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The Minnesota Proposal for No-Fault Auto Insurance

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Since Professors Robert E. Keeton and Jeffery O'Connell published their study of automobile accident reparations in 1965,[1] enormous attention has been directed to our system of compensating auto accident victims. The most significant of the post Keeton-O'Connell studies is that of the American Insurance Association (AIA), published in October, 1968.[2] The AIA, which represents stock companies selling 30 percent of the nation's auto insurance, rejected the compromises of Keeton-O'Connell and endorsed a total no-fault system. The fact that such a report has been made by an organization with considerable political weight should encourage every supporter of change in auto compensation to push optimistically for quick, meaningful reform.

This article presents, with author's comments, a no-fault auto insurance bill consistent with the major recommendations of the AIA. The author introduced the bill in the Minnesota senate on February 18, 1969. Hearings were held on the proposal and, after some amendment, it was pushed to a committee vote on May 5, 1969. The motion to recommend passage lost by a vote of 10 to 5. In this legislative battle the bill received competent, antagonistic examination. The bill stood the test of the opponents' review and was improved in the process. In the end one opponent commented to the author, with considerable dismay, that "every time I find a defect in the bill, you fix it up." No-fault advocates, including the AIA, gave the bill enthusiastic support.

The bill will be introduced again in the 1971 session of the Minnesota legislature. A subcommittee of the house insurance

* Member, Minnesota Senate; Professor of Law, William Mitchell College of Law.

1. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM (1965) [hereinafter cited as KEETON & O'CONNELL].

2. AM. INS. ASS'N, REPORT OF SPECIAL COMMITTEE TO STUDY & EVALUATE THE KEETON-O'CONNELL BASIC PROTECTION PLAN & AUTOMOBILE ACCIDENT REPARATIONS (1968); *see also* N.Y. DEPARTMENT OF INSURANCE, AUTOMOBILE INSURANCE—FOR WHOSE BENEFIT? (1970). This recently-published 155 page book deserves first place on any reading list for students of the auto insurance system. The New York recommendations are consistent in all essentials with the AIA recommendations and the proposal of this article.

committee and a subcommittee of the senate commerce committee are conducting interim studies on the proposal. Those subcommittees and the author seek to refine the language and perfect the policy of the bill. That effort will continue until the proposal is enacted. Reader comments are therefore invited.

This bill differs from the draft bill prepared by Professors Keeton and O'Connell in almost every provision. Yet it draws upon their draft in so many places that to attempt to give credit for each borrowed idea or phrase or sentence would make this article unreadable. Perhaps Keeton and O'Connell are given credit enough if I assign to them responsibility for half the words and four-fifths of the ideas.

SUMMARY OF PROPOSAL

The key provision of the bill is section 2, subdivision 1, which abolishes liability for damages arising from ordinary negligence in the operation of motor vehicles. Were this subdivision enacted, and nothing more, no-fault reform would be accomplished. The insurance industry would respond to the termination of auto negligence liability by offering first-party insurance to compensate, without regard to fault, those losses from auto accidents which appropriately should be reimbursed by insurance.

Political realities require painting an explicit picture of what is to be substituted for negligence action recoveries. Therefore, the bill defines the insurance coverage to be provided once the inefficiencies and irrationalities of the fault system have been removed from the scene. Section 3 makes a minimum level of first-party no-fault insurance compulsory for all motorists. Sections 6 and 7 specify the compulsory coverage, which is:

(1) full reimbursement of medical expense, including rehabilitation costs;
(2) reimbursement for lost earnings up to $750 per month subject to a reasonable percentage deduction to discourage malingering;
(3) survivor's benefits up to $750 per month;
(4) funeral expenses of $500; and
(5) compensation for permanent medical impairment according to a schedule.

These coverages represent an effort to establish a basic level of insurance which is socially responsible, but not so generous as

to be inappropriate for compelled purchase through government sanction. Any motorist who desires higher benefits for his own family may voluntarily buy the "added reparation benefits" authorized by section 8.

Payment for pain and suffering is explicitly excluded from the compulsory coverages. Indeterminate pain and suffering damages and the fault concept are the "twin cancers"[3] which create the greatest inequities and wastes of the present negligence-liability insurance system.

In addition to removing difficult determinations of fault and impossible calculations of pain and suffering, the proposal expedites claim payment by changing the settlement process from an adversary tort proceeding to a nonadversary contract process. The objective of nonadversary settlement is furthered by section 10, subdivision 1. This subdivision provides that family auto policies follow family members into all noncommercial vehicles. Most claims will therefore be asserted against the company selected by the claimant's family. The insurer will be forced by competition to pursue a claims policy which will create a reputation for fair claims payment. Claims policy has always been a key element of competition in selling first party insurance.

Disputes will still occur. When they do, the claimant may enforce his contractual right to compensation through a civil action with a right to a jury trial. Section 14 relates to such actions. The complete text of the proposed bill with comments follows.

THE BILL AND COMMENTS

A bill for an act

relating to motor vehicles; requiring no-fault reparation insurance and liability insurance and limiting tort liability; providing for the administration thereof; and providing penalties; repealing Minnesota Statutes 1967, Chapter 170.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [DEFINITIONS.] Subdivision 1. The following terms as used in this act have the meaning given them in this section.

Subd. 2. "Motor vehicle" means any vehicle of a kind re-

3. Statement of T. Lawrence Jones, President, American Insurance Association, before the Senate Antitrust and Monopoly Subcommittee, Dec. 15, 1969.

quired to be registered under Minnesota Statutes, Chapter 168.

Comment: Cross reference to the registration chapter brings under the act: autos, trucks, trailers, motorcycles, motor scooters, buses and mobile homes. It does not include tractors and snowmobiles. The coverage seems appropriate.

Subd. 3. "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.

Subd. 4. "Named insured" means a person, usually the owner of a vehicle, identified in a policy by name as the insured under that policy.

Subd. 5. "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.

Comment: This definition s relevant to: (a) what policy is applicable to a particular injury (sec. 10, subd. 1); (b) who benefits from added insurance benefits purchased by an insured which are above the compulsory level (sec. 8); (c) who is subject to optional deductibles (sec. 7, subd. 1), and (d) who may collect no-fault benefits under a named insured's policy when an accident occurs in a state without the no-fault system. (sec. 5, subd. 4).

Sec. 2 [NEGLIGENCE LIABILITY ABOLISHED; INDEMNITY; PUNITIVE DAMAGES.] Subdivision 1. Liability for damages arising from the negligent operation of a motor vehicle within this state is abolished except as to damage to property other than motor vehicles and their contents.

