FINAL REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

Motor Vehicle Insurance and Unisex Ratings

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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Report of the Joint Subcommittee Studying Motor Vehicle Insurance and Unisex Ratings

To the Governor and the General Assembly of Virginia

To: The Honorable L. Douglas Wilder, Governor of Virginia, and The General Assembly of Virginia

I. INTRODUCTION

As the 1990 interim report of this joint subcommittee suggested, the Virginia General Assembly and a number of state agencies devoted substantial time and resources during the latter half of the 1980's to studying issues relating to the adequacy, affordability, and availability of various types of property and casualty insurance in the Commonwealth. Much of that effort focused on commercial liability insurance lines, those most seriously affected by the "liability insurance crisis" of 1986-1987. However, individual consumers and consumer advocates continued to report concerns about the cost and availability of private passenger motor vehicle insurance and motor vehicle insurer practices to members of the General Assembly, the Office of the Attorney General, and the State Corporation Commission's (SCC) Bureau of Insurance.

The General Assembly responded to citizen concerns regarding motor vehicle insurance by passing resolutions in both the 1987 and 1988 Sessions directing the Bureau of Insurance to study specific motor vehicle insurance issues. The 1987 study resulted in the enactment of legislation in 1988 relating to the grounds for nonrenewal and the requirements for termination notifications. The 1988 study resulted in the recommendation to the 1989 Session of the General Assembly that existing regulatory procedures appeared adequate to monitor and redress improper premium surcharges.

Despite these early efforts, problems relating to automobile insurance remained a leading subject of consumer complaints filed with the Bureau of Insurance and the Attorney General in 1988. In part, these complaints mirrored reports that over the period from 1982 to 1987, Virginia motor vehicle insurance premiums increased by 72%.

In addition to premium increases, other motor vehicle insurance issues emerged as concerns to both the Attorney General and members of the 1989 General Assembly. Those specific concerns included: (1) whether rate design factors such as age, gender, marital status and geographic location are being

appropriately applied in Virginia; (2) whether steps should be taken to reduce the number of drivers in Virginia's assigned risk plan; and (3) whether current laws prohibiting rebating and prohibiting excluding named drivers from coverage best serve the interests of Virginia consumers, insurers and insurance agents. To address those concerns, the Attorney General recommended and the 1989 Session of the General Assembly passed Senate Joint Resolution No. 223, establishing a joint legislative subcommittee with citizen participation to study the affordability and availability of motor vehicle insurance in the Commonwealth.

The following members were appointed to the Joint Subcommittee pursuant to the resolution: Senators Richard L. Saslaw of Annandale and John H. Chichester of Fredericksburg; Delegates Thomas W. Moss, Jr. of Norfolk, Edward R. Harris, Jr. of Lynchburg, and Harvey B. Morgan of Gloucester; and citizens Evans B. Brasfield, Esquire, of Richmond and Mr. Samuel A. Derieux of Richmond.

Senator Saslaw was elected Chairman and Delegate Moss, Vice-Chairman, of the Joint Subcommittee, which identified at its initial meeting an extensive list of topics for study. Those topics included: (1) consumer awareness, (2) the assigned risk plan, (3) automobile theft and fraud, (4) uninsured motorists, (5) the named driver exclusion, (6) premium surcharges, (7) cancellations and nonrenewals, (8) settlement problems, (9) safe driver discounts, (10) competition and insurance pricing, (11) costs associated with drunk and drugged driving, and (12) no-fault insurance.

A wide range of issues was discussed at the Joint Subcommittee meetings, held on September 20 and October 31, 1989, by participants that included staff of the Office of the Attorney General and the Department of Motor Vehicles; Commissioner of Insurance Steven T. Foster; counsel for several companies writing motor vehicle insurance in Virginia; and spokespersons for the Independent Insurance Agents of Virginia, the Alliance of American Insurers (Alliance), the National Association of Independent Insurers (NAII), the Virginia Trial Lawyers Association (VTLA), and Virginians for Fair Rates and Fair Compensation.

The Joint Subcommittee heard testimony relating to many, but not all, of the topics it resolved to study in 1989 and received recommendations for legislative initiatives from the Office of the Attorney General and others. Mindful of the varied and complex issues pending before the Subcommittee, the 1990 Session of the General Assembly passed Senate Joint Resolution No. 61 seeking continuation of the study established in 1989 pursuant to SJR 223. The General Assembly incorporated into the provisions of SJR 61 the substance of a separate resolution that requested a study of the potential impact of "unisex rating," or gender-neutral insurance rating laws. In adopting SJR 61 (Appendix 1), the General Assembly also increased the number of members on the Joint Subcommittee from seven to eleven.

Pursuant to the provisions of SJR 61, two additional Senators and two additional Delegates were appointed to join the original seven subcommittee members. The appointees added in 1990 were: Senators William E. Fears of Accomac and J. Granger Macfarlane of Roanoke and Delegates W. W. Bennett, Jr., of Halifax and Bernard S. Cohen of Alexandria. Senator Saslaw continued to serve as Chairman of the Joint Subcommittee and Delegate Moss as Vice-Chairman.

II. EXECUTIVE SUMMARY

The Joint Subcommittee began the second year of its study by conducting an organizational meeting in Richmond on July 2, 1990. At that meeting, Chief Deputy Attorney General H. Lane Kneedler summarized the Joint Subcommittee's work during its first year, and the Chairman invited representatives of the National Organization for Women (NOW) to comment on the unisex rating issue. The NOW representatives took the opportunity to explain NOW's position that auto insurance premiums should be based upon exposure to loss as measured by miles driven annually. This proposal, calling for "metered premiums," met with immediate objection from several insurance industry representatives.

