compulsory Laws Don't Work

The core of the case against compulsory insurance laws is the argument that they simply don't work, that they don't compel motorists to buy insurance. These laws are hard to enforce because of the nature of liability insurance itself. Liability coverage is designed to protect the policyholder from losing his assets and income if he causes an accident that harms someone. Drivers with no property, no savings, and little income have nothing to lose in a lawsuit. They have no economic incentive to buy liability insurance.

"They perceive the liability insurance policy as taking care of other people," Dr. John W. Hall, chairman of the insurance department at Georgia State University, reported to the South Carolina Joint Legislative Automobile Liability Insurance Study Committee in 1979. "The compulsory liability insurance system forces these people to pay high premiums relative to their own income for benefits for others when they cannot themselves afford adequate benefits to cover their own losses."

Critics of compulsory laws maintain that the compulsory insurance states, faced with determined resistance by drivers who neither need nor want liability insurance, have failed in their efforts to enforce the laws. As proof, they point to the experiences of the three states that have had compulsory laws the longest and have made the strongest efforts to enforce them:

Massachusetts, the first state to enact a compulsory insurance law, watched its auto insurance rates climb until they became the highest in the nation. In 1968, Gov. John Volpe told the Massachusetts legislature that "the people of the commonwealth have lost confidence in our compulsory automobile insurance system." After 53 years of compulsory insurance, the number of uninsured vehicles in Massachusetts still presents a serious problem.

New York adopted a compulsory liability insurance law in 1956. In 1963, a study by the University of Michigan found that there were twice as many uninsured drivers in New York as there were before the compulsory law was passed. A 1978 study found that 6.5 percent of a sample of 9,345 cars were uninsured.

The *New York Daily News* studied the state's compulsory insurance system in 1963 and reported: "The compulsory insurance law. . .(has) failed miserably to achieve its aims. Insurance companies despise it, the Motor Vehicles Department is suffering with it, the district attorneys won't prosecute on it and police departments don't enforce it. . . as far as *News* reporters could determine, no uninsured driver has ever been sent to jail, no matter what human or property damage he has caused. . ."

Even in North Carolina, the state regarded by many observers to have done the most effective job of enforcing compulsory liability insurance, many vehicles are still uninsured after 23 years of well financed and highly sophisticated enforcement efforts.

The most damning proof that compulsory liability laws don't work, opponents maintain, is the fact that all the compulsory states require insurers to offer uninsured motorist coverage and that most drivers buy it. Drivers in compulsory states are carrying a double burden: paying the premiums for uninsured motorist coverage and also bearing the cost of trying to enforce the compulsory insurance law.

Drivers who don't want to buy liability insurance find it easy to evade compulsory insurance laws.

Probably the most common technique of evading compulsory laws is called insurance dodging. The motorist goes to an insurance agent and applies for liability coverage in order to get an insurance identification card. The motorist uses the card to get his license tag, but then either cancels the coverage or fails to pay the balance of the premium. Although in some states the insurance company must send a notice to the proper state agency that the driver's coverage has lapsed, much time goes by before the overworked state bureaucracy gets around to taking any action. Even then the police, who must give priority to more serious crimes, don't have enough manpower to send officers out to confiscate the license tags.

Even if they are prosecuted and convicted of violating the compulsory law, insurance dodgers have little to fear. Judges, who deal with an endless stream of more serious offenders, are very lenient with someone who does nothing worse than refuse to buy insurance. In short, insurance dodgers face little risk.

Compulsory Laws Are Costly

The second major argument made by opponents of compulsory laws is that they are too costly to administer. Proper enforcement of these laws would require a large state bureaucracy, an extensive data processing system, and enough state police officers to go out and confiscate the license tags of uninsured drivers. No state has been willing or able to spend the vast amount of money that would be required for this kind of enforcement program.

Of all the states with compulsory laws, North Carolina has carried out the most extensive and effective enforcement program. The program is supervised by the Department of Motor Vehicles at a cost of about $1.3 million a year. All of the record-keeping and forms preparation is done by a sophisticated computer system provided by the state Department of Transportation at an annual cost of about $1.6 million. The Department of Public Safety employs 50 state police officers to confiscate about 19,000 sets of license plates a year at an annual cost of more than half a million dollars.

