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COMMITTEE ON AUTOMOBILE INSURANCE



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 190

November, 1972

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OF THE
COLORADO GENERAL ASSEMBLY

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* * * * *

The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

COMMITTEE ON
AUTOMOBILE INSURANCE

Legislative Council
Report To The
Colorado General Assembly

Research Publication No. 190
November, 1972

COLORADO GENERAL ASSEMBLY

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WALLACE PULLIAM

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LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203

892-2285
AREA CODE 303

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SEN. WILLIAM L. ARMSTRONG

SEN. JOSEPH V. CALABRESE

SEN. GEORGE F. JACKSON

SEN. VINCENT MASSARI

SEN. RUTH S. STOCKTON

REP. RALPH A. COLE

REP. JOHN D. FUHR

REP. HAROLD L. McCORMICK

REP. HIRAM A. McNEIL

REP. PHILLIP MASSARI

REP. CLARENCE QUINLAN

November 27, 1972

To Members of the Forty-ninth Colorado General Assembly:

In accordance with the provisions of Senate Joint Resolution No. 7, 1972 Session, the Legislative Council submits the accompanying report and recommendations pertaining to Colorado's automobile insurance laws.

The report of the Committee on Automobile Insurance was accepted by the Legislative Council for transmission with recommendation for favorable consideration by the first regular session of the Forty-ninth Colorado General Assembly.

Respectfully submitted,

Representative C. P. (Doc) Lamb
Chairman

CPL/mp

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Representative C. P. (Doc) Lamb
Chairman Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

Pursuant to Senate Joint Resolution No. 7, the Committee on Automobile Insurance submits the following report for consideration by the Legislative Council.

The Committee's findings and recommendations are the result of six meetings during which the Committee considered means for improving Colorado's automobile insurance laws. The Committee received information from several state agencies and spokesmen for various facets of the insurance industry and the legal profession. Other interested organizations also met with the Committee and a great amount of helpful information was supplied by all interested parties.

As a result of these meetings, the Committee concluded that Colorado's present system of automobile insurance can be greatly improved by legislative enactment of the Committee's bill which would provide a system of no-fault motor vehicle insurance in Colorado.

As evidenced by the minority report, there was not unanimous agreement on the recommendations of the Committee. However, it is the opinion of a majority of the Committee that the bill concerning a system of motor vehicle insurance would improve the automobile reparations system in Colorado.

Respectfully submitted,

/s/ Representative Clarence Quinlan
Chairman
Committee on Automobile Insurance

CQ/mp

FOREWORD

Senate Joint Resolution No. 7, 1972 Session, directed the Legislative Council to appoint a committee to study:

"...means for the improvement of automobile insurance laws. The study should include alternative plans for reducing costs of automobile insurance to the citizens of Colorado and for prompt and equitable distribution of claims dollars to persons injured in auto accidents."

Members of the General Assembly appointed to the Committee on Automobile Insurance were:

Rep. Clarence Quinlan,
Chairman
Sen. Dan Noble,
Vice-chairman
Sen. Hugh Chance
Sen. Roger Cisneros
Sen. William Garnsey
Sen. Richard Plock
Sen. Joe Schieffelin
Sen. Christian Wunsch

Rep. T. John Baer
Rep. Dominic Coloroso
Rep. Carl Gustafson
Rep. Harold Koster
Rep. Richard Lamm
Rep. Lowell Sonnenberg
Rep. Michael Strang
Rep. Ruben Valdez

The committee expresses its appreciation to the many persons who testified and provided helpful information to the Committee during the interim study. In particular, the Committee wishes to thank the individuals from the state agencies, the insurance companies and organizations, and other persons listed in Appendix A of this report.

Assisting the committee were Mrs. Rebecca C. Lennahan, and Michael T. Risner of the Legislative Drafting Office who provided bill drafting services to the committee. Primary Legislative Council staff responsibility was performed by Stanley Elofson, Principal Analyst, and Lenny Arnold, Senior Research Assistant.

November, 1972

Lyle C. Kyle
Director

TABLE OF CONTENTS

	<u>Page</u>
LETTERS OF TRANSMITTAL.....	iii
FOREWORD.....	vii
COMMITTEE REPORT AND RECOMMENDATIONS.....	1
Directive for Study.....	1
Committee Meetings.....	1
Rejection of the Ballott Proposal.....	1
Committee Findings.....	2
Compensation Under the Tort Liability	
System.....	3
Special and General Damages.....	3
Double Recovery.....	3
Defects of the Present System.....	3
Committee Recommendations.....	4
Compensation Under the New System.....	5
Access to the Tort Liability	
System.....	5
Insurance Coverage-Colorado and	
Other States.....	5
Coordination of Coverage.....	5
Increased Coverage -- Cost of	
New Insurance System.....	6
Summary of the Committee Bill.....	6
Required First Party Coverages.....	6
Medical Coverage.....	6
Rehabilitation Coverage.....	7
Income Loss Coverage.....	7
Accidental Death Coverage.....	7
Minimum Coverages.....	7
Recipients of First Party Coverage.....	7
Limitation on Tort Recovery.....	8
Noncomplying Motorist-Required to be	
Covered.....	8
Noncomplying Motorist - Not Required	
to be Covered.....	9
Coordination of Benefits.....	9
Interstate and Intrastate Provisions.....	9
Self-Insurers.....	9
MINORITY REPORT.....	11
Rates.....	14
Rates Would Rise.....	14
Shifts in Premiums.....	14
Effects of Claims on Rates.....	14
Rating Under No-fault.....	14

	<u>Page</u>
Equity.....	15
Claimants in Massachusetts.....	15
The Poor.....	15
A Dual System.....	15
The 80 Percent More Claimants	
Argument.....	15
Summary.....	17
TEXT AND EXPLANATION OF BILL.....	19

Section

13-25-1	Short Titles.....	19
13-25-2	Legislative Declaration.....	19
13-25-3	Definitions.....	20
13-25-4	Administrative Authority.....	21
13-25-5	Coverage Compulsory.....	22
13-25-6	Required Coverages.....	22
13-25-7	Benefits Payable.....	25
13-25-8	Prompt Payment of Direct Benefits.....	28
13-25-9	Coordination of Benefits.....	29
13-25-10	Required Coverages Are Minimum.....	30
13-25-11	Required Provision for Intrastate and Interstate Operation.....	31
13-25-12	Conditions and Exclusions.....	32
13-25-13	No Tort Recovery for Direct Benefits.....	33
13-25-14	Limitation on Tort Actions.....	34
13-25-15	No Limitation on Tort Action Against Non-complying Tort-Fea- sors.....	35
13-25-16	Self-Insurers.....	36
13-25-17	Quarterly Premium Payments.....	37
13-26-18	Effective Date - Applicability.....	37

APPENDICES

A -- List of Persons who Testified and Organiza- tions which Submitted Information to the Committee.....	39
B -- Correspondence from Senator Joseph B. Schreffelin to Mr. Charles C. Hewitt, Jr., and Mr. Hewitt's Reply.....	43

COMMITTEE REPORT AND RECOMMENDATIONS

I. Directive for Study

Senate Joint Resolution No. 7 directed that the Legislative Council appoint a committee to study:

... means for the improvement of automobile insurance laws. The study should include alternative plans for reducing costs of automobile insurance to the citizens of Colorado and for prompt and equitable distribution of claims dollars to persons injured in auto accidents.

The resolution further directed that the committee report its findings and recommendations to the 1973 Session of the Colorado General Assembly. A Committee on Automobile Insurance, consisting of seven members of the Senate and nine members of the House of Representatives, was appointed by the Legislative Council to conduct this study.

Committee Meetings

In carrying out its directive, the committee held six meetings during the 1972 interim concerning means for improving Colorado's automobile insurance laws. At the meetings, the committee received information and testimony from the Colorado Insurance Division, the state Judicial Department, other state agencies, a number of insurance companies and insurance organizations, and several other interested organizations, including the Colorado Bar Association and the Colorado Trial Lawyers Association. The names of the persons by organizations who met with the Committee are listed in Appendix A.

II. Rejection of the Ballot Proposal

As the public is well aware, an initiated ballot proposal, sponsored by Common Cause and the Colorado Labor Council, which was to provide a system of no-fault insurance in this state was rejected by the electorate by a substantial margin in the November election (209,849 Yes; 598,815 No). The majority of the committee, however, believes that the defeat of this initiated proposal represented rejection of a particular bill rather than rejection of the concept of no-

fault by a majority of Coloradans. This conclusion is reached in light of the following evidence:

(a) Most of the individuals and organizations which went on record in opposition to the ballot proposal advocated the enactment of this complex legislation through the open and deliberative legislative process, rather than enactment through an initiated ballot measure. Thus, the majority of the committee expects that many of these opponents of the ballot proposal will work for the passage of the Legislative Council Committee proposal in the 1973 Session.