On July 31, 1990, the Joint Subcommittee conducted the first of three public hearings in locations outside of Richmond. In Norfolk, the Joint Subcommittee heard support for gender-neutral auto insurance rates, and various recommendations endorsed by the Virginia Citizens Consumer Counsel. Also the Joint Subcommittee heard some of the consumer problems reported to the Norfolk Office of Consumer Affairs.

The next public hearing was held in Roanoke on August 23, 1990. The Subcommittee heard testimony from individual citizens experiencing claims settlement problems and increasing auto insurance premiums. The testimony regarding claims settlement problems prompted a discussion of a recommendation made by the Attorney General that the law should allow a civil penalty to be imposed upon an insurer that denies, in bad faith, a claim exceeding $1,000. The Subcommittee also heard testimony from a representative of Older Virginians on the inconsistency in the application of premium surcharges by insurers. In addition, a NOW representative addressed the Joint Subcommittee, explaining the organization's "metered premiums" proposal.

The third public hearing was conducted in Fairfax on September 26, 1990. This hearing focused on public comment concerning auto insurance, and a discussion of no-fault auto insurance.

At the meeting, NOW advocated the implementation of "metered premiums" to eliminate "the disproportionate premium burden imposed on low-mileage drivers." The presentation engendered discussion of the practical aspects of implementing such a system and the extent to which insurers already incorporate miles driven as a factor in establishing premiums. The Joint Subcommittee also heard from an individual citizen regarding a long delay in compensating him for a loss.

Various views regarding no-fault were then presented by a series of speakers. Considerable discussion ensued on whether circumstances in Virginia warrant moving to either a mandated or "choice" no-fault system.

The Joint Subcommittee returned to Richmond for a hearing on December 20, 1990, to discuss the Group Personal Lines Property and Casualty Model Act developed by the National Association of Insurance Commissioners ("NAIC") and to receive proposals for Joint Subcommittee endorsement.

Commissioner Foster discussed group auto insurance and the NAIC Model Act. He indicated that while no law prohibits an insurer from writing a group motor vehicle insurance policy in the Commonwealth, current insurance statutes relating to notice requirements and nonrenewals present obstacles to the marketing of such group auto coverage. According to the Commissioner, the NAIC Model Act fails to address adequately some of the problems posed in writing group auto insurance policies. However, he noted that a preliminary draft group auto insurance bill produced by the Office of the Attorney General was an improvement on the NAIC Model Act. Commissioner Foster added that such legislation might be worth exploring because one major carrier had, in fact, conferred with the Bureau of Insurance about marketing a group auto plan in the Commonwealth.

The Office of the Attorney General then presented a series of administrative recommendations relating to auto insurance and proposals for three legislative initiatives. The recommended legislative initiatives would: (1) establish an industry-funded program to receive and reward information relating to auto theft; (2) authorize and facilitate group auto insurance; and (3) create a civil penalty for an insurer's bad faith failure to pay an insured's claim that exceeds $1,000.

The Commissioner of Insurance presented two legislative proposals: (1) a requirement that, under certain circumstances, an agent disclose to a client seeking auto insurance that the agent is subject to restrictions on the agent's ability to write coverage; and (2) a prohibition on denying original coverage because of two or fewer wholly or partially not-at-fault accidents.

The final issue raised at the December 20 meeting was the NOW "metered premium" proposal. Insurance industry representatives responded to NOW's arguments by explaining the methods by which the industry already considers miles driven in determining premiums.

On January 9, 1991, the Joint Subcommittee met in Richmond to vote on the proposals presented. The Subcommittee agreed to recommend the two proposals suggested by Commissioner Foster as well as the Attorney General's proposals to create an auto theft tip-reward program and authorize a penalty for an insurer's bad faith denial of a claim of an insured exceeding $1,000. In addition, the Joint Subcommittee approved the concept of authorizing group auto insurance.

The Joint Subcommittee declined, however, to endorse a policy statement proposed by Delegate Cohen relating to the relative weight given to various factors in establishing rates, and it also voted to pass by indefinitely the NOW proposal on "metered premiums."

III. WORK AND DELIBERATIONS OF THE JOINT SUBCOMMITTEE

The Joint Subcommittee held five public hearings plus a final work session during the second year of its study.

At an organizational meeting in Richmond on July 2, 1990, the Joint Subcommittee decided, among other things, to conduct three hearings in locations around the Commonwealth to elicit testimony from the public on a variety of issues related to the cost and availability of motor vehicle insurance and the conduct of motor vehicle insurers. Subsequently, the Joint Subcommittee held hearings in Norfolk on July 31, in Roanoke on August 23, and in Fairfax on September 26.

On December 20, 1990, the Joint Subcommittee met in Richmond to receive recommendations for proposed legislative and administrative initiatives. Finally, on January 9, 1991, the Joint Subcommittee conducted a work session, open to the public, at which the members voted on proposals received during their 1990 term.

Participants and attendees at Joint Subcommittee meetings generally included the Office of the Attorney General, the State Corporation Commission's Bureau of Insurance, insurance trade group and company representatives, insurance agent representatives, individual citizens, representatives of the National Organization for Women, consumer advocates and spokespersons for the Virginia Trial Lawyers Association.

A summary of the issues explored by the Joint Subcommittee and the Subcommittee's findings follow.