Comment: This is the key subdivision discussed in the introduction. It permits auto insurance to escape the bonds of negligence liability and thus to respond directly to the need for compensating accident losses. As to motor vehicles, property damage insurance will be voluntarily-purchased, first-party collision coverage. If collision insurance is not purchased, the owner will

simply be gambling against accident involvement. Liability for negligently damaging property other than motor vehicles is preserved because the loss normally would not otherwise be compensated by auto insurance. Perhaps it would not be compensated by any insurance.

Subd. 2. Whenever a recipient of basic or added reparation benefits realizes a recovery from a tort claim arising from the injury covered by the reparation benefits, the reparation insurer has a right of indemnity out of the tort recovery. The indemnity claim is in the amount of the reparation benefits paid by the insurer. The tort recovery shall also be credited against reparation benefits thereafter coming due. Attorneys' fees and costs shall be assessed against insurer and claimant in the proportion each benefits from the tort recovery.

Comment: Subdivisions 4 and 5 of section 6 deal with the problem of benefits from collateral sources other than tort claims. This section preserves tort claims based, for example, on products liability, civil damage (dramshop), railroad negligence, contractor negligence, assault, battery and out-of-state auto accidents. A policy against duplicate recovery is nonetheless implemented by giving the no-fault insurer a right of indemnification out of any tort recovery made.

Subd. 3. A person injured by the grossly negligent driving of another may recover punitive damages from the grossly negligent driver.

No insurer may contract to indemnify for punitive damages awarded under this subdivision. A principal is not liable under this subdivision for the grossly negligent driving of his agent.

Comment: This subdivision was conceived as I reflected upon the fallacious representations by foes of no-fault that the present system works as a fault liability system. The fact is that we have an insurance system. Typical of the repetitious assertion by opponents of no-fault is the following: "We believe that one who is injured through the carelessness of another should be compensated *by the person who was responsible* for causing the injury." (Emphasis added).[4]

4. THE DEFENSE RESEARCH INSTITUTE, INC., AN ANALYSIS & CRI-

That statement is a misrepresentation of how the present system works. Less than three percent of those "responsible for causing the injury" now pay anything to the injured person.[5] Payment, if any, is made by insurance companies.

If no-fault opponents really believe in a fault system where bad drivers pay victims, they should favor this bill over the present system. This subdivision allows the harmed to pursue the wrongdoer and to extract from the wrongdoer whatever flesh a jury will allow. But the jury will know the pursuer already has been reasonably compensated for his injuries and that in his action under this subdivision he seeks to punish. If punishment has a place in our compensation system, this bill provides for it. The present tort-liability insurance system does not.

Sec. 3. [INSURANCE REQUIRED; NONRESIDENTS.] Subdivision 1. The owner of a motor vehicle required to be registered in this state shall not operate or permit the vehicle to be operated in this state at any time unless security for the payment of tort judgments and basic reparation benefits in accordance with the provisions of this act is in effect.

Comment: This section establishes compulsory auto insurance which includes self-insurance as permitted by subdivision 3 of this section.

Subd. 2. The commissioner of insurance may require insurers to notify the commissioner of insurance of the termination of insurance policies, and may require insurers to furnish the Minnesota registration numbers of vehicles they insure. Proof of security for payment of tort judgments and basic reparation benefits may be required of the owner of any vehicle by notice mailed to the owner. Proof shall be filed with the commissioner of insurance within two weeks of the receipt of the notice.

Comment: Keeton-O'Connell required annual proof of insurance to register a motor vehicle,[6] following

TIQUE OF AN AUTOMOBILE INS. PROPOSAL PREPARED FOR STUDY & COMMENT BY THE AM. INS. ASS'N 3 (1969).

5. Conard & Jacobs, *New Hope for Consensus in the Automobile Injury Impasse*, 52 A.B.A.J. 533, 537 (1966).

6. KEETON & O'CONNELL, *supra* note 1, § 5.1, at 326-27.

the practice under the compulsory auto insurance laws of Massachusetts, New York and North Carolina. Since more than 90 percent of Minnesotans now carry auto insurance on a voluntary basis, this enforcement device appears unnecessarily expensive. The bill does provide a misdemeanor penalty, but the truly effective sanction is denial of insurance benefits to the violator. Failure to insure therefore should be a small problem. Nonetheless, this subdivision provides for spot checks and computer cross checks between reports of insured vehicles and vehicle registration records as an alternative to routinely requiring proof of insurance whenever a motor vehicle is registered.

Subd. 3. A policy of insurance, in order to satisfy the requirements of subdivision 1, must be issued by or on behalf of an insurer authorized to transact business in this state, or otherwise qualifying pursuant to Minnesota Statutes, section 60A.20; but to satisfy the requirements of subdivision 4, a policy may be issued by or on behalf of any insurer approved by the commissioner of insurance for nonresident coverage only. Security for the payment of tort judgments and basic reparation benefits may also be provided with respect to any motor vehicle through self insurance by filing with the commissioner of insurance proof of security approved by the commissioner of insurance as affording security substantially equivalent to that afforded by a policy of insurance.

Comment: Provision must be made for the self-insurer, for those insured by surplus line carriers, and for the nonresident who is insured at home by a company not admitted in the enacting state.

Subd 4. If a motor vehicle not required to be registered in this state has been physically present within this state, whether operated or not, during more than 30 of the preceding 365 days, the owner shall not operate or permit the vehicle to be operated in this state unless he has in effect security for payment of basic reparation benefits in accordance with the provisions of this act.

Comment: This is the first of four subdivisions which deal with problems of interstate travel. This provision is insignificant because the following subdivision converts the liability policies of most

out-of-state motorists into no-fault policies when they drive in the enacting state. This means the requirement to insure after 30 days in the state will be necessary for a very small percentage of out-of-state motorists.

Subd. 5. Between October 1 and December 1 of any calendar year any motor vehicle tort liability insurer may file with the commissioner of insurance a written election that all motor vehicle tort liability policies written for nonresidents shall include basic reparation coverage for any accident within the provisions of section 5. The insurer's election to include basic reparation coverage shall be effective for all succeeding calendar years until withdrawn between October 1 and December 1 as to succeeding calendar years. When the election is made, basic reparation benefits shall be provided under the policy according to this act covering accidental injuries within this state involving nonresident insureds or motor vehicles of nonresident insureds.

Every insurer writing basic and added reparation insurance in this state is held to have made the election provided in this subdivision as a condition of writing basic and added reparation insurance in this state.