(b) The Committee on Automobile Insurance voted at its September 28 meeting to express its concern over the initiated ballot proposal and to urge the public to vote against the proposal in the November election. At other meetings, however, the majority of the committee voted to consider the reform of the automobile reparations system as its primary objective and voted its approval of the bill submitted in this report. The majority of the Committee has been consistent in supporting reform of the automobile reparations system through the legislative process, including the work of the interim committee.

(c) People in Colorado undoubtedly voted against the initiated no-fault ballot proposal for a variety of reasons. The ballot proposal contained some drafting mistakes, acknowledged by the sponsors of the proposal, plus some controversial policy judgments, such as criminal penalties for non-compliance. These policy issues became widely publicized by the opponents of the ballot proposal. The bill submitted in this report has avoided practically all of the policy and bill drafting criticisms of the ballot proposal.

III. Committee Findings

As a preface to the committee's findings, a brief description of the present tort liability system of automobile accident reparations is necessary. It should be remembered that basic to the understanding of the present tort liability system is that it is a fault oriented, adversary system. Under this system, recovery is directly related to negligence. The bodily injury and property damage liability insurance that an individual purchases is not designed to compensate the policyholder for his own losses, but rather compensates a person who is injured or whose property is damaged because of the policyholder's negligence.

The primary objective of the tort liability system is not to compensate all persons who suffer loss, but to provide compensation in relation to an individual's legal responsibility for damages to another person. Under the tort liability system, a person is held legally and financially responsible for damages caused to another as a result of his own negligence or "fault".

Compensation Under the Tort Liability System

In order for an individual to recover damages under present Colorado law, he must establish that his "negligence was not as great as the negligence of the person against whom recovery is sought."^{1/} Under the comparative negligence rule, a person who is partially negligent may still recover damages but only in inverse proportion to his degree of "fault".

Special and General Damages. An individual, under the present system, may recover from the "at fault" party general and special damage awards. The term "special damage awards" refers to compensation for tangible out-of-pocket expenses which the injured party has incurred such as medical expenses and income loss. The term "general damage" (or "pain and suffering awards"), refers to intangible losses such as inconvenience, loss of dignity, and discomfort.

Double Recovery. The tort liability system allows the injured party to recover damages several times over his actual loss because of the "collateral source" rule. This rule of damages holds that a person who is at fault should not benefit by paying lower damages simply because the injured person has received compensation for his losses from other sources (e.g., health and accident insurance).

Defects of the Present System

The Committee recognizes that while Colorado has not experienced, at least to the same degree, some of the problems which have plagued other states with regard to the tort liability system, the committee does believe that there are inherent major problems within the system with respect to the handling of automobile accident victims who suffer bodily injuries.

^{1/} Section 41-2-14 (1), C.R.S. 1963 (1971 Supp.).

(1) The tort liability system does not compensate all victims for their losses nor, in all fairness, is it designed to do so. The tort system, for example, excludes from recovery victims of single car accidents, the "at fault" driver and his family, passengers in the "at fault" driver's motor vehicle, and the "at fault" pedestrian.

(2) Further, one study has shown that those persons who are compensated by the tort liability system are not always compensated equitably. A Department of Transportation study on the "Economic Consequences of Automobile Accident Injuries" indicated that persons suffering minor injuries tend to be over-compensated for their losses, while persons with serious injuries tend to be under-compensated for their losses.^{2/}

(3) The cost/benefit ratio of the tort liability system is exceedingly high. Out of each premium dollar paid by policy holders for automobile bodily injury liability insurance, 33 cents goes for general overhead expenses and 23 cents goes for claims administration costs for a total overhead cost of 56 cents. Of the remaining 44 cents, the net amount paid to victims over their actual economic loss (i.e., "pain and suffering" awards) was 21.5 cents; 8 cents was paid to compensate for losses compensated from other sources; and only 14.5 cents was paid to victims as compensation for out-of-pocket loss not otherwise compensated.^{3/}

IV. Committee Recommendations

As a result of the testimony, the committee concluded at its August 15th meeting that Colorado's present automobile reparations system was in need of reform, and a motion was adopted to consider reform of the automobile reparations system as the committee's primary objective. At subsequent meetings, the committee voted its approval of draft legislation prepared to meet the committee's primary objective of reform of the automobile reparations system.

^{2/} Department of Transportation, Automobile Insurance and Compensation, Study: Economic Consequences of Automobile Accident Injuries, Vol. I (1970).

^{3/} Hearings before Committee on Commerce, United States Senate, Ninety-first Congress, Automobile Insurance Study Oversight, May, 1969, pp. 38-42.

(1) Compensation Under the New System. The Committee determined that any plan to reform the present system should provide coverage to a person injured in an automobile accident for: a) all reasonable and necessary medical expenses incurred over a three-year period; b) reasonable vocational rehabilitation expenses up to \$25,000 incurred within a five-year period; c) replacement of lost income of up to \$150 per week for a period of 51 weeks, and reimbursement of up to \$15 per day for 51 weeks, for essential service expenses which the injured person would have performed without income; and, d) compensation for death of \$1,500. These coverages are to be provided to the injured party by his own insurance company regardless of "fault". In addition, the injured party is to be paid within 30 days after making a claim, with an insurance company subject to penalties for noncompliance.

(2) Access to the Tort Liability System. The Committee also determined that the tort liability system of compensating persons for bodily injury should be limited to only those persons or relatives of persons who have suffered dismemberment, permanent disability, permanent disfigurement, or death and to persons who have incurred medical and rehabilitation expenses exceeding \$1,000. In addition, the injured party may not recover through the tort liability system for those benefits already provided by his own insurance company. Incidentally, the Common Cause proposal required medical and rehabilitation expenses of \$2,000 before an injured person could sue.

(3) Insurance Coverage - Colorado and Other States. Under the new system, automobile insurance would be compulsory for both commercial and private motor vehicles, but no criminal penalties would be imposed upon a person who fails to purchase the required coverages. The Common Cause proposal provided misdemeanor penalties for non-complying drivers.

The committee bill provides that an individual's policy written in Colorado will provide coverages while the person is in jurisdictions other than Colorado. The proposed bill also provides that an automobile liability insurance policy issued in another state will automatically be converted to provide Colorado coverages while the motor vehicle is being operated in Colorado. Further, any insurance company which does business in Colorado may not write policies in other states which excludes Colorado coverages while the vehicle is being operated in this state. The Common Cause proposal would also have required out-of-state motorists to have complying insurance coverage or be subject to misdemeanor penalties.

(4) Coordination of Coverage. Under the new system, automobile insurance would be primary. That is, the benefits

provided by a person's automobile insurance would initially pay for losses incurred and other sources of insurance would be in addition to the automobile insurance benefits. However, a policyholder, at his own option, may elect to coordinate the coverages provided by his automobile insurance with other sources of coverage such as health and accident insurance. If the policyholder does elect to coordinate coverages, the providers of other sources of coverage are required to show that the coordination has resulted in an equitable reduction in premium costs to the policyholder. The Common Cause proposal provided that automobile insurance would be secondary to other sources of insurance.

(5) Increased Coverage -- Cost of New Insurance System. Finally, the committee believes that, under the new system of motor vehicle insurance which the committee is recommending, Colorado's motoring public will be compensated for most of the actual economic losses resulting from bodily injury incurred in automobile accidents. Not only will greater benefits be paid for economic losses, a greater number of people will be compensated for these losses under the new system.

Costing information submitted to the committee by a major automobile insurance company writing in Colorado indicates that benefit coverage can be provided to policyholders for about the same premium as they now pay, and there may even be modest decreases in premiums in many cases.

V. Summary of the Committee Bill

Provided below is a brief narrative of the draft bill prepared by the committee for consideration in the 1973 Session. The text and comments of the bill begin on page 19 of this report.

Required First Party Coverages

This bill would provide that every owner of a motor vehicle which is required to be registered or licensed in Colorado must have, in addition to the present bodily injury and property damage liability coverages, first party coverages (i.e., payable regardless of "fault") for medical, rehabilitative, income loss, and death benefits (13-25-5).