IV. SUBCOMMITTEE FINDINGS

A. Unisex Rating of Motor Vehicle Insurance. During the 1990 Session, Senator Yvonne B. Miller of Norfolk introduced Senate Joint Resolution No. 92 asking the General Assembly to study the unisex rating of insurance products. Her resolution was incorporated into Senate Joint Resolution No. 61.

In exploring the unisex rating concept, the Joint Subcommittee heard extensive testimony from representatives of the National Organization for Women (NOW) who favored unisex rating for motor vehicle insurance by supporting a metered premiums amendment to eliminate sex discrimination in both the youth and adult rates currently charged for auto insurance. Under NOW's proposal, automobile insurers would be required to convert their insurance class rates from a "dollars-per-year" basis to a "cents-per-mile" basis for on-the-road insurance coverage. The NOW proposal contemplated that odometer readings could be used to measure the loss exposure applicable to an insured vehicle. Proponents testified that verified odometer mileage is the most objective and sex-neutral method for measuring the risk exposure of a vehicle and could be done at the time of annual inspection. According to the proponents legislation was pending in Pennsylvania to require mileage to be the exposure unit for calculating private passenger auto insurance premiums. A transcript of the testimony and accompanying exhibits appear as Appendix 2 to this report.

NOW representatives testified that they did not oppose classifying passenger automobiles for rating purposes and pointed out that per-mile class rates are readily multiplied by odometer mileage to produce metered premiums. In their testimony they recognized that cars used in business, cars garaged in urban territories, more expensive cars, and other factors may cost more money to the insurer per mile of protection, when an accident occurs than cars at lesser risk or of lower value. The proponents argued that insurers ignore the key fact that accident probability of each car in the same risk class varies according to its exposure on the road, measurable by miles driven. They argued that common sense tells us that car driven twice as many miles a year than another car has a proportionately greater chance of involvement in an accident.

NOW supported the conclusion that the insurers' failure to multiply class rates by odometer mileage discriminates against women and in favor of men as purchasers of auto insurance. This conclusion was based on their evidence that

women drive on average half as many miles as men but, with the exception of a discount for women under 25, women pay the same premium rates as men. Any individual who drives less, in fact, is forced to subsidize the cost of insuring those who drive more.

To end this discrimination, NOW proposed that insurers should be required by an amendment to the state rate law to proportion premium charges to an objective measure of the actual miles an insured car has been driven over the specified time period. This objective measure is the odometer reading, and it is one already relied on for financial transactions and is protected by state and federal law.

Opponents of the unisex rating proposal, such as the National Association of Independent Insurers, argued that risk classification variables currently used by insurers are relatively accurate indicators of accident propensity. They asserted that only after collecting and analyzing many years of loss experience data have insurers determined that characteristics reflecting the age, sex and marital status of the driver and the area in which the car is garaged are the most effective criteria for pricing automobile insurance. Secondary factors, such as mileage, driving record, the make and model, and the vehicle use are also considered. The use of these factors as rating criteria has been found to be not only a practical method of allocating costs among policyholders, but also justifiable and equitable.

Opponents testified that statistics from numerous studies reveal that male drivers, regardless of age, have more frequent and more serious accidents, and accumulate more traffic violation convictions than female drivers. The NAII offered statistical information for Virginia concerning drivers under the age of twenty-five. In Virginia, the average loss for young male drivers is twenty percent greater than for young single female drivers, indicating that it costs insurers twenty percent more to provide coverage to young males. They went on to point out that not only are male drivers under twenty-five involved in more automobile accidents than young female drivers, but their claim costs are higher than those of female motorists. They concluded that based on NAII statistics: (i) the average youthful male motorist represents a higher risk in automobile accidents than his female counterpart; (ii) if the sex of the insured is eliminated as a rating criterion, then, as the total amount of premium which an insurance company receives will not change, a rate redistribution among all young policyholders will occur; and (iii) that while some insurers do not differentiate between adult male and female motorists in their plans, many insurers make such a distinction, and hence, if auto insurers are not allowed to rate policyholders on the basis of their sex, then even adult male and female motorists will be effected.

The NAII also offered the following testimony in opposition to the unisex and metered-premium proposal:

- On October 1, 1985, Montana put into effect a law prohibiting insurance companies from using gender as a rating factor. The All-Industry Research Advisory Council conducted a survey of 12 leading auto insurers in that state and found that women drivers younger than age 25 had to pay substantially

higher auto insurance rates The study fund that average auto insurance rates for young women increased $91 to $274 a year, depending on their age, marital status and place of residence.

- Most consumers believe that increases in premiums as a result of unisex insurance rating would be unfair. A 1987 poll conducted by the Roper Organization on the subject of auto insurance found that about 75% of American women say it would be unfair to charge young women the same rates for auto insurance as young men, while 63% of the men agree with them on this point.

- The industry has already considered the number of annual miles driven as a possible alternative to gender as a rating criterion, however, the inability to accurately estimate or verify individual mileage alone diminishes the potential value of this concept. In fact, if mileage could be considered a primary rating factor, policyholder fraud would probably be relatively great. Moreover, mileage is simply not an acceptable replacement for sex as a rating variable because youthful drivers and male drivers consistently have higher accident frequencies per mile than adult drivers and female drivers, respectively.

- Any move to alter the present classification structure will create another effect on the insurance marketplace--the inevitable restriction of insurance availability and affordability for high risk policyholders. No one can deny that insurance companies will do whatever possible to avoid selling their product to high risk drivers, if the rate charged them is inadequate. Hence, these motorists whom removal of the current rating factors appears to help, will actually be hurt. The result will be a market dislocation because they will be forced to seek coverage in the residual market, most likely at a price greater than that which is charged today under the current rating structure. Also, those insureds remaining in the voluntary market who must pay more as a consequence of this change may have a legitimate complaint against unfairly high premiums. Not only do restrictions imposed on the rating structure lead to problems of availability and affordability, but they will inevitably result in an erosion of the competitive market.