Comment: The automatic election provided by the last sentence of this subdivision converts auto liability policies of a high percentage of nonresidents into no-fault policies while the nonresident is in the enacting state. The subdivision is drawn from AIA drafts. It expeditiously solves the problem of providing no-fault coverage to the nonresident. The next section meets the opposite problem of providing liability insurance to the resident of the enacting state when he drives in a fault state.

Sec. 4. [LIABILITY INSURANCE.] The security for payment of tort judgments required by section 3 shall be applicable to tort judgments resulting from accidents arising out of the use of a motor vehicle without this state, and within this state to the extent negligence liability is preserved by section 2, subdivision 1. The security shall be in the amount of at least $10,000 for property damage, at least $50,000 for injury to one person, and at least $100,000 for injury to more than one person in one accident or, if written with a single limit, a limit of at least $100,000.

Comment: Compulsory insurance must meet at least minimum levels of responsibility. If out-of-state liability coverage were not required, a motorist well protected within his home state by his compulsory no-fault policy would become an uninsured motorist as he crossed the line into a state retaining auto negligence liability. The liability coverage will be inexpensive for it will be applicable only to the small percentage of accidents occurring away from the home state of the insured.

The fourth subdivision concerned with interstate travel is section 5, subdivision 4. It provides that a resident of the enacting state will collect on his no-fault policy if he is injured in an out-of-state accident. His insurer will be subrogated to any tort claim the resident may have as a result of the out-of-state accident.

Sec. 5. [APPLICABILITY OF REPARATION INSURANCE; INTENTIONAL INJURIES; CONVERTED VEHICLES; TERRITORIAL COVERAGE.] Subdivision 1. Basic and added reparation insurance shall be applicable to accidental injuries arising out of the use of a motor vehicle. Use of a motor vehicle includes loading and unloading it, but does not include conduct within the course of a business of repairing, servicing or otherwise maintaining vehicles unless the conduct occurs outside the business premises.

Comment: The Keeton-O'Connell bill included "maintenance" of a motor vehicle within its coverage.[7] The word led opponents to tell outrageous horror stories about possible fraudulent claims. Since our problem is compensation for highway accidents, not for car-washing accidents, "maintaining" was eliminated (and a lot of irrelevant talk with it).

Subd. 2. Injury caused intentionally by the use of a motor vehicle shall be considered accidental, but a person intentionally causing or attempting to cause injury to himself or to another is disqualified from basic or added reparation benefits for his own injuries. His survivors are disqualified from survivor benefits.

7. *Id.* § 1.4, at 303.

Subd. 3. Injury arising out of the use of a motor vehicle by a converter is accidental injury, but a converter is disqualified from basic or added reparation benefits for his own injuries. For purposes of disqualification from basic or added reparation benefits, a relative residing in the household of the owner of the motor vehicle or one whose taking and use of the motor vehicle of another is done with a good faith belief that he is legally entitled to use the vehicle is not treated as a converter.

Subd. 4. Basic and added reparation insurance shall be applicable to injury from motor vehicle accidents occurring within this state and to injury suffered by the named insured or a relative residing in the same household from a motor vehicle accident occurring outside this state.

Comment: In an out-of-state accident the insured's family recovers no-fault benefits, but the insurer is subrogated to any tort recovery allowed by the state in which the accident occurs (sec. 2, subd. 2).

Sec. 6. [POLICY TERMS: TYPES OF LOSS; COLLATERAL SOURCES.] Subdivision 1. Under basic and added reparation insurance the insurer shall be liable to pay without regard to fault benefits reimbursing persons for net loss suffered through accidental injury coming within the terms of section 5, subject to deductibles, exclusions, limits and other conditions permitted by this act.

Subd. 2. Basic and added reparation benefits, other than for medical impairment, are payable monthly as loss accrues, except as lump sum settlements are authorized by section 13.

Comment: Subdivision 1 makes clear the no-fault basis of the insurance and subdivision 2 establishes a month by month payout of compensation.

"Net loss," a key term in this section, is defined in subdivisions 3, 4 and 5 which follow. Although these subdivisions are primarily for definition, they also contain some limitations on compensation. The "deductions, exclusions and limits" appear more generally in section 7, which spells out the level of benefits necessary to satisfy the compulsory insurance requirement.

Subd. 3. For the purposes of this section "loss" means detriment from injury to a person as follows:

(1) Allowable expenses consisting of reasonable charges incurred for products, services, and accommodations necessary as a result of the injury. Allowable expenses include reasonable expenses for rehabilitation and occupational training.

(2) Expenses related to funeral and burial.

(3) Work loss consisting of (a) loss of income from work the injured person would have performed had he not been injured and (b) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed for income or for the benefit of himself or his family.

(4) Survivors loss consisting of (a) loss, after the date on which the deceased died, of contributions of tangible things of economic value, not including services, that survivors would have received from the deceased had he not suffered the injury causing death and (b) expenses reasonably incurred by such survivors after the date on which the deceased died in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit had he not suffered the injury causing death. The remarriage of a surviving spouse terminates the right of the spouse to benefits for survivors loss.

(5) Medical impairment consisting of permanent bodily injury, whether or not affecting earnings or earning power, including loss of members, loss of function, and disfigurement.

Pain, suffering and inconvenience are not loss. Economic detriment, such as loss of wages arising from the interference of pain and suffering with work, is loss.

Comment: This subdivision defines the five elements of loss which must be compensated. The mandatory level of compensation as to these defined elements of loss is spelled out in section 7.

Paragraph (1) requires reimbursement of all the ordinary expenses resulting from injury such as ambulance, hospital, medical and drug expenses.

Paragraph (2) requires some compensation for funeral and burial expense.

Paragraph (3)(a) requires reimbursement of loss of earnings. It is intended to include compensation for a student's delayed entry into

the labor market when he is forced out of school for a period by an auto injury. It also is intended to include compensation for probable lost earnings from disability suffered before the victim has entered the employment market. Paragraph (3)(b) is a housewife and self-employed provision.

Paragraph (4) requires compensation to survivors in death cases. In valuing claims under this paragraph the probable retirement date of the decedent, the probable rate of promotion and probable cost-of-living adjustments to income should be included in the calculation.