After New York passed its compulsory law, the cost of enforcement rose to more than $7 million a year. In an effort to cut these high costs, New York went to a self-certification program in 1974. This simplified procedure shaved about $3 million off the cost.

South Carolina, with a much smaller population than New York, reported that it spent $1.3 million in the fiscal year ending April 30, 1979, to enforce its compulsory law.

The magazine *National Underwriter* reported in 1979 that enforcement of Pennsylvania's compulsory insurance law was "bogged down in a bureaucratic morass" in the Department of Transportation because of "poverty and lack of staff to administer the program." A department official said 40,000 notices of cancellation or lapses poured into the department every month and declared: "We'll never be current." Today, however, Pennsylvania requires cancellation notices only during the first six months of the policy, and the department is quite current.

The California Department of Motor Vehicles, after studying California's compulsory insurance law in 1976, reported that "if all social costs associated with this program are considered, this program is almost certainly a social liability from the cost-benefit standpoint." The department found that "less than one-half of one percent of the drivers in California are financially responsible as a consequence of this program."

Higher Rates For Responsible Drivers

Opponents of compulsory insurance laws argue that these laws cause insurance premiums to go up for responsible drivers.

Part of this increase comes from the higher operating costs of insurance companies, which must issue identification cards or stickers to all their policyholders and may have to notify the state every time a customer fails to renew, or cancels, a policy or doesn't pay the balance of his premium.

But most of the increase, opponents maintain, results from the higher accident rates among many of the formerly uninsured drivers who are forced to buy insurance.

"Insurers that provide insurance to the overwhelming majority of safe and responsible drivers," said Dr. Hall, "are forced to include high-risk drivers among their insureds. As these high-risk drivers incur losses, the rating structure will be affected and the overall rates must rise."

Massachusetts adopted compulsory insurance in 1927. By 1938, its claim frequency per thousands insured vehicles had increased 33 percent—while the countrywide frequency declined 21 percent.

Massachusetts Gov. Volpe attributed much of his state's high insurance cost to its compulsory law in 1968 when he reported: "The personal injury claims frequency in the commonwealth is 1.8 times that of the next highest state (which also happens to be a compulsory state), and twice the national average. This claims frequency may be directly related to our high insurance costs and also supports the conclusion that under our compulsory system, Massachusetts motorists have become more claims conscious than those in other states."

Alternatives to Compulsory Insurance

Those who oppose compulsory liability insurance laws offer two alternatives: (1) strong financial responsibility laws and (2) insurance coverages that motorists can buy to protect themselves from losses caused by uninsured drivers.

Financial responsibility laws have been in use since the 1920s. These laws do not require insurance before cars can be licensed and they do not make it a criminal offense to drive without insurance. When motorists are involved in an accident (generally one resulting in bodily injury or in more than a specified amount of property damage), financial responsibility laws require them to show proof that they will be able to pay damages that might be awarded to other accident victims. Generally, they can do this with a liability insurance policy providing minimum required benefit limits, by posting a bond for the same amount, or by depositing cash or securities in that amount. Failure to do one of these leads to suspension of licenses of at-fault drivers for a certain length of time.

Opponents of compulsory insurance see several advantages in financial responsibility laws. They are aimed only at drivers who cause accidents, not at every driver in the state. As a result, the cost of enforcement is greatly reduced, insurance company operating costs are cut, and the great majority of responsible motorists are not subjected to the state's efforts to enforce compulsory insurance. The pressure is removed from those who can't afford to buy insurance and those who have no need for liability coverage.

Opponents maintain that a well-administered financial responsibility law is just as effective as a compulsory law—at a fraction of the cost. Virginia, generally regarded as having one of the most effective financial responsibility systems, is estimated to have about the same percentage of its cars insured as neighboring North Carolina, with the nation's best-enforced compulsory law.

Since neither compulsory laws nor financial responsibility laws can remove all uninsured drivers from the road, those who oppose compulsory laws recommend that motorists buy their own insurance coverage to protect themselves from irresponsible drivers.

Uninsured motorist coverage has long been available in every state. Often it can be purchased with limits as high as the liability limits carried by the driver. When the driver is in an accident with an uninsured motorist, his own insurance company will pay him damages that the uninsured driver is legally obligated to pay.

Underinsured motorist coverage is now becoming available in most states. This new coverage comes into play if the policyholder is injured by an at-fault driver who is insured, but has limits of liability coverage that are inadequate.