- In addition to proposed legislation on sex-neutral rates, there has been much litigation concerning the elimination of the traditional risk classifications. One in particular is Insurance Services Office v. Commissioner of Insurance, 381 So. 2d 515 (1979 La. App.) 382 So. 2d 1391 (1979), whereby the Louisiana Supreme Court affirmed a Court of Appeals decision vacating a regulation adopted by the Commissioner. This regulation prohibited the use of age and sex as auto insurance rating criteria. The court said: "The evidence taken by the Commissioner indicates that there exists a sound statistical basis for using classifications based on age and sex in fixing insurance rates. It further appears that any classification system which results in different classes paying different rates for the same protection is to some extent discriminatory. R.S. 22:1404 requires that the classification used in establishing rates be reasonable and not unfairly discriminatory. We agree with the trial judge that classifications based on age and sex are not unreasonable, and although there is discrimination against the good, young driver, it is not unfair or unreasonable" (381 S.2d 517).

- The issue of the present risk classification structure is not one of discrimination versus non-discrimination, but that of fair versus unfair discrimination. Insurers do comply with the rate regulatory laws that prohibit unfair discrimination. Insurers do not discriminate on a prejudicial basis, but on the basis of hard statistical facts. The use of reliable statistics does not discriminate for or against any group but only permits insurers to draw clear distinctions for the purpose of defining insurance risk. It is true that insurers differentiate between youthful and adult drivers, male and female insureds and young unmarried and young married male motorists; of course they differentiate among territorial divisions. Not to rate these classes differently would be unfair.

At the request of the Joint Subcommittee, the insurance industry submitted testimony reflecting how gender and mileage are currently utilized in tier rate-making process. The testimony submitted appears as Appendices 3 and 4 of this report.

The Joint Subcommittee found that while the unisex and cents-per-mile rate proposal suggested by NOW and the industry's current use of certain criteria in its classification plans are not mutually exclusive, the insurance industry's current risk assessment process is justified and based upon relatively accurate statistical data. They found that the criteria currently used are necessary to determine the expected costs in providing insurance coverage and in identifying different loss propensities of each group of insureds.

B. No-Fault Insurance. Although Senate Joint Resolution No. 61 did not directly identify the issue of no-fault insurance as a topic to be studied, several members of the Joint Subcommittee asked that the Joint Subcommittee allow time for presentations to be made on no-fault because (i) it has proven to be a workable system in some states; (ii) it has cost-containment features, such as, eliminating adversarial costs and nuisance cases; and (iii) it potentially offers a better system of delivery of payments to injured parties than does the liability system. At its Fairfax Public Hearing in September, the Joint Subcommittee received testimony on no-fault. The Joint Subcommittee took no formal action on the issue of no-fault. Appendices 5 and 6 of this report are copies of the testimony received.

C. Claims Settlement Problems; Bad Faith. Some of the public testimony presented the Joint Subcommittee during the three public hearings (Norfolk, Roanoke and Fairfax) held in 1990 concerned citizen complaints with the settlement practices of their insurer or third party insurer. The Joint Subcommittee found that with regard to first party claims, the insured should have a statutory civil remedy against his insurer who in bad faith fails to properly settle a claim totalling more than $1,000 and should be able to seek a penalty from the insurer. Testimony that led to this conclusion follows.

The Attorney General of Virginia proposed that § 8.01-66.1 of the Code of Virginia be amended to permit an insured a remedy against his insurer for a bad faith failure to a claim totalling more than $1,000. Under the proposal, the insurer found to have denied, in bad faith, payment of the claim in excess of $1,000 to its insured, shall be liable to the insured for the amount of the claim due, plus interest

at double the legal interest rate together with reasonable attorney's fees and expenses. In making this proposal, the Attorney General gave the following testimony:

- The Office of the Attorney General expressed concern about what should be done when an insurer fails to fulfill its obligation to pay an auto insurance claim in a reasonable and timely fashion to its own insured or to an injured third party. Each year, the Bureau of Insurance and the Attorney General's Insurance and Utilities Regulatory Section receive scores of written complaints and telephone calls from citizens concerning the handling of policyholder claims. While the total of such claims -- let alone each individual claim -- seems insignificant when compared to the large amount of auto insurance premiums collected and claims paid annually in Virginia, each of these complaints can represent a major financial difficulty for those involved. Lienholders, for example, must be reimbursed for loans on vehicles that have been totalled, damaged vehicles must be repaired or replaced, and doctors and hospitals must be promptly paid for medical care provided.

- Complaints directed to the Attorney General and the Bureau of Insurance, as well as citizen testimony to this subcommittee, suggest that something is wrong with the way <u>some</u> insurers handle automobile insurance claims. This office has heard reports of ignored letters, unreturned phone calls, seemingly arbitrary reversals of position, agonizing delays and utter frustration. Furthermore, it is probably fair to assume that this office receives reports reflecting only a portion of the problems.

- The Bureau of Insurance can penalize insurers that demonstrate a pattern of unfair claims practices. It can also be helpful in getting some of these complaints resolved. But <u>Virginia law only provides a specific private sanction for an auto insurer's bad faith misconduct in failing to pay a claim in one limited set of circumstances -- when the amount of the claim totals no more than $1,000.</u> For such claims, an insured or third party claimant can resort to court and obtain a "penalty" against an insurer--double the amount of the claim. Attorney's fees and costs can also be awarded.