Medical Coverage. The injured person would be compensated for all medical, chiropractic, hospital, nursing, X-ray, dental, surgical, ambulance and prosthetic services, and non-

medical care and treatment rendered in accordance with a recognized religious healing method, performed within three years after the injury. The named insured may choose a \$100 deductible provision for himself and his family (13-25-6 (3)).

Rehabilitation Coverage. The injured person would receive compensation up to \$25,000 for rehabilitation procedures, or treatment and occupational training provided within five years after the injury (13-25-6 (4)).

Income Loss Coverage. The injured person would receive 80 percent or the first \$100 of his loss of gross income per week, and 70 percent of his loss of gross income over \$100 per week, subject to a maximum of \$150 per week. In addition, the injured person would be compensated for expenses of up to \$15 per day for essential services which the injured person would have performed without income. The payments for income loss and essential services are to begin not less than seven days after the accident and are not to exceed 51 additional weeks (13-25-6 (5)).

Accidental Death Coverage. A sum of \$1,500 would be paid to the estate upon the death of a person who is eligible to receive benefits under this bill.

Minimum Coverages. The coverages noted above are the required minimum coverages and insurers are expressly permitted to issue policies providing more extensive coverage. Loss statistics as to bodily injury liability, property damage liability, and the required first party coverages are to be kept separately for rating purpose (13-25-10).

Recipients of First Party Coverages

The first party coverages would be applicable to the owner of the automobile, members of his family, the occupants of his automobile, and pedestrians in accidents involving his automobile. In addition, the insured and the members of his family would be covered in accidents involving any motor vehicle in this state or any other state (13-25-7 (b), (c), and (d)).

If a passenger is covered by a policy other than the policy covering the vehicle in which he is injured, primary coverage would be afforded by the policy covering the vehicle (13-25-7 (3)). However, if a person who has a complying policy is operating a vehicle other than his own or his employer's, the operator's policy is primary. (This exception would not apply to vehicles regulated by the Public Utilities Commission (13-25-7 (4)).

Limitation on Tort Recovery

No person for whom the first party coverages are required may sue for damages for bodily injury except in cases of death, dismemberment, permanent disfigurement, permanent disability or where medical and rehabilitation services have a reasonable value in excess of \$1,000 (13-25-14 (1)). Persons required to be covered would include every owner of a motor vehicle required to be registered or licensed in Colorado, his family, the occupants of his motor vehicle, and pedestrians involved in an accident with his motor vehicle.

No person eligible for the first party coverages required by this bill would be able to recover in an action for damages for those first party benefits required to be paid. This provision would eliminate the collateral source or "double recovery" rule under the tort liability system. However, it would not prevent a person who reaches the threshold (i.e., death, dismemberment, permanent disability or disfigurement, medical and/or rehabilitation costs over \$1,000) from recovering special damages over and above that paid by his automobile insurance policy, nor does it bar recovery for general or "pain and suffering" damages. An insurer has the right to subrogate or recover benefits paid to his policyholder from the negligent party in those cases where benefits are paid in excess of \$1,000 (13-25-13).

Noncomplying Motorist - Required to be Covered

A person who is required to have a complying policy but does not comply would be subject to the sanctions of section 13-7-15 of Colorado's "Motor Vehicle Financial Responsibility Act" (13-25-5 (1)). The noncomplying driver would be personally liable to his passengers and pedestrians for any benefits which they would have been entitled to receive had the driver been covered by a complying policy. By this provision, a noncomplying motorist would be held strictly liable for these benefits. That is, no determination of negligence or fault would be necessary (13-25-5 (2)). There is no limit on the right of an insurer or an injured party to sue a noncomplying motorist (13-25-15 (1) (c)). However, the noncomplying driver is subject to the limitations on tort actions established by section 13-25-14 (i.e., suffers permanent disfigurement, dismemberment, etc.), and may not sue unless he meets the criteria of that section.

Noncomplying Motorist - Not Required to be Covered

Section 13-25-15 (1) (b) would apply to accidents involving out-of-state drivers and other vehicles not required to be covered. Since the driver who is not required to be covered would have all of his rights under the tort liability system, the same rights are given to the complying driver should he be involved in an accident with a person not required to be covered. However, if an out-of-state driver has coverage equivalent to the coverage required by Colorado, he may not be sued unless the injured party meets the criteria of Section 13-25-14 (e.g. medical expenses of over \$1,000).

Coordination of Benefits

Under this bill, automobile insurance would be primary. It does not require that benefits be coordinated, but at the option of the policyholder the providers of other benefits, such as health and accident carriers, are authorized to coordinate benefits (13-25-9 (1)). If benefits are coordinated, the other providers are required to show evidence that the coordination has resulted in an equitable reduction of costs or premiums to the beneficiary (13-25-9 (2)).

Interstate and Intrastate Provisions

Every policy is to provide the minimum coverage required by this bill outside of this state and shall be at least as extensive as the coverages afforded in other jurisdictions (13-25-11 (3)). A complying policy may not be required to provide coverage if a motor vehicle is operated in a jurisdiction where coverage is afforded through a government agency or public financed auto accident reparation plan such as the plans in effect in Saskatchewan, Canada or in Puerto Rico (13-25-11 (2)). Any automobile liability policy issued outside of Colorado would automatically be converted to provide the required coverages while the motor vehicle is being operated in this state (13-25-11 (4) (a)). In addition, no insurer writing business in Colorado could exclude the required Colorado coverages from an automobile liability policy written elsewhere (13-25-11 (4) (b)).

Self-Insurers

Any person who has more than 25 motor vehicles registered in his name may qualify as a self-insurer if that person has the ability to pay the direct benefits required by this bill and any judgment which may be obtained against him (13-25-16).

MINORITY REPORT

Senate Joint Resolution No. 7 of the 48th General Assembly appointed a committee to conduct:

A study on the means for the improvement of automobile insurance laws. The study should include alternative plans for reducing costs of automobile insurance to the citizens of Colorado and for prompt and equitable distribution of claims dollars to persons injured in auto accidents.

The committee, by majority vote, changed the charge of the General Assembly and did not consider alternatives at all. Instead, the committee spent all its time discussing: (a) the concept of no-fault insurance; (b) the Common Cause No-Fault proposal (which it voted to oppose 7-4); (c) the 1972 no-fault bill (H.B. 1064); and, finally, (d) its "revised" House Bill 1064, included in this report, which was approved by a majority of the committee.

We, the minority of the committee, wish to bring, by means of this report, some very significant findings on the problems associated with no-fault insurance which came out during the hearings. We would also stress again that the committee did not follow the legislative assignment and we question whether a legislative directive to an interim committee has any meaning.

Early in the hearings it became evident that, to reduce costs of automobile insurance, it was necessary to study the factors of the automobile insurance premium which make up the majority of the premium, i.e., those elements dealing with damage to the car. These factors are the premiums charged for property damage liability, collision, and comprehensive, which make up approximately 70 percent of the total premium of a typical Colorado automobile insurance policy. The committee voted to ignore these factors and instead concentrated on the remaining 30 percent of the premium. Thus, the proposed bill only affects 30 percent of the premium.

We, the minority of the committee, asked for hearings regarding these other matters and were promised a full day of hearings on whether to include property damage liability in any proposed legislation. Property damage is not included in the bill and we did not receive a day of hearings on this matter. The majority of the committee concluded that it was important for the committee to approve almost any bill prior to the election in order to offset the Common Cause proposal

and voted for the revised House Bill 1064 at the committee's last meeting.

Although we believe that the committee acted hastily and high handedly, it did act. We believe the proposed bill will not meet the prime goal of the committee -- an improvement of Colorado's automobile insurance laws. In fact, based on much revealing testimony, we conclude that enactment of the bill would be a step backward and would increase premiums. The existing system is preferable.

Inevitably, many witnesses and committee members referred to the Massachusetts and Florida no-fault laws. However, we believe all members of the committee came to the conclusion that comparing the insurance and court problems of those states to those issues in Colorado is comparing apples and oranges. Colorado's laws must be based on Colorado's experience.

In our hearing with claims representatives, we found that between 90 - 94 percent of claims are paid promptly here. There was some evidence that overpayment may exist occasionally regarding payment of small medical "back-lash" type claims and occasional underpayment on large crippling claims. But the proposed bill does not address the large claims. They would be paid under the fault "tort" system, even under this proposal. The claims representatives felt that the extent of overpayment of small claims was minimal. Thus, we conclude the existing system already meets the goal of "prompt and equitable distribution of claim dollars."