Paragraph (5) requires compensation for permanent injury. There is a consensus on the need to compensate permanent injury more generously than a mere reimbursement of medical expense and wage loss. Keeton-O'Connell did so by preserving negligence lawsuits and pain and suffering damages in cases of serious injury.[8] This is logically inconsistent with abolishing both pain and suffering damages and fault liability in smaller cases. Also, the AIA study showed that retention of negligence liability in large cases substantially dilutes the cost savings possible under no-fault insurance.[9] The AIA initially proposed as compensation for permanent injury a benefit of 50 percent of medical expenses,[10] but has since abandoned that formula because medical expenses often have little correlation to the severity of the disability. The Minnesota formula for mandatory medical impairment compensation appears in section 7 along with the other specifications for compulsory coverage.

One objective of the bill is to eliminate indeterminate damages, such as for pain and suffering, since obligations of indeterminate amount inevitably lead to uncertainty, dispute

8. *Id.* § 4.3, at 324-25. This section contains the limited tort immunity provisions in the original Keeton-O'Connell bill.
9. AM. INS. ASS'N, *supra* note 2, at 15.
10. *Id.* at 5.

and expensive litigation. Under the bill all compensation, except for medical impairment, is measured by actual economic loss. That does not mean that loss calculation will be easy in all cases. In a small percentage of cases, particularly under paragraphs (3) and (4), determining economic loss will be difficult. In these cases the help of a lawyer may be necessary even though most no-fault claims will be handled on a routine basis without legal complications.

Subd. 4. For the purposes of this section "net loss" means loss, less subtractable benefits. "Subtractable benefits" are all benefits or advantages one receives or is entitled to receive because of the injury, from sources other than basic and added reparation insurance, except amounts one receives or is entitled to receive:

(1) in discharge of familial obligations of support;

(2) by way of succession at death;

(3) as proceeds of life insurance;

(4) as proceeds of any contract or insurance policy containing an explicit provision making its benefits supplemental to basic and added reparation benefits; or

(5) as gratuities.

In no event shall any payment made by an employer to his employee be regarded as a gratuity. No subtraction is made because of the value of or the recovery upon a claim in tort nor because of the benefit one realizes from the exclusion from taxable income of amounts one receives because of the injury.

Subd. 5. Any contract, policy of disability, health and accident, or other insurance or other source of benefits reimbursing loss which might also be covered by basic or added reparation benefits may provide that any basic or added reparation recovery shall be deducted from benefits payable under it or that its benefits are supplemental to basic and added reparation benefits. If the other source of benefits does not provide either that this deduction shall be made or that its benefits are supplemental, benefits payable under it are subtractable benefits under subdivision 4.

Comment: Duplicate coverage is one of the great evils of the fault system. A rational insurance system should not compensate twice for the same loss.

Subdivisions 4 and 5 attempt to resolve the difficult problem of fitting together separate and potentionally overlapping insurance coverages. The collateral source rule of the bill is that the question of primary and secondary coverage is controlled by the provisions of non-auto insurance policies. Since some insureds may desire protection in amounts greater than the basic compulsory auto coverage and may not want to obtain the extra coverage as part of their auto insurance package, clause (4) of subdivision 4 authorizes non-auto insurance to be made "supplemental" to no-fault benefits. In such cases recovery under both policies will be allowed and premiums will be set accordingly. The non-auto policy may, on the other hand, provide that its benefits are to be displaced by any auto no-fault benefits available. If it so provides, losses and premiums under the non-auto coverage will be reduced. Since compulsory auto insurance will be the more universal coverage, it is appropriate that premium reductions resulting from the elimination of duplicate payoffs should benefit the more select group which chooses to carry medical, hospital or disability insurance rather than inuring to auto insurance policyholders as a group. Finally, if a non-auto policy has no provision on the issue, its benefits will reduce auto no-fault benefits.

Thus, subject to the terms of the policy, non-auto insurance benefits may be made supplemental to, displaceable by or deductible from auto policy benefits. These options also apply to fringe employment benefits like sick pay agreements or health clinic privileges. Benefits under social welfare programs like medicare, social security and poor relief eventually might also be adjusted pursuant to these options in cases of auto injury.

Clauses (1), (2) and (5) of subdivision 4 exclude from the collateral source rules of the bill benefits which are independent of insurance. These benefits do not violate the single recovery

policy so they are ignored in the payment of basic no-fault benefits.

Clause (3) of subdivision 4 establishes a special treatment for life insurance. Without a clause making the life policy secondary to auto insurance, the life policy is treated as independent of auto insurance and thus not as a collateral source to be either displaced by or deducted from auto policy benefits. This is consistent with the historical attitude toward life insurance which permits insureds to pile up arbitrary amounts of flight, travel, double indemnity, cancer, credit life and other hit and miss life insurance coverages.

Sec. 7. [TERMS OF BASIC REPARATION.] Subdivision 1. The following standard provisions for basic reparation insurance apply to all claims unless optional provisions are applicable.

(1) Allowable expenses within basic reparation coverage for a hospital room may not exceed a reasonable and customary charge for semi-private accommodations.

(2) Basic reparation benefits related to funeral and burial may not exceed $500.

(3) Twenty-five percent of all work loss, except expenses of in lieu services, is excluded in calculating basic reparation benefits.

(4) Basic reparation benefits for work loss or for survivors loss sustained in any period of one month shall not exceed $750.

(5) The measure of compensation for medical impairment under basic reparation is based on the schedule below. The amounts provided in the schedule are applicable to loss of members and to complete loss of function of the member. If function is partially lost, the benefit amount is an appropriate percentage of the benefit for complete loss of function. The benefit amount is adjusted for the age of the injured person by reducing the benefit by two percent for each year of age in excess of 30 years at the time of injury up to a maximum reduction of 60 percent.

Nonfunctioning or Lost Body Member	Medical Impairment Benefit
Thumb	$1,950
First or Index Finger	1,200
Second finger	1,050
Third finger	750

Fourth or little finger	600
First phalange of thumb	975
First phalange of 1st finger	600
First phalange of 2nd finger	525
First phalange of 3rd finger	375
First phalange of 4th finger	300
Great toe	1,050
Any other toe	450
First phalange of great toe	525
First phalange of any other toe	225
Hand not including loss of wrist movement	5,850
Hand including loss of wrist movement	6,600
Arm	8,100
Foot not including ankle movement	4,200
Foot including ankle movement	4,950
Leg if enough remains to permit use of artificial limb	5,850
Leg where no effective artificial limb can be used	6,600
Eye	4,800
Hearing in one ear	1,650
Hearing in both ears	5,100
Eye and leg	12,000
Eye and arm	12,000
Eye and hand	13,500
Eye and foot	12,000
Two arms	15,000
Two hands	15,000
Two legs where effective artificial members can be used	15,000
Two feet	15,000
One arm and the other hand	15,000
One hand and one foot	15,000
One leg and other foot	15,000
One leg and one hand	15,000
One arm and one foot	15,000
One arm and one leg	15,000
Injury to back—total disability	25,000
Damage to mental faculties—total disability	25,000
Permanent total disability*	25,000

*Total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties, or any other injury which totally incapacitates a person constitutes total disability.