- Thus, the Code of Virginia presently limits an insurer's liability to an insured or third party claimant to a total of only $2,000 (plus reasonable fees and cots) for a <u>bad faith</u> failure to pay a claim, and a right to this remedy may be asserted only by persons with small claims of $1,000 or less.

- The Attorney General's Office has advanced the concept of simply lifting the $1,000 cap and permitting a civil sanction of double the legal rate of interest (along with attorney's fees and cots) on larger claims where a court has found a bad faith failure to settle. However, the insurance industry has objected strenuously, arguing that lifting the cap would lead to higher litigation costs for the entire system, especially where third party claimants would be eligible to seek such sanctions. The Attorney General's Office has been sensitive to such concerns, at least where third parties would be eligible for such awards.

- However, the first party situation is different. There, a fiduciary relationship between the insurance company and the insured causes special concern about the lack of civil sanctions available to the insured when the insurance company refuses to settle in good faith.

Representatives of the insurance industry, including representatives for State Farm Mutual Automobile Insurance Company, the American Insurance Association, the National Association of Independent Insurers, the Alliance of American Insurers and Nationwide Mutual Insurance Company urged the Joint Subcommittee to reject the Attorney General's proposal creating additional civil remedies against insurers in disputes with insureds. They believed that adoption of the proposal would suggest that the Joint Subcommittee, after careful study, has concluded that automobile insurers in Virginia are engaging in bad faith dealings with their own insureds to such an extent that existing laws and regulations are not adequate to control the practice. They noted that no evidence was presented in support of this allegation other than a statement that the Attorney General's Office and the Bureau of Insurance have received some complaints regarding the settlement of automobile insurance claims.

In contesting the proposal, the insurance industry representatives affirmed that the consumer is currently more than adequately protected against the actions of insurers in Virginia. In cases of proven bad faith, current law under § 8.01-66.1 of the Code of Virginia allows the insured to recover double damages and attorney's fees and expenses involving claims under $1,000, and under § 38.2-209 of the Code of Virginia allows the insured to recover the amount of damages and attorney's fees and expenses in all such cases against ones own insurer. Also, they pointed out that the Unfair Claims Practices Act gives the State Corporation Commission a very effective means to deal with any bad faith dealing by an insurer, including sanctions ranging up to loss of license.

The opponents also noted that presently too little of the premium dollar ends up in the policyholder's pocket because of administrative costs and defense and claimant's attorney's fees. They suggested that this proposal is yet another tier of litigation which will cause the insurer and insured to go to court and increase administrative expenses.

The Virginia Trial Lawyers Association (VTLA) offered two amendments to the Attorney General's proposal. The VTLA proposed amendments to the Attorney General's proposal addressed third party claims and uninsured claims similarly to the way they are addressed by the current provisions of § 8.01-66.1 which cover claims of $1,000 or less. The VTLA amendments would have allowed redress to third party claimants and to the uninsured motorist claimant who has paid the fee under § 46.2-706 of the Code of Virginia. The Joint Subcommittee did not act on the VTLA's amendments.

A copy of the Attorney General's proposal appears in Appendix 10 of this report.

D. Theft and Fraud. The Joint Subcommittee heard presentations by the Office of the Attorney General addressing administrative and legislative proposals to reduce automobile insurance losses. Although the Joint Subcommittee did not take formal action on the administrative proposals (fraud education program for attorneys for the Commonwealth and the HoJack Program), it encouraged any efforts that could be taken administratively to reduce auto theft and insurance losses.

With regard to the legislation proposed by the Attorney General and supported by the insurance industry, the Joint Subcommittee found that the establishment of an insurance industry-funded program to receive and reward information leading to the arrest and conviction of auto thieves and "chop shop" operators to be in the best interest of the Commonwealth and premium-paying consumers.

The Joint Subcommittee learned that data from the Virginia Department of State Police and from insurers writing motor vehicle insurance in Virginia demonstrate increasing costs due to auto theft in the Commonwealth. The impact on auto insurance premiums is significant. Several states have launched cooperative programs that team the insurance industry, law enforcement authorities and the public in efforts to reduce auto theft losses. Most notable is the successful program initiated in Michigan in 1985, which serves as the model for similar programs in New Jersey, Florida and Texas.

These industry-funded programs, known as "HEAT" programs (for "Help Eliminate Auto Theft"), establish toll-free telephone hotlines to receive tips relating to auto thefts, theft rings and "chop shop" operations. HEAT hotlines are staffed by law enforcement personnel who relay information to local police agencies and submit tip information to the program's reward committee or agency. Informants' identities remain confidential and testimony voluntary.

Because of the success of HEAT programs elsewhere in reducing auto theft-related losses, it was recommended that the State Corporation Commission be authorized to collect assessments from motor vehicle insurers to fund a statewide HEAT program in the Commonwealth.

The proposal establishes an insurance industry-funded program to receive and reward information leading to the arrest and conviction of auto thieves and "chop shop" operators by adding a new section to Chapter 4 of Title 38.2 that requires motor vehicle insurers to pay an annual assessment to the State Corporation Commission for the purpose of providing funds to establish and operate an auto theft "tip reward" program. Consistent with other Commission assessments, the proposal provides for a penalty to be imposed by the SCC if any insurer fails to pay its assessment.