Uninsured motorist coverage in many states does not provide protection for damage to property. In those states, of course, motorists can still protect their vehicles by buying collision coverage.

In states with no-fault laws, personal injury protection coverage is provided to all insured drivers. This coverage reimburses policyholders for their own medical expenses and lost wages without regard to fault. In states without no-fault laws, medical payments coverage is available with limits up to $25,000. A loss-of-income coverage is also available from auto insurers.

Opponents of compulsory laws argue that it's better to let affluent drivers provide their own insurance protection rather than try to force drivers without assets to buy liability coverage they don't need and can't afford. This approach, they believe, is less costly than the financial burden of trying to enforce a compulsory law, plus paying the higher premiums that result from compulsory laws.

Conclusion

It seems clear that no state has been able to solve the problem of uninsured drivers with a compulsory insurance law. Even the best-enforced compulsory laws have been no more successful at removing uninsured drivers than good financial responsibility laws. In a free society, it is impossible to force large numbers of people to buy something they don't need and can't afford. No state government is willing or able to take the steps that would be necessary to fully enforce a compulsory liability insurance law.

Since compulsory laws are no more effective than financial responsibility laws, there seems to be no point in spending vast amounts of money and harassing millions of motorists in futile attempts to enforce them.

For responsible motorists, the more practical route is look after their own protection, rather than relying on unenforceable laws. Protection is readily available at moderate cost in the form of uninsured and underinsured motorist coverage, medical payments coverage, and loss-of-income coverage. In no-fault states, personal injury protection coverage offers even greater protection.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 28, 1983

MEMORANDUM

TO: Representative Joe Hayes
Attention: Jeff Day

FROM: David Teal
Research Staff

RE: Automobile Liability Insurance
Research Request Number 83-128

Jeff Day, of your staff, asked for information relating to automobile liability insurance. More specifically, he requested the latest estimates of the proportion of uninsured motorists in Alaska, the number of vehicles registered in the state, the number of licensed drivers, and the amount of property damage and personal injury caused by uninsured motorists.

Insured vs. Uninsured Motorists

As you may know, automobile liability insurance policies generally cover some persons not named on the policies; as far as the insurance provider is concerned, the unit of exposure is the vehicle, not the policy-holder or the number of potential operators. This factor makes determining the number of uninsured drivers very difficult and is the reason that data are usually presented in terms of uninsured vehicles rather than uninsured persons.

The Division of Insurance prepared statistics on the number of uninsured vehicles in Alaska, but included several caveats in the analysis. (See Attachment A.) That study used information from several sources and produced two estimates of the number of uninsured vehicles during several years. The estimates are so dissimilar that one must question their value. For example, the estimate of uninsured vehicles in 1980 was 40.5 percent by one method and 11.0 percent by the other method.

A third method, which was used by the Division of Drivers' Services in the Department of Public Safety, is likely to provide a much better estimate of the proportion of motorists in Alaska that are uninsured. The division reviewed records of accidents that occured during January of 1981 and found that 21 percent of motorists involved in accidents were uninsured. A repeat of the study in January of 1982 showed that

20 percent of motorists were uninsured. Applying the 20 percent figure to the vehicle registration statistics presented later in this memorandum produces an estimate of about 100,000 uninsured vehicles in the state. Figures for 1983 have not been compiled.

Liability Limits

Jeff Day noted that liability limits of $100,000 per person (to a maximum of $300,000 per accident) for bodily injury and $50,000 for property damage--traditionally written as 100/300/50--are "standard" and wondered how many insured drivers currently carry less than this amount of liability insurance. I was unable to find any written record of the number of motorists that purchase more insurance than is required by law, but it is worth noting that Alaska currently requires 25/50/10 and that Hawaii is the only state with higher limits than Alaska. (See Attachment B.)

The only way to determine the number of policies written for limits higher than the minimum is to contact the individual insurance companies. A reasonable estimate could be obtained by contacting State Farm, Allstate, Criterion, and United Services. Together, these companies insure about 70 percent of Alaska's motorists.

I was able to contact Allstate and State Farm Insurance Companies, and spokesmen for both said that their most common coverage is 100/300/50. In this sense, the 100/300/50 policy is the industry standard. According to State Farm Insurance, the additional cost of 100/300/50 amounts to only about $20 per year more than the 25/50/10 coverage. The company also pointed out that law suits now commonly exceed Alaska's current minimums.