Compensation for medical impairment also includes an appropriate benefit for disfigurement, not to exceed $3,500.

Comment: Paragraph (3) *Work Loss—25 percent deduction.* Keeton-O'Connell provided a 15 percent deduction in compensation for wage loss as an adjustment for the income tax advantage of insurance payments over earned income.[11] Keeton-O'Connell also provided a 10 percent deduction as an anti-malingering device.[12] These two deductions added together justify the 25 percent deduction provided in this bill.

The reduction in benefits to discourage malingering contrasts sharply with present practice. In an auto negligence tort action, a day off the job is included at a 100 percent rate in calculating special damages, then doubled or tripled in the common formula for evaluating pain and suffering.

Since the income tax advantage does not exist when someone is being hired to do the normal work of the injured person, the temptation to malinger is much less in such cases. Therefore, the 25 percent deduction from lost earnings benefits does not apply to the cost of hiring substituted service.

Paragraph (4) *Work Loss—$750 maximum.* The $750 cutoff, borrowed from Keeton-O'Connell,[13] is not as significant as it appears. Since benefits will usually be paid on a first party basis, loss of earnings exposure will be one of the factors upon which the price of individual policies are set. Thus, if the family breadwinner earns but $600 a month, the anticipated loss of earnings exposure will be $450 per month ($600 less 25 percent). If the breadwinner's monthly earnings are $1,000, the insurer's exposure after the 25 percent deduction is the statutory maximum of $750. The premium for that exposure will be more than for a $450 exposure. Finally, if the breadwinner earns $2,000 per month, he will not rely on the basic compulsory coverage,

11. KEETON & O'CONNELL, *supra* note 1, § 1.10 (d), at 307.
12. *Id.* § 2.3 (a), at 309.
13. *Id.* § 2.3 (d), at 309.

but will buy (with extra premiums) added income protection. He will thus avoid the $750 monthly limitation on compensation for lost earnings.

Paragraph (5) *Medical Impairment.* Compensation for medical impairment is designed for cases in which there is significant loss which transcends pure economic loss. (See comment to sec. 6, subd. 3 (5) above). The payout provided is in addition to compensation for medical expense and wage loss. The amounts in the schedule generally are 50 percent of the Minnesota workman's compensation schedule.[14] Since a large part of the workmen's compensation schedule is for lost earnings, the 50 percent figure is not ungenerous. It is, however, an arbitrary choice and the figures may be modified as the legislators seek to balance the objective of economy against the objective of adequacy of compensation.

The reduction in benefits based on the age of the injured person is an effort to adjust benefits to the duration of the disability. Any individual dissatisfied with the minimum coverage required by this subdivision for any element of loss may buy optional insurance for added benefits.

Subd. 2. Subject to the above limitations and deductions, basic reparation benefits cover all net loss without limitation per claimant, per accident or otherwise, but basic reparation insurers may offer singly or in combination optional deductible provisions applying only to claims for basic reparation benefits because of injury to the named insured or to a relative residing in the same household, as follows: (1) a deductible of 35 percent or 45 percent of all work loss in place of the standard 25 percent work loss percentage deduction; (2) a deductible of $100, $200 or $300 per accident applicable against any damages otherwise payable.

Comment: This subdivision makes explicit that medical expenses and work loss are compensated without limit as to gross amounts. It also authorizes deductibles on family claims. Since

14. MINN. STAT. § 176.101 (1967).

most claims will be made against the injured person's family auto policy, these deductibles will become widely applicable. If the first $100 of every claim were excluded, the total dollar saving on insurance premiums would be astounding.[15] The efficiency and popularity of $50 and $100 deductibles is evident from experience with collision coverages. Deductibles are of course impossible with third party auto liability coverage.

Subd. 3. Insurance providing benefits less in any respect than under the standard provisions of this section does not qualify as basic reparation insurance.

Comment: See comment to the following section.

Sec. 8. [ADDED REPARATION COVERAGE.] Every insurer writing basic reparation insurance may offer optional added reparation coverages which: (1) may insure against all or part of any amount of loss that would be excluded because of subtractable benefits or by the limits on hospital charges, funeral and burial expenses, and work loss; (2) may provide benefits for medical impairment in addition to benefits under section 7, subdivision 1; (3) may insure against property damage; (4) may provide other benefits as compensation for loss from motor vehicle accidents.

Added reparation coverage under this section may be limited to injured persons who are named insureds or relatives residing in the same household.

Comment: Sections 6 and 7 spell out the terms of an insurance policy which is mandatory for all motorists and is designed to provide benefits at a responsible level for the majority of cases. Because some people may think the level of mandatory coverages provides inadequate benefits,[16] this section permits the insurance marketplace to develop whatever additional coverages are de-

15. If a $100 deductible [could be] applied similarly to all the claims for bodily injury and property damage arising out of each accident under the tort liability system, we estimate that the total premium for bodily injury liability and property damage liability insurance could be reduced about 15%.
Letter from William O. Bailey, Senior Vice President, Aetna Life & Casualty, to the author, Oct. 16, 1969.

16. *See* Fuchsberg, *Lawyers View Proposed Changes*, in CRISIS IN CAR INSURANCE 210, 213 (R. Keeton, J. O'Connell & J. McCord eds. 1968).

sired by insurance buyers. The judgment of the author is that the sanctions of law should not be invoked to compel purchase of insurance protection greater than that dictated by a minimum level of social responsibility. Those who want higher benefits for themselves may buy optional coverages pursuant to this section.

An appropriate shift of insurance cost results from making deluxe coverage voluntary. At least as to loss of income coverage, the need for and the ability to pay for more generous coverage will go together. Obviously the low income motorist today must buy liability insurance to cover the potential claim of very high income claimants. But the low income motorist does not draw on the present insurance premium pool for reimbursement of high earnings. He therefore is subsidizing with his premium dollars the high income claimant.