Each insurer is assessed one-quarter of one percent (.25%) of its total calendar year written premiums for auto physical damage insurance other than collision, i.e., comprehensive coverage. The most recent data available suggests that total annual funding would approximate $500,000. The assessments would be placed in a separate fund to be controlled and administered by the Superintendent of the Virginia Department of State Police, who would appoint a seven-member advisory committee to develop and review a plan of operation for the program.

A toll-free HEAT hotline would be implemented that would channel tip information to the Virginia State Police, the Department of Motor Vehicles, and other law enforcement agencies. A media program would be developed to inform the public about HEAT. Any funds in excess of the amount required to establish and operate the tip reward program would be directed for auto theft law enforcement efforts.

A copy of the legislation appears in Appendix 10 of this report.

E. **Premiums.** Just as the proposals concerning auto theft and fraud had been developed with the ultimate goal of reducing auto insurance premiums and increasing consumer awareness, so too were two proposals submitted to the Joint Subcommittee by the State Corporation Commission's Bureau of Insurance.

1. The Commission's first proposal would require an insurance agent whose company had placed a moratorium on accepting applications from him for business in the preferred and standard market to disclose to an applicant or insured such limitations on their ability to place coverage. Appendix 10 of this report contains a copy of this proposal.

This first proposal was first brought to the attention of the Joint Subcommittee during its deliberations in 1989, however, the Commission decided to wait until the 1990 interim to craft language for the proposal acceptable to all parties. The Commission testified that most insureds apparently rely on their agents to shop for the coverage and the most competitive premiums. It was the Commission's concern that an insured who so depends on the agent may have an agent whose company places a moratorium on accepting applications for preferred or standard business from agents who have produced a "bad book of business", that is, business that has been unprofitable for the insurer. Moreover, such an insured or consumer who relies on such an agent to gather information comparing prices and coverage in the various markets could be placed with a company in the substandard market or in the assigned risk plan for reasons unrelated to the consumer's driving record, for example, because the agent's inability to secure coverage from companies in the standard market charging competitive rates.

Having amended the proposal so that it would cover direct writers with one company as well as independent agents and agents who write for more than one company, the Joint Subcommittee found for the reasons stated by the Commission that there needs to be a requirement on the agent to disclose to the consumer such limitations on his ability to place coverage in the competitive markets. Although the proposal has narrow application, the Subcommittee found that these limitations placed on an agent impairs the consumer's ability to shop for competitive rates.

2. The Commission's second proposal, which the insurance industry opposed, amended § 38.2-2213 of the Code of Virginia to prohibit an insurer from denying original coverage to a person because of two or fewer not-at-fault or partially-at-fault accidents within a three-year period. The Commission pointed out that the 1990 General Assembly enacted similar legislation prohibiting a nonrenewal of auto insurance for the same reason. Acknowledging that this proposal appears to dictate underwriting standards and therefore involves the Commission in reviewing underwriting practices, the Commission testified that insurers should, in fairness, write coverage for persons described in this proposal. The Commission observed in response to industry opposition that any company offering a preferred risk program for good drivers would not drop such a program because such a program is a very profitable "good book of business."

F. Group Auto Policy. The final issue (which was in the form of proposed legislation) that the Joint Subcommittee reviewed was whether group auto insurance policies should be specifically authorized by statute and provisions added to the Code of Virginia which would facilitate the marketing of such policies. The proposed was offered by the Office of the Attorney General and opposed by the insurance industry. The State Corporation Commission, while not supporting or opposing such suggested legislation, pointed out several problems accompanying the implementation of such legislation. A copy of the National Association of Insurance Commissioners' (NAIC) Model Act and a copy of draft legislation offered by the Attorney General appear in Appendices 7 and 8 of this report.

The Office of the Attorney General testified that the legislative proposal was designed to help make the automobile insurance market in Virginia work better by providing opportunities for insurers to compete in a new way, through the offering of group automobile insurance policies. The Attorney General believed that consumers would enjoy a broader range of choices and that premiums in many cases would be lower if group automobile insurance were available in the Commonwealth. With insurance costs continuing to require significant portions of family incomes, group auto insurance could present an attractive alternative for some consumers. Group auto insurance is not new, but has enjoyed surges and declines in popularity since the 1920's. At present, about a dozen states permit "group auto insurance" in a number of different forms.

Technically, Virginia law does not prohibit the writing of group motor vehicle insurance policies; however, some contend that Virginia's laws do not facilitate group motor vehicle insurance coverage, because they were designed to apply to the "typical family auto insurance policy," i.e., an individually underwritten policy of insurance coverage.

While Virginia has specific statutes authorizing group accident and sickness insurance policies and group life insurance policies, there is no law specifically authorizing group auto insurance policies. The Attorney General opined that such a law would promote healthy competition among insurers and facilitate expansion of the range of auto insurance products available to the public.

In proposing this legislative recommendation, the Attorney General reviewed the NAIC Group Personal Lines Property and Casualty Insurance Model Act, as well as separate state statutes dealing with group auto insurance. That office found that the NAIC Model Act appears to include several important consumer protection provisions that it believes are critical to the group auto insurance concept, and the proposal as drafted is a modified version of the NAIC Group Personal Lines Property and Casualty Insurance Model Act.