Four other prime reasons for changing the law in Florida and Massachusetts do not exist here:

(a) High premiums. Nationally among Allstate policyholders, Colorado ranks in the lowest 15 states in bodily injury premiums. An Insurance Service Office study showed us seventh lowest. How much better can we expect to get? We believe adoption of the proposal would raise premiums, and Colorado would thus lose its presently favorable status.

(b) Court delay, with a resultant delay in getting claims paid, is not a problem in Colorado. First of all, figures from the Colorado Judicial Department indicate that auto-related personal injury cases generally make up a small

percentage of total civil cases before the courts and these cases are promptly heard. The one exception is that there is some delay in Denver.

(c) Excessive attorney fees? Testimony indicated only one to four percent of claim dollars in Colorado go to attorneys.

(d) Excessive numbers of claims being handled through attorneys? In Massachusetts before no-fault, a great percentage of claimants engaged attorneys. This is not the case in Colorado.

The committee members, although often confused by differing statistics (occurring because of slightly different experiences in Colorado by different companies), generally agreed that the above criticisms of the automobile reparations system were not present in Colorado. We, the minority members, respectfully ask on what Colorado statistics do they base criticism of the existing system? We feel the existing system is working well at low rates.

On several occasions, witnesses and committee members made comments such as "We must adopt no-fault legislation. The public is crying for it." We reject that contention. No witnesses representing public groups made such remarks, unless one could call Common Cause a public group.

The rejection by Colorado voters of the Common Cause no-fault ballot proposal can only be interpreted as an overwhelming expression by Coloradans that they do not want no-fault legislation. Some people may have voted against the proposal because of drafting errors or specific policy decision made by the drafters of the ballot proposal. We believe, however, that the vote against no-fault was of such magnitude that the only explanation is that the people of Colorado opposed both the ballot proposal, in particular, and the no-fault concept, in general.

We believe that the public would like to see auto insurance premiums decrease, with no decreases in benefits, and with equity retained. We do not believe the proposed bill will do that. In fact, we believe the bill would increase rates and decrease equity.

Rates

(1) Rates would rise. Although company actuaries differed, the most exhaustive and detailed study of the Common-Cause Bill, done by Allstate Insurance Companies, indicated the maximum dollar savings possible on any no-fault bill would be \$12.50 per year in Colorado. As benefits are increased, this saving would disappear and higher premiums would be necessary. This proposal gives lots of additional benefits including unlimited medical, a death benefit, loss of income, etc. These benefits have to be paid for. The proponents claim the decrease in premiums on bodily injury liability, medical payments coverage, and uninsured motorists would more than cover the increased benefits. We think they are very wrong.

(2) Shifts in premiums. Substantial shifts in premium would occur if no-fault were adopted. These shifts would favor the young driver and penalize the older one. They would also favor the large car driver and penalize the driver of the small car. The old pensioner, driving a Volkswagen or Datsun, would find raises in premiums; the young driver, driving a large Ford, Chevrolet, or Cadillac, would find premiums lower. An insurance law which would encourage, through the rating structure, the purchase of large cars would obviously go against the present trend of conserving energy and of reducing air pollution.

The proposal includes trucks, buses, and motorcycles. There would be premium shifts to lower the insurance costs for trucks and buses and to substantially raise the premiums for motorcycle riders.

(3) Effects of claims on rates. Presently, claims on medical payments coverage, collision, and comprehensive are paid on a no-fault basis. Underwriting restrictions, such as putting a person on a deductible with rate hikes, are common insurance practices in Colorado after claims are made against these coverages. Premiums would also be increased for bodily injury claims under no-fault.

(4) Rating under no-fault. Even after the widely publicized rate reductions in Massachusetts, it is important to realize Massachusetts has still had the highest rates in the nation. We believe adoption of no-fault in Colorado would draw our rates toward the Massachusetts present rates. Unlike our present system, no-fault rates would be based on comparable factors between the two states -- medical, hospital, loss of wages benefits. Thus, Colorado, now enjoying between the eighth to tenth lowest insurance rates would rapidly lose that favored status.

Equity

Claimants in Massachusetts. Why did the Massachusetts poll of claimants after one year of no-fault indicate over a 62 percent dissatisfaction with the law? Any law is fine until you have to use it. This poll only talked to people who had to use it. The chief reason given went something like this: "Why should I have to make claim against my own insurance when I was not at fault? Why should the guy who was at fault get off free?" Is this equity?

Most companies claim this situation will not occur, since they still have to determine fault on the property damage portion of the claim. Don't you believe it!

The poor, many of whom do not carry insurance, now have a tort right to recover damages. Any no-fault bill, including the committee proposal, would strip them of this right. They lose a right and gain nothing. Is this equity?

Another effect on the poor is that, when they do buy insurance, they would purchase the highest deductibles available. But these are the very people who can least afford high deductibles when an accident occurs. Is this equity?

A Dual System

The proposal sets out a dual system of settling claims. It retains the tort system for settling property damage claims and a combination of tort and no-fault for the medical and other benefits claims. We believe this is a very important point -- not denied by the proponents -- but not understood by the public and General Assembly.

Most accidents do not involve bodily injury. Almost all accidents involve property damage. Thus, this no-fault "reform" is only talking about a small percentage (31 percent) of the accidents. We believe the public has been badly uninformed on this very vital point.

The 80 percent more claimants argument. A great deal of emphasis has been placed on the idea that many more people would collect under no-fault than under the present system. The widely publicized Department of Transportation figure that only 45 percent of the seriously injured claimants collect under the present tort system (and 55 percent not collecting) is highly misleading and is often used incorrectly. It was misused in Committee and in the Denver Post.

Under Appendix B, we show a letter from Senator Schiefelin to Mr. Charles Hewitt, Chief Actuary of Allstate Insurance Company, with Mr. Hewitt's reply. The "80 percent more claimants" figure is properly 3.85 percent as per Appendix B. (These figures have been updated as noted below.) We do not belittle the idea of paying 3.85 percent more claims, but the cost of doing that seems excessive.

In calendar year 1971, according to the Department of Revenue's Standard Summary of Motor Vehicle Traffic Accidents, there were 95,908 accidents reported in Colorado. As a result of these accidents, 635 people were killed and 8,301 people suffered "serious" accident (a bleeding wound, distorted member, or a condition that required a victim to be carried from the accident). Another 21,238 had visible injuries such as bruises, abrasions, swelling, etc., or complained of pain, without any visible signs of injury or were momentarily unconscious.

In 1971, the Colorado total of "serious" injury and fatalities was 8,936 or 9.32 percent of the total accidents reported. Assuming that the Department of Transportation study figures are correct, that only 45 percent of people seriously or fatally injured in accidents are compensated under the present system, the number of persons in Colorado compensated under the tort system would be 4,021. An increase of this figure by 80 percent would mean that we would be paying 3,217 new claimants in serious accidents. This number represents only 3.36 percent of all accidents in Colorado.

However, it must be remembered that the present insurance system is more than just the tort system. Many people are covered by and receive compensation from the medical payments portion of their automobile insurance. For example, a spokesman for Allstate Insurance Companies testified that 81 percent of their clients carry medical payment coverage. This coverage, of course, is paid on a "no-fault" basis and would mean that many people are compensated by this coverage under the present system. Thus, the present insurance system would compensate 7,238 people, so that the adoption of no-fault would not pay more people.

Summary

We believe that the cost of the committee's bill can be summarized as follows:

- (1) Higher rates for all drivers.
- (2) Considerably higher rates for older people.
- (3) Tremendous increase in rates for drivers of small cars and motorcycles.
- (4) Environmental costs, both in air pollution and the energy crisis. The law would encourage sale of "gas-eating" large cars, and would discourage sale of small cars.
- (5) Loss of the present tort right, except in cases of serious injury. This would be a particular hardship on our economically poor population.
- (6) The present system -- combining a tort system and a no-fault system -- already pays the same number of claimants as would the proposed bill.

Thus, we find any advantages to the proposed bill to be far out-weighed by the disadvantages and would urge the General Assembly to defeat it.

Respectfully submitted,

Senator Joseph B. Schieffelin
Senator Richard H. Plock
Senator Roger Cisneros
Representative Lowell E. Sonnenberg

TEXT

EXPLANATION

1 A BILL FOR AN ACT
2 CONCERNING A SYSTEM OF MOTOR VEHICLE INSURANCE.

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

4 SECTION 1. Chapter 13, Colorado Revised Statutes 1963, as
5 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

6 ARTICLE 25

7 Motor Vehicle Insurance

8 13-25-1. Short titles. (1) This article shall be known and may
9 be cited as the "Colorado Auto Accident Reparations Act".