Damage and Injury Caused by Uninsured Motorists

There are no requirements that records on this subject be maintained. Don Koch, of the Division of Insurance, stated that he wouldn't even be able to "guesstimate" because he felt that much of the damage is unreported and/or uncompensated. A similar opinion was expressed by representatives of the insurance industry.

As you may be aware, uninsured motorist coverage is a mandatory offering in Alaska. This means that insurance companies must offer the coverage and inform clients of its availability. There is no requirement that the coverage be purchased.

Registered Vehicles and Licensed Drivers

According to Sharon Naus, of the Division of Drivers' Services in the Department of Public Safety, there were 316,797 persons holding valid Alaska drivers licenses on January 10, 1983. She also reported that 407,870 vehicles were registered in Alaska in calendar year 1982. The following table shows the number of registered vehicles by vehicle type.

Motor Vehicles Registered in Alaska
Calendar Year 1982

Vehicle Type	Number
Passenger Automobiles	217,719
Motorcycles	14,504
Commercial Trailers	10,079
Utility Trailers	37,999
Commercial Trucks	19,361
Pick-ups	106,851
Buses	1,357
TOTAL	407,870

Source: Department of Public Safety 3/83

* * *

In addition to material obtained from the Division of Insurance, I am attaching a recent House Research Agency memorandum on the subject of compulsory insurance. If you have questions about information presented in this memorandum and its attachments or have additional questions, please call.

Attachments

A) Alaska Drivers: Insured vs. Uninsured (Division of Insurance, undated)
B) Liability Limits (Division of Insurance, undated)
C) Research Request 83-48

ATTACHMENT A

ALASKA DRIVERS
Insured vs. Uninsured

The division's statistical needs respond to rate-making and solvency issues. Nevertheless, it has made an attempt to obtain some feeling as to what portion of the public may be uninsured. Unfortunately, a number of caveats must be placed on this information. The sources for the data used in the calculation come from several areas and in each case, this data is untested and has been subject to some adjustment or assumption which may cast suspicion on its accuracy.

You will note the substantial difference between the two charts. The reason for this difference is attributed to the different interpretation of what constitutes a private passenger type risk. The caveats following each chart detail the source of the numbers.

The data that follows is useful for "guesstimating" the percentage of insured motor venicles in Alaska. It does not relate to insured persons in Alaska. To our knowledge, there is currently no source for arriving at a number of insured persons since a policy, when written, covers some persons not named automatically.

The unit of exposure, as far as the insurer is concerned, is the number of vehicles not the number of potential operators.

Chart 1. (From Division of Insurance 1982 Statistical Analysis)

(1) Year	(2) Registered Autos	(3) Insured Car Years	(4) % Insured	(5) % Uninsured
1975	199,536	117,355	58.8	41.2
1976	221,386	120,964	54.6	45.4
1977	226,389	121,635	53.7	46.3
1978	232,425	123,581	53.2	46.8
1979	229,403	132,391	57.7	42.3
1980	230,040	136,895	59.5	40.5

(1) This column is on a calendar basis.

(2) The number of registered automobiles was obtained from the Division of Planning and Research in the Department of Transportation and Public Facilities of the State of Alaska. The number of auto registrations derives from the following types of license plates:

- Regular
- Personalized
- Call Letter
- Other, including legislator, historic vehicle
- Pickups and vans
- Farm trucks

The numbers have been adjusted to remove duplicate registrations. They to not include unregistered vehicles, nor is there a method to arrive at a reasonable "guesstimate" of that number. Prior to 1977, pickups and vans were included in the freight-light trucks classification. We have made an adjustment to separate the pickups and vans from that classification, based on the relationship during 1977-79 of the pickups and vans classification to the freight-light trucks classification. Official automobiles (State, federal and municipal) are not included. Some fleets of automobiles have been included but are not identifiable by name or number. The chart relates only to private passenger registrations and insurance.

(3) These figures were obtained from the Automobile Insurance Plans Service Office (AIPSO), a licensed rating organization for this State. Included are voluntary and assigned risk nonfleet private passenger vehicles insured. An insured car year is one automobile insured for one year, so that, if a car is insured for six months, that would be 1/2 car year.

(4) = (3) ÷ (2)

(5) = 100% - (4)