The proposal would amend Title 38.2 by adding provisions that specifically authorize and facilitate the marketing of group motor vehicle insurance policies. The legislation authorizes group policies to be issued to employers, employee groups, other associations (provided certain conditions are met), or trusts established by one or more of the above. The employer, association, trust or trustee would be deemed the policyholder and issued a master policy. Each insured employee or member would receive a comprehensive certificate of insurance specifying his coverage. Master policies would be required to be filed with the State Corporation Commission and provide at least minimum coverage and limits required by law. The proposal prohibits a reduction of coverage or termination for an individual insured unless the insured fails to pay the premium contribution or unless employment or membership terminates. The legislation would encourage rates to be developed on a group basis, but would permit insurers to apply reasonable underwriting standards to disqualify certain employees or members from coverage. If coverage under the group policy is involuntarily terminated for a reason other than nonpayment of premium, the insured would be allowed to convert to an individual policy.

The decision to offer group auto insurance, even if this proposal were enacted, would be entirely up to the insurance companies; and the decision whether to participate would be up to various organizations, such as employers,

and the individuals who would make up the group. The proponents stated that the goal is simply to create an environment in which creative insurers can develop and make available a product that meets the needs of more Virginians, resulting in a greater range of choices for consumers, increased competition in the marketplace, and a moderating influence on automobile insurance premiums.

The opponents to the group auto policy proposal submitted a paper pointing out many shortfalls of the proposal contemplating equal auto insurance rates for all members of a group. The paper appears as Appendix 9 to this report.

The State Corporation Commission speaking to this proposal, appeared at the request of the Joint Subcommittee to explain the NAIC Model Act offered in July 1989. That Model Act appears as Appendix 7 to this report. With regard to the proposal, which is similar to the one offered by the Attorney General, the Commission stated that no prohibition currently exists that would prevent an insurer from filing and selling group auto insurance policies. However, the Commission observed that existing statutes and regulations promulgated to enforce and administer those statutes would provide a number of hurdles that would have to be crossed in order to sell this type product.

The Commission recommended study of the Model Act because its provisions could produce some cost savings in the delivery of such policies, particularly where selective underwriting is authorized, and some lower premiums could result due to economies of scale. However, the Commission recommended that the General Assembly approach this proposal carefully and review thoroughly the consumer protection features. For example, the Commission noted that under the Commonwealth's current forty-five-day nonrewal notice provision in Title 38.2, notice would be sent to the owner of the policy, who under the proposal would be the employer or trust, but the covered driver, who would normally receive notice, would not receive a nonrenewal notice.

Other concerns the Commission raised are also obvious problems created when the owner of the policy is the employer, not the employee. For example, each employee has different assets to protect and such differences require different amounts of coverage. In addition, the proposal does not explain how coverage is continued if the employee leaves work or is fired nor does the Model Act thoroughly address the problems created when the owner of the policy fails to remit the premium and when the carrier can cancel the policy in midterm for nonpayment of premium. Also, the Commission observed that tying employment with auto insurance coverage could necessitate questions of driving records during employment interviews.

The Commission pointed out that the provision for group auto insurance would as drafted create a prior approval type of insurance where the insurer would have to file the policy and rates with the Commission, and receive the Commission's approval on both before selling the product. Most auto insurance is sold on a file and use basis. In its review of the proposal, the Commission found certain problems with the conflicts of law feature of the draft in that the proposal does not specify which state law would be applicable for a certificate holder. The Commission representative observed that the proposal did not permit as much flexibility as they would like to see for allowing an insurer or owner to selectively cover employees or members. Also, the proposal may have some

prohibiting or limiting effects on the stacking of coverage, which Virginia statutes and case law presently allow. Finally, the Commission stated its concern with the proposal's failure to authorize the Bureau of Insurance to review cases of nonrenewal of coverage, an authorization which current law provides for an individual's policy.

The Joint Subcommittee found the concept of group auto insurance to have the potential of saving insureds' premium dollars; however, members found that many of the problems with this type of policy that have been pointed out by industry and the Commission are real problems and ones that need to be addressed before such policies are marketed in the Commonwealth.

V. RECOMMENDATIONS

A. Unisex Rating; No-Fault insurance; Group Auto Insurance. Three of the issues reviewed by the Joint Subcommittee did not result in legislation introduced to the 1991 General Assembly. Those three were (1) unisex rating of motor vehicle insurance, (2) no-fault insurance, and (3) group automobile insurance.

1. At its January 9, 1991 meeting, the Joint Subcommittee considered the proposal offered by the National Organization for Women to amend the rating laws in the insurance title to require that "for driving coverages of private passenger automobiles, the exposure unit shall be the mileage as recorded on the odometer of the insured car." For the reason stated in Part IV of this report, the Joint Subcommittee voted unanimously to pass this proposal by indefinitely.

The Joint Subcommittee also considered and voted 9 to 2 not to endorse the following policy statement proposed by Delegate Cohen:

> "Insurers should be required to establish that each criterion they use in making rates is causally related to risk and that the weight given to each factor is substantially equal to the importance of that factor in measuring risk. Thus, insurers should be required to weight driving records and mileage driven heavily, territory lightly, and occupation, sex and lifestyle not at all in determining how much to charge a given risk."

2. The Joint Subcommittee heard proponent and opponent arguments on no-fault insurance, but took no action on the issue.

3. After hearing the arguments for and against group auto insurance, the Joint Subcommittee by a 9 to 1 vote approved the concept of specifically authorizing and facilitating group automobile insurance.

The Office of the Attorney General told the Joint Subcommittee that it would continue to work on appropriate language to resolve the problems which had been pointed out to the Subcommittee, recognizing that proposed legislation might not be completed in time for introduction in the 1991 Session and promising that it would not be introduced if a resolution to each problem could not be reached.

B. Claims Settlement; Theft and Fraud; Auto Insurance Premiums. The Joint-Subcommittee's review of issues relating (1) claims settlement, (2) theft and fraud, and (3) premiums from automobile insurance resulted in recommendations that four pieces of legislation be introduced during the 1991 Session of the General Assembly.