-61- 10 (2) For purposes of coordination of this article with auto
11 accident reparation laws enacted in other jurisdictions, this article
12 and those laws enacted in other jurisdictions which are substantially
13 similar to the provisions of this article shall be known as the
14 "Standard Auto Accident Reparations Act".

15 13-25-2. Legislative declaration. The general assembly declares
16 that its purpose in enacting this article is to avoid inadequate
17 compensation to victims of automobile accidents; to require
18 registrants of motor vehicles in this state to procure insurance
19 covering legal liability arising out of ownership or use of such
20 vehicles and also providing benefits to persons occupying such

TEXT

EXPLANATION

1 vehicles and to persons injured in accidents involving such vehicles;
2 and to stabilize and reduce the cost of automobile insurance to the
3 public.

4 13-25-3. Definitions. (1) As used in this article, unless the
5 context otherwise requires:

6 (2) "Commissioner" means the commissioner of insurance.

7 (3) "Complying policy" means a policy of insurance approved by
8 the commissioner, which provides the coverages and is subject to the
9 terms and conditions required by this article.

10 (4) "Department" means the department of revenue acting directly
11 or through its duly authorized officers and agents.

12 (5) "Described motor vehicle" means the motor vehicle described
13 in the complying policy.

14 (6) "Director" means the executive director of the department.

15 (7) "Insured" means the named insured, relatives of the named
16 insured who reside in the same household as the named insured, or any
17 person using the described motor vehicle with the permission of the
18 named insured.

19 (8) "Motor vehicle" means any vehicle of a type required to be
20 registered and licensed under the laws of this state and which is

TEXT

1 designed to be propelled by an engine or motor except one designed
2 primarily for use off the road or on rails.

3 (9) "Owner" means a person who holds the legal title to the
4 vehicle; or in the event a vehicle is the subject of an agreement for
5 the conditional sale or lease thereof with the right of purchase upon
6 performance of the conditions stated in the agreement and with an
7 immediate right of possession vested in the conditional vendee or
8 lessee, or in the event a mortgagor of a vehicle is entitled to
9 possession, then such conditional vendee or lessee or mortgagor shall
10 be deemed the owner for the purpose of this article.

11 (10) "Pedestrian" means any person not occupying or riding in or
12 upon a motor vehicle or machine operated by a motor or engine.

13 (11) "Person" means every natural person, firm, partnership,
14 association, or corporation.

15 13-25-4. Administrative authority. Except where specific
16 administrative authority is conferred on the commissioner, the
17 director shall administer and enforce the provisions of this article,
18 and he may make rules and regulations necessary for the administration
19 of this article in accordance with article 16 of chapter 3, C.R.S.
20 1963.

EXPLANATION

The director of the Department of Revenue is
to administer and enforce this article.

TEXT

1 13-25-5. Coverage compulsory. (1) Every owner of a motor
2 vehicle who operates the motor vehicle on the public highways of this
3 state or who knowingly permits the operation of the motor vehicle on
4 the public highways of this state shall have in full force and effect
5 a complying policy under the terms of this article covering the said
6 motor vehicle, and any owner who fails to do so shall be subject to
7 the sanctions provided under section 13-7-15 of the "Motor Vehicle
8 Financial Responsibility Act".

9 (2) Any owner of a motor vehicle who operates the motor vehicle
10 on the public highways of this state or who knowingly permits the
11 operation of the motor vehicle on the public highways of this state
12 who fails to have in full force and effect a complying policy covering
13 said motor vehicle at the time of any accident, on account of which
14 benefits under section 13-25-6 (3) to (6) would be payable, shall be
15 personally liable for the payment of such benefits to the person for
16 whom such payment would have been required, if such coverage had been
17 in effect under the terms of section 13-25-7. Such an owner shall
18 have all of the rights and obligations of any insurer under this
19 chapter.

20 13-25-6. Required coverages. (1) Subject to the limitations

EXPLANATION

Every owner of a motor vehicle required to be registered or licensed in this state would need to have a complying policy under the terms of this bill. Any owner who fails to do so would be subject to the sanctions of section 13-7-15 of the "Motor Vehicle Financial Responsibility Act". No criminal penalties for non-compliance are included under this bill. The bill includes both private and commercial motor vehicles. The term motor vehicle is defined in section 13-25-3 (8) on page 20.

Any owner who is required to be covered, but who does not have a complying policy in effect at the time of an accident, would be personally liable to the occupants of his motor vehicle and pedestrians involved in an accident with his motor vehicle for any benefits which they would have received had he been covered by a complying policy. The owner would have all the rights and obligations of an insurer. Section 13-25-15 (1) (c) also provides that an injured person or his insurer shall not be limited in their right to maintain tort action against an alleged noncomplying tort-feasor.

TEXT

1 and exclusions authorized by this article, the minimum coverages
2 required for compliance with this article are as follows:

3 (2) Legal liability coverage for bodily injury or death arising
4 out of the use of the motor vehicle to a limit, exclusive of interest
5 and costs, of fifteen thousand dollars to any one person in any one
6 accident and thirty thousand dollars to all persons in any one
7 accident, and for property damage arising out of the use of the motor
8 vehicle to a limit, exclusive of interest and costs, of five thousand
9 dollars in any one accident;

10 (3) Compensation to injured persons for payment of all
11 reasonable and necessary expenses for medical, chiropractic, hospital,
12 nursing, x-ray, dental, surgical, ambulance, and prosthetic services,
13 and nonmedical remedial care and treatment rendered in accordance with
14 a recognized religious method of healing, performed within three years
15 after the accident and arising out of the use or operation of a motor
16 vehicle; except that there shall be offered to the insured, for the
17 named insured and relatives of the named insured who reside in the
18 same household as the named insured, at the option of the named
19 insured, deductible provisions of one hundred dollars;

20 (4) (a) (i) Rehabilitation procedures or treatment and

EXPLANATION

To comply with this bill every owner of a motor vehicle would have to have the following coverages:

(2) Bodily injury and property damage liability coverage. Bodily injury liability coverage would still be necessary because some exposure to tort action would still exist under this bill. Property damage liability coverage would be necessary since the bill does not include property damage under the new system.

(3) Medical benefits. Would require coverage for all reasonable and necessary expenses for the services noted in the text performed within three years after the accident. The insured may select a deductible provision of \$100 for himself and his family.

(4) Rehabilitation benefits. Would require

TEXT

1 rehabilitative occupational training for the injured person. The
2 procedures, treatment, or course of rehabilitation shall meet the
3 following standards:

4 (ii) A healing art procedure or treatment as defined by section
5 91-5-3, C.R.S. 1963, or other nonmedical remedial care and treatment
6 rendered in accordance with a recognized religious method of healing;

7 (iii) A course of occupational training shall be reasonable and
8 appropriate for the particular case;

9 (iv) A procedure, treatment, or training shall contribute
10 substantially to rehabilitation;

11 (v) The cost of a procedure, treatment, or training shall be
12 reasonable in relation to its probable rehabilitative effects.

13 (b) An insurer obligated to provide direct benefits under this
14 section shall be presumed to have complied with the provision for
15 rehabilitation when the value of rehabilitation services or treatment
16 provided under this subsection (4) shall have reached twenty-five
17 thousand dollars within five years after an accident involving a motor
18 vehicle.

19 (5) Payment of benefits equivalent to eighty-five percent of the
20 first one hundred dollars of loss of gross income per week and seventy

EXPLANATION

coverage for rehabilitation procedures or treatment and training which meets the standards noted in the text. Rehabilitation benefits would be provided up to \$25,000 within a five year time period.

Section 91-5-3 defines healing art as including: "any system, treatment, operation, diagnosis, prescription, or practice for the prevention, ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition."

(5) Income loss benefits. Would provide the injured party 80 percent or the first \$100 of his gross lost income per week, and 70 per-

TEXT

1 percent of the loss of gross income over one hundred dollars per week
2 from work the injured person would have performed had he not been
3 injured during a period commencing not later than seven days after the
4 date of the accident and not exceeding fifty-one additional weeks, but
5 subject to a maximum of one hundred fifty dollars per week of
6 benefits, plus expenses not exceeding fifteen dollars per day which
7 are reasonably incurred for essential services in lieu of those the
8 injured person would have performed without income during the period
9 commencing not later than seven days after the date of the accident
10 and not exceeding an additional fifty-one weeks;

11 (6) Compensation on account of the death of a person for whom
12 direct benefits are provided under this section, payable to the estate
13 of the deceased, in the total amount of one thousand five hundred
14 dollars.