Sec. 9. [APPROVAL OF TERMS AND FORMS.] Further terms and conditions of basic and added reparation insurance and of policy forms used by insurers in offering these coverages are subject to the approval of the commissioner of insurance, who shall approve only terms and conditions which are consistent with the purposes of this act, which are fair and equitable to all persons whose interests may be affected, and which limit the variety of coverages available so as to give insurance purchasers reasonable opportunity to compare the cost of insuring with various insurers.

Comment: The last clause of this section constitutes a "truth-in-insuring" provision.

Sec. 10. [COVERAGE; PEDESTRIANS; LARGE VEHICLES; ASSIGNED CLAIMS.] Subdivision 1. Except as otherwise provided in this section, the basic reparation insurance applicable to injury to a named insured or a relative residing in the same household is the policy of the insured. If such a policy is not applicable, the basic reparation insurance applicable to injury to any occupant of a vehicle involved in an accident, including the driver, is the insurance on that vehicle.

A claim for basic reparation benefits based upon injury to a person not otherwise covered who is not an occupant of any vehicle involved in an accident may be made against the insurer

of any involved vehicle. The insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but is thereafter entitled to recover from the basic reparation insurers of all other involved vehicles proportionate contribution for the benefits paid and the costs of processing the claim.

Comment: The family policy of the injured person is to pay in most cases. This means insurer pays customer, not stranger; thus obligation and negotiation will be on a first party basis. If the injured person has no family auto policy (perhaps he owns no automobile), he collects from the insurer of the auto he occupied. If the uninsured victim is a pedestrian, he recovers from the insurer of the vehicle which hit him. In cases of collisions which cause an involved vehicle to strike a pedestrian, insurers of all vehicles are required to contribute to the compensation paid the pedestrian.

Subd. 2. In the case of injury to any occupant of a commercial vehicle, including the driver, the basic reparation insurance applicable is the insurance on the commercial vehicle.

Comment: The principle of family auto insurance paying all claims is not followed in cases of commercial vehicles. The cost of taxi and bus passenger injuries should be imposed on operators as a cost of doing business. An injury to a commercial driver should fall on the employer's auto fleet or workman's compensation insurer, not on the driver's family policy.

Subd. 3. When one or more of the vehicles involved in an accident is larger than an ordinary passenger automobile, the basic reparation insurer of the large vehicle shall be responsible for a percentage of basic or added reparation benefits paid to occupants of other vehicles involved in the accident. The commissioner of insurance shall promulgate regulations classifying all motor vehicles larger than ordinary passenger automobiles into reasonable categories and assigning to each category a percentage of responsibility for injuries to occupants of other vehicles. The classifications and percentages of responsibility shall be based upon the increased severity of injury caused by large vehicles in comparison to passenger automobiles. If a large vehicle insurer is liable for more than 70 percent of the basic or

added reparation obligation as to any injury, it is entitled to control the processing of any claim based on the injury and to obtain contribution from insurers liable for the remainder of the benefits.

Comment: The bill imposes on trucks and buses extra charges appropriately related to their propensity for causing serious injury to passengers in other vehicles. The first Keeton-O'Connell draft appeared to put the full cost of injury on the vehicle in which the injured person was riding.[17] This would have had the unintended effect of shifting almost all the costs of car-truck crashes off the trucking industry and onto private autos. Keeton-O'Connell, in a later draft,[18] imposed a surcharge on large vehicle insurance premiums to more equitably reflect the damage done by large vehicles, for they agree trucks should pay much of the cost when auto passengers are injured by collision with trucks.

The most recent AIA draft imposes on the insurers of commercial vehicles 75 percent of the responsibility for injuries suffered by occupants of other vehicles involved in accidents with commercial vehicles.[19] This seems unduly harsh on small commercial vehicles. Imposing different percentages of responsibility on different size vehicles is simple and equitable.

Subd. 4. Except for the owner of a motor vehicle involved in the accident who knowingly failed to maintain security as required by section 3, each person suffering loss because of an injury arising out of an accident coming within the provisions of section 5 of this act may obtain benefits through the assigned claims plan established pursuant to section 17 of this act when: (1) no basic reparation insurance is applicable to the injury, or (2) no basic reparation insurance applicable to the injury can be identified, or (3) the basic or added reparation insurance applicable to the injury is, because of financial inability of an insurer to fulfill its obligations, inadequate to provide the benefits contracted for.

17. KEETON & O'CONNELL, *supra* note 1, § 2.6 (d), at 312.
18. H. 4820, Commw. of Mass., Gen. Ct. Sess. § 30 (1968).
19. AM. INS. ASS'N proposed Draft no. 9, § 2.7 (c) (Dec. 29, 1969).

Comment: This subdivision provides protection for victims of hit-run accidents who have no insurance of their own. Also covered are those rare nonresidents whose ordinary auto insurance is not converted by section 3, subdivision 5 into no-fault coverage upon their coming into the enacting state. A third group of beneficiaries under this subdivision are members of the families of uninsured motorists. The violator himself is excluded from benefits, but his family is purposely included. Exclusion of the injured owner should be by itself an adequate sanction to secure compliance with the statutory obligation to insure. The fourth group to whom benefits are provided by this subdivision are those whose insurance companies become insolvent. In effect this provision establishes protection against the serious problem of insurance company insolvencies.

Sec. 11. [OVERDUE BENEFITS; INTEREST.] Basic or added reparation benefits, other than for medical impairment, are payable monthly as loss accrues. Loss resulting from an injury accrues not when the injury occurs, but rather as a work loss or allowable expense is incurred. Benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of loss realized, except insurers may accumulate claims for periods not exceeding one month and benefits are not overdue if paid within 15 days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, which part totals $100 or more, that part is overdue if not paid within the time provided by this subdivision. Medical impairment benefits are overdue if not paid with 120 days after the insurer receives reasonable proof of the degree of medical impairment.

All overdue payments bear interest at the rate of six percent per annum.

Comment: The ordinary rule will be that economic loss is to be paid within 30 days after a claim is filed. Since some companies may desire to use batch processing, some flexibility is written into the time of payment provision.

A 120 day period is allowed for investigating

and evaluating claims for medical impairment benefits. Since these claims do not involve immediate economic losses, quick payment is not essential.

Sec. 12. [LEGAL FEES.] Subdivision 1. Within the discretion of the court, a claimant may be allowed an award of a reasonable sum for attorney's fee where the insurer's denial of all or part of the claim was fraudulent or so arbitrary as to have no reasonable foundation.

Subd. 2. Within the discretion of the court, an insurer may be allowed an award of a reasonable sum against the claimant as attorney's fee for the insurer's attorney in defense against a claim that was fraudulent or so excessive as to have no reasonable foundation. To the extent that any benefits are then due or thereafter come due to the claimant from the injury on which the claim is based, such a fee may be treated as an offset against such benefits.