15 13-25-7. Benefits payable. (1) (a) The coverages described in
16 section 13-25-6 (3) to (6) shall be applicable to:

17 (b) Accidental bodily injury sustained by the named insured when
18 injured in an accident involving any motor vehicle, regardless of
19 whether the accident occurs in this state or in any other
20 jurisdiction, except where the injury is the result of the use or

EXPLANATION

cent of loss of gross income over \$100 per week, up to a maximum of \$150 per week. Coverage would also include payments up to \$15 per day for essential services which would have been performed without income by the injured party. Payments for income loss and essential service benefits would begin no later than seven days after the accident and would continue for up to 51 additional weeks.

(6) Accidental death coverage. Would provide \$1,500 compensation on occurrence of death.

The medical, rehabilitative, income loss, and death coverages described above would apply to: (1) the named insured and relatives who reside with the named insured, when involved in an accident involving any motor vehicle regardless of whether the accident occurs in Colorado or in other jurisdictions; (2) occupants of the insured's motor vehicle, or; (3) pedestrians injured by the insured's motor vehicle.

EXPLANATION

TEXT

1 operation of the named insured's own motor vehicle not actually
2 covered under the terms of this article;

3 (c) Accidental bodily injury sustained by a relative of the
4 named insured under the circumstances described in paragraph (b) of
5 this subsection (1), if the relative at the time of the accident is a
6 resident in the household of the named insured (whether or not
7 temporarily residing elsewhere), except where the relative is injured
8 as a result of the use or operation of his own motor vehicle not
9 actually covered under the terms of this article;

10 (d) Accidental bodily injury arising out of accidents occurring
11 within this state sustained by any other person while occupying the
12 described motor vehicle with the consent of the insured or while a
13 pedestrian if injured in an accident involving the described motor
14 vehicle.

15 (2) The definition of "motor vehicle" set forth in section
16 13-25-3 (8) shall not apply with respect to paragraphs (b) and (c) of
17 subsection (1) of this section. For purposes of said paragraphs (b)
18 and (c), "motor vehicle" means any motor vehicle required to be
19 registered and licensed for operation on the public highways of this
20 state or any other jurisdiction.

TEXT

1 (3) Except as provided in subsection (4) of this section, when a
2 person injured is also an insured under a complying policy other than
3 the complying policy insuring the vehicle out of the use of which the
4 accident arose, primary coverage shall be afforded by the policy
5 insuring said vehicle under section 13-25-6; but in the event two or
6 more insurers have obligations under complying policies to pay
7 benefits to the same person, the limits of coverage available as
8 benefits to such person shall be the limits of a single complying
9 policy except to the extent that optional coverages purchased for
10 additional premiums on a voluntary basis are applicable. In the event
11 two or more insurers are liable to pay benefits on the same basis, any
12 insurer paying benefits shall be entitled to an equitable pro-rata
13 contribution from such other insurer.

14 (4) When an accident involves the operation of a motor vehicle
15 by a person who is neither the owner of the motor vehicle involved in
16 the accident nor an employee of the owner, and the operator of the
17 motor vehicle is an insured under a complying policy other than the
18 complying policy insuring the motor vehicle involved in the accident,
19 primary coverage as to all coverages provided in the policy under
20 which the operator is an insured shall be afforded by the policy

EXPLANATION

The policy insuring the vehicle is to provide primary coverage in the event that a passenger or other person injured is insured under his own complying policy. An injured person may not receive benefits from more than one complying policy, except to the extent that a policy may provide additional optional coverage. If two or more insurers are liable to pay benefits, the insurer paying the benefits is entitled to a pro-rata contribution from the other insurer.

The policy of the motor vehicle operator is to be primary in cases where the operator is neither the owner of the motor vehicle or an employee of the owner. However, policies covering a motor vehicle subject to regulation by the Public Utilities Commission under the articles cited would be primary.

TEXT

1 insuring the said operator and any policy under which the owner is an
2 insured shall afford excess coverage. When an accident involves the
3 operation of a motor vehicle regulated under the provisions of
4 articles 9, 10, or 11 of chapter 115, C.R.S. 1963, the provisions of
5 subsection (3) of this section shall apply.

6 13-25-8. Prompt payment of direct benefits. (1) Payment of
7 benefits under the coverages enumerated in section 13-25-6 (3) to (6)
8 shall be made on a monthly basis. Benefits for any period are overdue
9 if not paid within thirty days after the insurer receives reasonable
10 proof of the fact and amount of expenses incurred during that period;
11 except that an insurer may accumulate claims for periods not exceeding
12 one month, and benefits are not overdue if paid within fifteen days
13 after the period of accumulation. If reasonable proof is not supplied
14 as to the entire claim, the amount supported by reasonable proof is
15 overdue if not paid within thirty days after such proof is received by
16 the insurer. Any part or all of the remainder of the claim that is
17 later supported by reasonable proof is overdue if not paid within
18 thirty days after such proof is received by the insurer. In the event
19 that the insurer fails to pay such benefits when due, the person
20 entitled to such benefits may bring an action in contract to recover

EXPLANATION

The benefits required by this bill become overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses. The section also contains enforcement provisions with interest and damage penalties for noncompliance.

TEXT

1 the same. In the event the insurer is required by such action to pay
2 any overdue benefits, the insurer shall, in addition to the benefits
3 paid, be required to pay the reasonable attorney fees incurred by the
4 other party. The insurer shall pay interest on the benefits which
5 were in controversy at a rate of eighteen percent per annum, with
6 interest commencing from the date the benefits in controversy were
7 due. In addition, in the event of willful and wanton failure of the
8 insurer to pay such benefits when due, the insurer shall pay to the
9 other party, in addition to the other amounts due to the other party
10 under this subsection (1), an amount which is three times the amount
11 of unpaid benefits in controversy in the action.

12 (2) Benefits provided under section 13-25-6 (3) and (4) may be
13 paid by the insurer directly to any person supplying necessary
14 products, services, or accommodations to the person for whom benefits
15 are required under section 13-25-6 (3) or (4).

16 13-25-9. Coordination of benefits. (1) To avoid duplication of
17 benefits available through other insurance or contract rights,
18 providers of other benefits are hereby expressly authorized to
19 coordinate such benefits with coverages required under this article.

20 (2) Any provider of such other benefits which have been

EXPLANATION

The benefit coverage provided by automobile insurance is to be primary to other sources of benefits. Providers of other benefits, such as health and accident, are authorized to coordinate benefits with the coverages required under this bill. If benefits are coordinated, the provider of other benefits must show evidence of reduced premiums or cost.

TEXT

EXPLANATION

1 coordinated with coverages required under this article shall file with
2 the commissioner evidence that such coordination has resulted in an
3 equitable reduction in premiums or costs to beneficiaries of such
4 other insurance or contract rights.

5 (3) Providers of other benefits which have been coordinated with
6 coverages required under this article shall state in clear and
7 conspicuous language in both English and Spanish in the contracts and
8 descriptive materials by which such other benefits are conferred that
9 such other benefits have been coordinated with minimum coverages under
10 this article.

11 (4) Failure of compliance with either subsection (2) or
12 subsection (3) of this section shall render any coordination of
13 benefits by other providers unenforceable.

14 13-25-10. Required coverages are minimum. Nothing in this
15 article shall be construed to prohibit the issuance of policies
16 providing coverages more extensive than the minimum coverages required
17 under this article nor to require the segregation of such minimum
18 coverages from other coverages in the same policy. However, loss
19 statistics as to bodily injury liability, property damage liability,
20 and benefits under section 13-25-6(3) to (6) shall be kept separately

Coverages in excess of the minimum benefits provided under this bill are allowed. Loss statistics for bodily injury liability, property damage liability, and benefits required by this bill are to be kept separately for rating purposes.

TEXT

EXPLANATION

1 for rating purposes and such statistics shall be filed with the
2 commissioner each year.

3 13-25-11. Required provision for intrastate and interstate
4 operation. (1) Notwithstanding any of its terms and conditions,
5 every complying policy shall afford coverages at least as extensive as
6 the minimum coverages required by operation of sections 13-25-6 and
7 13-25-7.