Sec. 13. [LUMP SUM AND INSTALLMENT PAYMENTS.] Subdivision 1. Rights and obligations arising under basic or added reparation insurance with respect to a claim, inclusive of future loss arising from an injury, may be discharged by a settlement for a total amount not exceeding $2,500 payable in installments or in a lump sum. A settlement for a larger amount may be made with judicial approval upon a finding that the settlement is in the best interest of the claimant.

Comment: The theory of this bill is periodic payment of actual economic loss, with guessing as to future loss eliminated. In some cases it becomes advantageous to lump a number of small payments so the insurer may close a claim file and so the claimant need not continue to submit small periodic claims. The dollar limit on lump sum settlement is designed to protect the improvident claimant who might trade off very substantial future claims to get an immediate "mess of pottage." The $2,500 dollar limit may be waived upon judicial approval. For example, an injured person might seek a lump sum to invest in a business which he can operate despite some disability arising from the accident.

Subd. 2. An insurer or a claimant may obtain a lump sum award or an installment award of basic or added reparation

benefits that would come due after the date of the award, but only upon a finding supported by medical evidence that the final settlement will contribute to the health and rehabilitation of the injured person or upon a finding that the present value of all benefits to come due in the future does not exceed $1,000.

Comment: Subdivision 1 provides for voluntary settlements. Subdivision 2 provides for settlements imposed on one party by court order at the request of the other party.

Sec. 14. [ACTIONS; APPEALS.] Subdivision 1. If no basic or added reparations have been paid, a civil action for benefits may be commenced not later than three years after the accident from which the injuries arose. If basic or added reparation benefits have been paid, a civil action for benefits may be commenced not later than one year after benefits were last paid or three years after the accident from which the injury arose, whichever is later.

Comment: No-fault auto insurance will eliminate most auto injury law suits by removing the fact issues relating to liability and damage evaluation which make dispute and litigation inevitable. Some disputes and legal actions will still occur. This subdivision sets the statute of limitations for these actions.

Disputes under no-fault will be primarily on issues of causation, amount of medical impairment and amount of survivor's loss. When a dispute occurs between the insurance company and the accident victim, the claimant may sue on the insurance contract. Either side may obtain a jury trial. Keeton-O'Connell picked up a substantial political handicap by including a totally unnecessary bar on jury trials in claims of less than $5,000.[20] Jury trials are permitted under this bill in accord with the rules of civil procedure.

Subd. 2. In an action for basic or added reparation benefits, judgments shall be entered as to benefits to come due thereafter only for the period as to which the court can make reasonably certain determination of future net loss. An award of benefits as to any period beyond five years after the date of judgment

20. KEETON & O'CONNELL, *supra* note 1, § 3.10, at 323.

may be set aside in any case upon application of an interested party. A judgment determining that no benefits have become due or will become due after a specified date, when declared to be final by the court, may not be set aside under this subdivision.

Comment: Unnecessary guesses by a court as to future losses are to be avoided as often as possible. In a contested case the judgment should determine whatever fact is in dispute, but leave proof of future losses for a month-to-month determination. Thus, if the dispute is over causation where some pre-existing condition may have caused part of the post-accident earnings loss, the court might find the auto accident to have caused 50 percent of the losses. The auto insurer would then be responsible for 50 percent of losses up to the time of judgment and for 50 percent of losses thereafter occurring.

If the dispute is over the amount of earnings lost, the court could make a finding as to past loss and might make a determination of the losses to occur in the future. This subdivision limits the binding effect of the determination of future loss to a period of five years. At the end of five years the parties may reexamine the circumstances and negotiate a new figure. If negotiation fails, they may again return to court.

Subd. 3. Orders or judgments may be appealed in accordance with the Minnesota Rules of Civil Procedure. An order which is not subject to appeal may be revised at any time prior to entry of an appealable order or judgment.

Sec. 15. [DISCOVERY; EXAMINATIONS.] Subdivision 1. Whenever the mental or physical condition of a person is material to any claim that has been or may be made for past or future basic or added reparation benefits, the basic or added reparation insurer may petition a court of competent jurisdiction for an order directing the person to submit to a mental or physical examination by a physician or physicians. The order may be made only for good cause shown and upon notice to the person to be examined and to all persons having an interest. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

If requested by the person examined, the basic or added reparation insurer causing an examination to be made shall deliver to him a copy of every written report concerning the examination, at least one of which reports must set out the examiner's findings and conclusions in detail. After such request and delivery, the basic or added reparation insurer causing the examination to be made is entitled upon request to receive from the person examined every written report available to him 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 basic or added reparation 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 any person refuses to comply with an order entered pursuant to this subdivision the court may make such orders in regard to the refusal as are just.

Subd. 2. When relevant to a claim for basic or added reparation benefits and upon the request of the basic or added reparation insurer, information shall be disclosed as follows:

(1) Every employer shall furnish a statement of the work record and earnings of an employee upon whose injury the claim is based. The statement shall cover the period specified by the insurer making the request and may include the entire period after the injury and a reasonable period before the injury.

(2) Every physician, hospital, clinic or other medical institution furnishing services or accommodations to an injured person in connection with a condition alleged to be connected with an injury upon which a claim is based shall furnish a written report of the history, condition, treatment, and dates and cost of treatment of the injured person and produce and permit the inspection and copying of records regarding the history, condition, treatment, and dates and cost of treatment.

Any person providing information under the terms of this subdivision may charge the person requesting the information a reasonable amount in reimbursement for the cost of providing the information.

In the event of any dispute regarding an insurer's right to discover the facts about an injured person's earnings or about his medical history, condition, treatment, and dates and cost of such

treatment, a court of competent jurisdiction may enter an order for such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and shall specify the time, place, manner, conditions and scope of the discovery. A court may, in order to protect against annoyance, embarrassment, or oppression, 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.

Comment: This section gives insurers a legal basis upon which to obtain information necessary to intelligently process claims for compensation. The claim procedure involves an insurance company and its own customer. It is not an adversary contest and the information should be available without an action being commenced and without the intervention of a court.

Sec. 16. [REFUSAL OF REHABILITATION.] Upon refusal of any injured person to obtain reasonable rehabilitative treatment or occupational training, an insurer may upon notice move for (1) an order that benefits be reduced or terminated so as to limit recovery of benefits to an amount equal to the benefits that in reasonable probability would be due if the injured person submitted to such rehabilitative treatment or occupational training or (2) such other orders as are reasonable.