8 (2) Nothing in this section shall be construed to require that a
9 complying policy provide coverage while the insured motor vehicle is
10 operated in such other jurisdictions by reason of any program,
-31- 11 statute, law, or administrative regulation in effect in such other
12 jurisdiction by which coverage is afforded in such other jurisdiction
13 through a government agency or publicly financed auto accident
14 reparations plan such as, by way of illustration and not limitation,
15 plans presently in effect in the province of Saskatchewan, Canada, and
16 the commonwealth of Puerto Rico, U.S.A.

17 (3) Notwithstanding any of its other terms and conditions, every
18 complying policy shall afford coverages at least as extensive as the
19 minimum coverages required by operation of sections 13-25-6 and
20 13-25-7, during such periods of time as the insured motor vehicle is

Coverage afforded by other jurisdictions through a government agency or a publicly financed auto accident reparations plan may provide coverage while the insured motor vehicle is being operated in that jurisdiction.

Would require every policy to provide that the minimum coverage required by this bill would apply in jurisdictions other than Colorado. If coverages in other jurisdictions are more extensive than in Colorado, the other jurisdiction's coverages would apply.

TEXT

EXPLANATION

1 operated in other jurisdictions of the United States, its territories
2 or possessions, and the provinces of Canada, as the statutes, laws, or
3 administrative regulations of such other jurisdictions require with
4 respect to liability, or financial responsibility, and direct benefit,
5 or first party coverages for operators, occupants, and persons
6 involved in accidents arising out of use or operation of motor
7 vehicles within such other jurisdictions.

8 (4) (a) Notwithstanding any of its other terms and conditions,
9 every contract of liability insurance for injury, wherever issued,
10 covering ownership, maintenance, or use of a motor vehicle, shall
11 provide coverages at least as extensive as the minimum coverages
12 required by operation of sections 13-25-6 and 13-25-7, and qualifies
13 as security covering the vehicle while it is in this state;

14 (b) An insurer authorized to transact or transacting business in
15 this state may not exclude the minimum coverages required by operation
16 of sections 13-25-6 and 13-25-7 in any contract of liability insurance
17 for injury, wherever issued, covering ownership, maintenance, for use
18 of a motor vehicle while it is in this state.

19 13-25-12. Conditions and exclusions. (1) The coverages
20 described in section 13-25-6 may be subject to conditions and

Would convert a liability policy, wherever issued, into a complying policy while the motor vehicle is in Colorado.

This paragraph would act as a "safety valve" in the event that paragraph (a) is held to be unconstitutional. Every insurer transacting business in Colorado would be required to include in every policy, regardless of where it is written, a provision that such policy includes coverages required by this bill when the motor vehicle is in Colorado.

Allows for conditions and exclusions to the required coverages, subject to the approval of the commissioner of insurance.

TEXT

1 exclusions approved by the commissioner which are not inconsistent
2 with the requirements of this article.

3 (2) (a) The coverages described in section 13-25-6 may also be
4 subject to exclusions where the injured person:

5 (b) Sustains injury caused by his own intentional act; or

6 (c) Is operating a motor vehicle as a converter without a good
7 faith belief that he is legally entitled to operate or use such
8 vehicle.

9 13-25-13. No tort recovery for direct benefits. Neither any
10 person eligible for direct benefits described in section 13-25-6 (3)
11 to (6) or any insurer providing benefits described in section 13-25-6
12 (3) to (6) shall have any right to recover against an owner, user or
13 operator of a motor vehicle, or against any person or organization
14 legally responsible for the acts or omissions of such person, in any
15 action for damages for benefits required to be paid under section
16 13-25-6 (3) to (6), regardless of any deductible option, waiting
17 period, or percentage limitation; except that an insurer paying
18 benefits under section 13-25-6 (3) to (6) to or for any one person in
19 excess of one thousand dollars shall have a direct cause of action
20 against an alleged tort-feasor to the extent of benefits paid in

EXPLANATION

No person eligible for the direct benefits (medical, rehabilitation, income loss and death) or his insurer shall have the right to recover against the owner, user, or operator of a motor vehicle in any action for damages for any benefits required to be paid. Eligible persons include the named insured, relatives who reside with the named insured, occupants of the insured's motor vehicle, and pedestrians involved in an accident with the insured's motor vehicle. Insurers have the right to subrogate in those cases where benefits paid to any one person exceed \$1,000.

EXPLANATION

TEXT

- 1 excess of one thousand dollars. Nothing hereunder shall be construed
2 to afford such provider of benefits under section 13-25-6 (3) to (6) a
3 cause of action or claim against a person to whom or for whom such
4 benefits were paid except in those cases in which such benefits were
5 paid by reason of fraud or material misrepresentation of fact.
- 6 13-25-14. Limitation on tort actions. (1) (a) No person for
7 whom direct benefit coverage is required by operation of sections
8 13-25-5, 13-25-6, and 13-25-7, or for whom direct benefits would have
9 been payable but for exercise of a deductible option or but for a
10 waiting period or percentage limitation, shall be allowed to recover
11 against an owner, user or operator of a motor vehicle, or against any
12 person or organization legally responsible for the acts or omissions
13 of such person, for damages for bodily injury caused by a motor
14 vehicle accident, except in those cases in which there has been caused
15 by a motor vehicle accident:
- 16 (b) Death;
17 (c) Dismemberment;
18 (d) Permanent disability;
19 (e) Permanent disfigurement;
20 (f) Reasonable need for services of the type described in

A person for whom direct benefit coverage is required shall not be allowed to recover against the owner, user, or operator of a motor vehicle for damages for bodily injury except in cases of death, dismemberment, permanent disfigurement, permanent disability, or where medical and rehabilitation expenses have a reasonable value exceeding \$1,000. Direct benefit coverage is required for every owner of a motor vehicle, the relatives who reside with the owner of the motor vehicle, the occupants of the motor vehicle, and pedestrians involved in an accident with the motor vehicle.

TEXT

1 section 13-25-6 (3) and (4) having a reasonable value in excess of one
2 thousand dollars. "Reasonable value" as used in this paragraph (f)
3 means the average cost of specific types of services described in
4 section 13-25-6 (3) and (4) in the state of Colorado as determined by
5 the commissioner and published not less than once each year.

6 (2) Nothing in this article shall be construed to preclude
7 recover in such action against an alleged tort-feasor of benefits
8 provided or recoverable in excess of the minimum coverages required in
9 section 13-25-6 (3) and (4).

10 13-25-15. No limitation on tort action against noncomplying
11 tort-feasors. (1) (a) Nothing in this article shall be construed to
12 limit the right to maintain an action in tort by either a provider of
13 direct benefits under section 13-25-6 (3) to (6) or by a person who
14 has been injured or damaged as a result of an automobile accident
15 against an alleged tort-feasor where such alleged tort-feasor was
16 either:

17 (b) Using or operating a motor vehicle not required to be
18 covered under the provisions of this article, unless coverage
19 equivalent to that required under section 13-25-6 was, at the time of
20 occurrence of the alleged tortious conduct, actually provided for the

EXPLANATION

No limit is placed on the right of an injured person or his insurer to maintain tort action against a person using or operating a motor vehicle not required to be covered (i.e., an out-of-state driver), unless the user or operator has coverage equivalent to that required under this bill at the time of the accident.

TEXT

1 benefit of persons for whom benefits are provided under section
2 13-25-7; or

3 (c) Using or operating a motor vehicle which, although required
4 to be covered under the provisions of this article, was not, at the
5 time of the occurrence of the alleged tortious conduct, actually
6 covered under the provisions of this article.

7 13-25-16. Self-insurers. (1) Any person in whose name more
8 than twenty-five motor vehicles are registered may qualify as a
9 self-insurer by obtaining a certificate of self-insurance issued by
10 the director.

11 (2) The director may, in his discretion, upon the application of
12 such person, issue a certificate of self-insurance when he is
13 satisfied that such person is possessed and will continue to be
14 possessed of ability to pay direct benefits as required under section
15 13-25-6 (3) to (6) and to pay any and all judgments which may be
16 obtained against such person. Upon not less than five days' notice
17 and a hearing pursuant to such notice, the director may, upon
18 reasonable grounds, cancel a certificate of self-insurance. Failure
19 to pay any benefits under section 13-25-6 (3) to (6) or failure to pay
20 any judgment within thirty days after such judgment shall have become

EXPLANATION

There is no limit on the right of an injured person to maintain tort action against a person using or operating a motor vehicle which is required to be covered under this bill but which was not covered at the time of the accident.

EXPLANATION

TEXT

1 final shall constitute a reasonable ground for the cancellation of a
2 certificate of self-insurance.

3 13-25-17. Quarterly premium payments. (1) The commissioner
4 shall issue rules and regulations establishing quarterly, semiannual,
5 and annual premium payments for persons who are required to purchase
6 insurance under this article.

7 13-25-18. Effective date - applicability. This article shall
8 take effect January 1, 1974, and shall apply with respect to
9 automobile accidents occurring on or after January 1, 1974.

10 SECTION 2. Safety clause. The general assembly hereby
11 finds, determines, and declares that this act is necessary for
12 the immediate preservation of the public peace, health, and
13 safety.

APPENDIX A

List of Persons who Testified and Organizations which Submitted Information to the Committee

Allstate Insurance Companies

Charles C. Hewitt, Jr., Chief Actuary
Northbrook, Illinois

Theodore Stowell, Public Law Department
Northbrook, Illinois

American Insurance Association

Frank Tucker, Vice-president
Southwest Region, Dallas, Texas

Melvin Stark, Senior Vice-president
Government Affairs, Washington, D.C.
James C. Perrill, Attorney, Denver

American Mutual Insurance Alliance

Rosewell P. Ellis, Branch Manager, Denver
Richard Bernick, Attorney, Denver

Colorado Bar Association's Special Committee on Automobile Accident Reparations

Walter A. Steele, Chairman
Special Committee of Colorado Bar Association
on Automobile Accident Reparations

George M. Allen, Vice-chairman
Special Committee of Colorado Bar Association
on Automobile Accident Reparations

Colorado Blue Cross and Blue Shield

Ernie Michna, Manager, Management Services
and Planning, Chicago, Illinois

Joseph Bridges, Director of Group Sales,
Denver

Colorado Center for Law and Research

Jeremy Shamos, Executive Director

Colorado Defense Lawyers Association

William Horan, Attorney, Denver
Robert Montgomery, Attorney, Denver

Colorado Department of Revenue

Colorado Division of Insurance

J. Richard Barnes, Commissioner of Insurance
Eugene H. Glascock, Chief Rate Analyst

Colorado Farm Bureau Insurance

Dean R. Kittel, Administrative Officer, Denver

Colorado Insurors Association

Arthur Johnson, President, Denver

Colorado Judicial Department

Bea Hoffman, Research Director

Colorado Trial Lawyers Association

Harold A. Feder, President
William Nikkel, Attorney
Norman Kripke, Attorney

Home Insurance Companies

Joseph Smolski, Claims Manager
Denver

Legal Aid Society of Metropolitan Denver

Jean Dubofsky, Attorney

National Association of Independent Insurers

William G. Imig, Attorney, Denver

Reliance Insurance Companies

William Downs, Claims Manager
Denver

Royal Globe Insurance Companies

Robert Kelley, Claims Manager
Denver

State Farm Insurance Companies

Robert D. Bischoff, Regional Vice-president
Greeley

Orrin Osterholm, Claims Manager, Greeley
Edward Doedbling, Director of Internal Control, Greeley

~~The Hartford Insurance Group~~

Don G. Steffes, Regional Manager
Denver

APPENDIX B

Correspondence from Senator Schieffelin
to Mr. Charles C. Hewitt, Jr., and
Reply from Mr. Hewitt

C O P Y

4315 Wadsworth Boulevard
Wheat Ridge, Colorado 80033
October 2, 1972

Mr. Charles C. Hewitt, Jr.
Allstate Insurance Companies
Allstate Plaza
Northbrook, Illinois 60062

Dear Sir:

Thank you for appearing before the Insurance Study Committee of the Colorado Legislature. Your testimony was well prepared and well presented. I have several questions concerning your testimony which I feel need clarification and wonder if you would reply.

1) You mentioned adoption of No-Fault Legislation would lead to the payment of 80% more claims. This figure seems very high to me for two reasons. A) Evidence from Massachusetts seems to suggest that fewer claims are being filed than under the old system (perhaps reluctance to claim from your own company, for fear of cancellation or higher premium, particularly if the claim is small). B) Your figures show that 81% of your Colorado clients already carry Medical Payment Coverage, thus leaving only 19% uncovered for that benefit. Granted, no-fault would cover loss of wages, etc., not presently covered under Medical Payment coverage but nevertheless, since Medical Payment coverage includes passengers, where do you see 80% more claims?

2) Massachusetts adopted No-Fault for a number of reasons -- court delay, high number of cases being handled by attorneys, large judgments, etc. As you indicated, most of these factors are not present here in Colorado, and this is indicated by our relatively low rates. No-Fault benefits are pegged to hospital and doctor costs, as well as lost wages. These factors, it seems to me, would be roughly the same in

Colorado as they are in Massachusetts. For this reason, why isn't it logical that, should we adopt a similar plan, our rates would increase a lot more than you indicated and approach those of Massachusetts?

I enclose a Denver Post newspaper editorial. You can see the confusion the 80% figure has caused and certainly the Post is correct if we raise premiums 6% and handle 80% more claims, we should do it. But I assume that your 80% figure would relate only to Bodily Injury claims which only make up 11% of total claims here. Now assuming the DOT study figure that only 45% of people hurt in accidents get paid under the present system is correct, if we were to increase that figure by 80%, we would then be paying 81% of the total Bodily Injury victims or 8.8% of the total claims..(81% of 11%). We are already paying 4.95%..(45% of 11%), thus No-Fault would pay only 3.85% more victims, for a 6% to 27% increase in premium.

Where am I off in my logic? Please clarify the 80% figure and add any comments you wish.

Very truly yours,

/s/ Joseph B. Schieffelin
State Senator

JBX/ris
Encl: Denver Post Editorial

APPENDIX B (Continued)

C O P Y

Allstate Plaza
Northbrook, Illinois 60062
October 5, 1972

Senator Joseph B. Schieffelin
4315 Wadsworth Boulevard
Wheat Ridge, Colorado 80033

Dear Senator Schieffelin:

It was rewarding to get your letter of October 2nd with a copy of the editorial from the Denver Post. I have found that not many people pay as close attention on a technical subject as you do. The points which you raise are good ones and I agree with you that the interpretation of my testimony given by the Denver Post is comparing "apples" and "oranges".

Now to the questions which you raise. The "80% more claimants" to which I referred is the increase from those now able to collect under Bodily Injury to those able to collect under the proposed combination of No-Fault and Bodily Injury. I think the best answer to your attempt to relate this figure to recent Massachusetts experience is contained in an article from an insurance publication, "The National Underwriter" of February 18, 1972. A full copy of this article is enclosed for your information, but I believe that that portion which I have marked with arrows is particularly relevant to your inquiry.

Once you understand that the 80% increase applies only to tort claimants, you can then see that the proportion purchasing Medical Payment coverage is not a relevant number. Obviously, when we allow for the people now collecting under Medical Payment coverage, we will not have a 80% increase, as you conclude.

Your Item No. 2 is basically answered by the enclosed article. Because we have valid Colorado information available with respect to out-of-pocket costs such as medical and wage loss, it is not necessary to relate to Massachusetts figures in this area. The increase in cost in Colorado as a result of a No-Fault plan is represented by the number of additional claimants, as discussed above.

With respect to the editorial in the Denver Post, it is not correct to compare the 80% increase in claimants with a 6% increase in premium. The latter is measured against a full package of coverages, whereas the 80% applies only to the Bodily Injury coverage, as you state.

The DOT Study figure of 45% to which you refer on the second page of your letter is reconcilable with my 80% figure. First, it is important to note that the 45% refers to only people actually collecting under the tort system and not to the number of people who have a tort right. Many injured motorists are unable to exercise their tort right because the tortfeasor is uninsured. An entirely separate DOT Study shows that, countrywide, something over 20% of all motorists are uninsured. On a rough judgment basis, this would make the 45% come up to approximately 55%, and now as we increase the 55% by 80%, we are up to 100% of the injured motorists. My figure of a 80% increase is arrived at on an entirely different basis than this rough reconciliation, but I wanted to show you that there is an accommodation between my analysis and the DOT Study.

I am sure both of us appreciate the problem in communicating on a technical subject with a relatively large audience in a relatively short period of time. Your letter makes me feel that in at least one instance I have almost succeeded.

Thank you for the opportunity to expand on my testimony.

Yours very truly,

/s/ Charles C. Hewitt, Jr.
Allstate Insurance Companies

CCH:mhn

Enclosure