The court in determining whether an injured person has reasonable ground for refusal to submit to rehabilitative treatment or occupational training shall take into account all relevant factors, including the extent of the probable benefit, the attendant risks, the extent to which the procedure, treatment or training is or is not recognized as standard and customary, and whether the imposition of sanctions because of the injured person's refusal would abridge his right to the free exercise of his religion.

Sec. 17. [ASSIGNED CLAIMS BUREAU.] Subdivision 1. Insurers authorized to write basic or added reparation insurance in this state may organize and maintain, subject to approval and regulation by the commissioner of insurance, an assigned claims bureau and an assigned claims plan and formulate and from time to time amend rules and regulations for their operation and for the assessment of costs on a fair and equitable basis, consist-

ent with the provisions of this section. In default of the organization and continued maintenance of an assigned claims bureau and assigned claims plan by insurers in a manner considered by the commissioner of insurance to be consistent with the terms of this act, the commissioner of insurance shall organize and maintain such a bureau and plan.

Every insurer writing basic or added reparation insurance in this state is required to participate in the assigned claims bureau and the assigned claims plan. Claims shall be assigned to insurers and costs incurred in the operation of the bureau shall be assessed against insurers according to rules and regulations that assure fair allocation among insurers in proportion to the volume of basic and added reparation insurance they write in this state.

Subd. 2. A person authorized by section 10, subdivision 4, to obtain basic or added reparation benefits through the assigned claims plan shall notify the bureau of his claim within the time that would have been allowed for filing an action for basic or added reparation benefits had there been in effect identifiable coverage applicable to the claim. If timely action for basic or added reparation benefits is commenced against an insurer who because of financial inability is unable to fulfill its obligations, a claim through the assigned claims plan may be made within a reasonable time after the discovery of the financial inability.

Subd. 3. The bureau shall promptly assign the claim and notify the claimant of the identity and address of the insurer to which the claim is assigned or of the fact that the claim has been assigned to the bureau. Claims arising from injury to one person sustained in one accident and brought through the assigned claims plan shall be assigned to one insurer, or to the bureau, which thereafter shall have rights and obligations as if it had issued a policy of basic reparation insurance of standard provisions applicable to the injury or, in the case of the financial inability of an insurer to perform its obligations under a policy, as if it had issued the policy.

Comment: This section implements the rights given by section 10, subdivision 4, to: (1) uninsured victims of hit-run accidents; (2) nonresidents whose policies have not been converted into no-fault coverage; (3) members of the families of uninsured motorists, and (4) insureds whose companies have become insolvent.

Sec. 18. [ASSIGNED RISKS.] Agreements may be made among insurers with respect to the equitable apportionment among them of liability and basic and added reparation insurance which may be afforded to applicants who are required by this act to provide security for the payment of tort judgments and basic reparation benefits but who are unable to procure such security through ordinary methods. The insurers may agree among themselves on the use of reasonable rate modifications for that insurance. Agreements and rate modifications are subject to the approval of the commissioner of insurance. In the event of the failure of insurers to reach an agreement consistent with this section or their failure to agree on rates, the commissioner of insurance shall by regulation establish a plan for equitable apportionment of coverage among insurers and the rates therefor.

Comment: This section borrows the assigned risk procedures used under financial responsibility laws to make auto insurance available to high risk drivers.

Sec. 19. [REQUIRED OFFERING; RATES.] Subdivision 1. Insurers meeting the requirements for writing motor vehicle tort liability insurance in this state may offer basic and added reparation insurance in accordance with the terms and conditions of this act covering injuries arising out of the ownership or use of a specified vehicle or vehicles and injuries to named insureds and relatives residing in the same household.

Comment: The auto insurance business is left with the auto insurers.

Subd. 2. Rates charged for basic and added reparation insurance shall be reasonable and adequate for the classes of risks to which they apply. Classifications of risk for rating shall be reasonable. Among other factors, traffic violations and accident involvement may be taken into account. Rate making and regulation of rates for basic and added reparation insurance are governed by Laws 1969 Chap. 958.

Comment: Controversy concerning regulation of auto insurance premium rates should be avoided during legislative consideration of this bill by cross referencing to and continuing whatever rate policy is in effect at the time of introduction.

Under the present fault system, insurance companies generally raise premiums for drivers

who are convicted of violating traffic laws and for drivers whom the insurance claims bureaucracy decides have caused an accident. The rate increase is based on the proposition that those who are once caught driving badly are poor insurance risks because they are likely to drive badly again. Adoption of the no-fault system does not foreclose the use of this rating practice. This subdivision specifically authorizes it.

Sec. 20. [REGULATIONS.] The commissioner of insurance is authorized to promulgate and from time to time amend reasonable regulations to provide effective administration of the provisions of this act.

Sec. 21. [PENALTIES.] Any owner of a motor vehicle, for which security for the payment of claims is a prerequisite to its legal operation within this state under section 3, subdivision 1 or subdivision 4, who operates such motor vehicle or permits it to be operated upon a public highway in this state without having in full force and effect security complying with the terms of section 3 may be fined $300 or be imprisoned for 90 days, or both. Any other person who operates such a motor vehicle upon a public highway in this state with the knowledge that the owner does not have such security in full force and effect may also be fined $300 or be imprisoned for 90 days, or both.

Comment: The penalty is standard for misdemeanors in Minnesota.

Sec. 22. [REPEALS.] Minnesota Statutes 1967, Chapter 170, is hereby repealed.

Comment: The chapter repealed is the financial responsibility law. Fitting this act into existing statutory law must be done on a state-by-state basis. For example, Minnesota Statutes, section 221.141 gives the Public Service Commission authority to require truck and bus operators to maintain "public liability and *indemnity* insurance." That language easily accommodates no-fault insurance so no amendment is necessary, but in many states the corresponding section must be amended.

Sec. 23. [EFFECTIVE DATE.] This act is effective [approximately 13 months after passage] except as follows:

(1) The provisions of section 6, subdivision 5, and section

19, requiring and authorizing certain insurance policies and clauses, are effective immediately as to the issuance of policies to be in effect after [the effective date determined above].

(2) The provisions of sections 9, 17, 18 and 20 are effective immediately.

Comment: Some delay in effective date is necessary for an orderly transition by the insurance industry. In addition, insurance companies should have an opportunity to mail no-fault endorsements to their insureds. Postponing the effective date for a year will allow them to mail the endorsements along with the annual or semi-annual premium notices.