1. The Joint Subcommittee recommended that:

   Section 8.01-66.1 of the Code of Virginia be amended to create a civil remedy for an insured for a bad faith failure of his insurer to pay a claim totalling more than $1,000. An insurer found to have denied, in bad faith, such a claim to an insured shall be liable to the insured for the amount of the claim plus interest at double the legal interest rate, together with reasonable attorney's fees and expenses.

Review of current Virginia law reveals that there is a statutory civil remedy available to an insured for his auto insurer's bad faith failure to pay a claim of $1,000 or less; however, there is no specific statutory remedy available to an insured for his insurer's bad faith failure to pay a claim over $1,000. The Joint Subcommittee decided that the fiduciary relationship between an insurance company and its insured remains the same regardless the size of the claim, and there should be a specific civil remedy available when an insurance company refuses to settle in good faith large or small claims with its own insured. A copy of the legislation addressing bad faith settlement practices appears in Appendix 10 of this report.

2. The Joint Subcommittee recommended that:

   Title 38.2 of the Code of Virginia be amended to establish an insurance industry-funded program to receive and reward information leading to the arrest and conviction of motor vehicle thieves.

The legislation should require motor vehicle insurers to pay an annual assessment to the State Corporation Commission for the purpose of providing funds to establish and operate the program. The assessment would equal one-quarter of one percent of each insurer's total Virginia calendar year written premiums for auto physical damage insurance other than collision. The fund would be administered by the Department of State Police. A seven-member advisory committee would be appointed by the Superintendent of State Police to develop a plan of operation for the HEAT Program. Any funds in excess of the amount required to establish and operate the program in any year would be used for auto theft law-enforcement and education efforts. The Joint Subcommittee decided that the establishment of such a program could help reduce auto insurance premiums by reducing theft and costs associated with theft. A copy of the legislation appears in Appendix 10 of this report.

3. The Joint Subcommittee recommended that:

   Title 38.2 of the Code of Virginia be amended to add a provision to require an insurance agent who is under a moratorium imposed by an insurance company to which he submits applications seeking coverage if, as a result of the moratorium, the applicant would have to pay a higher premium for the coverage sought.

The Joint Subcommittee felt such disclosure was appropriate and pro-consumer because it would allow the applicant to make a more informed decision concerning the type of coverage available and which agent he wanted to manage the policy. A copy of the legislation appears in Appendix 10 of this report.

4. The Joint Subcommittee recommended that:

> **Title 38.2 of the Code of Virginia be amended to prohibit an insurer from denying coverage to an applicant for original motor vehicle insurance based upon the fact that the applicant had two or fewer not-at-fault or partially-at-fault accidents within a three-year period.**

The Joint Subcommittee decided that because the General Assembly had enacted legislation at the 1990 Session to prohibit the same type of action by an insurer for renewal policies the same prohibition should be placed on insurers with regard to original applications. A copy of this legislation appears in Appendix 10 of this report.

VI. CONCLUSION

The Joint Subcommittee began its study of motor vehicle liability insurance by conducting three public meetings in 1989. The Subcommittee adopted an extensive agenda and identified twelve topics that it would review during 1989. The Subcommittee's work is reported in Senate Document No. 34 of 1990.

The 1990 General Assembly enacted several pieces of legislation that reflect some of the concerns and proposals presented before the Subcommittee in 1989. One was a bill that prohibits an insurer from assigning accident points under an insurance policy to any vehicle other than the vehicle customarily driven by the driver responsible for incurring points.

A second bill provided that no insurer or agent may base an adverse underwriting decision, even in part, on the fact that an individual previously obtained insurance coverage from a particular company or agent.

A third bill prohibited insurers from nonrenewing an auto insurance policy solely because of two or fewer not-at-fault or partially-at-fault accidents within a three-year period. It also prohibited an insurer from increasing an insured's premium or charging points due to a not-at-fault accident.

A fourth bill provided that if an insurer or agent gave a premium quote to an insured or applicant for insurance and the authorized rate for the insured would actually result in a premium increase of ten percent or more over the quoted premium, the insured or applicant may cancel the contract or policy. If the applicant or insured cancels, the insurer must reimburse the unearned premium and must calculate the earned premium prorate using the premium originally quoted unless that quote was based on incorrect or incomplete information furnished by the insured or applicant.

The members of the Joint Subcommittee met their goal of hearing extensive testimony on all the topics and of deciding which issues deserved legislative actions

and where administrative action alone could resolve certain problems. Their ultimate charge of keeping Virginia's automobile insurance market competitive and assuring the continued availability and affordability of product was met.

The Joint Subcommittee expresses its appreciation to those interested groups who have worked long and hard on those issues described in this report. The members of the Subcommittee recognize that the dedication of those interests represented has made this study successful.

Respectfully submitted,

Richard L. Saslaw, Chairman
Thomas W. Moss, Jr., Vice-Chairman
W. W. Bennett, Jr.
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Samuel A. Derieux

V. APPENDICES

1. Senate Joint Resolution No. 61 (1990).
2. July 2 Presentation by Virginia National Organization for Women.
3. December 20 Statement of Government Employees Insurance Company.
4. December 20 Statement by State Farm Mutual Automobile Insurance Company.
5. September 26 Statement of Robert H. Joost.
6. September 26 Presentation by Virginia Trial Lawyers Association.
7. National Association of Insurance Commissioners Group Personal Lines Property and Casualty Insurance Model Act.
8. December 20 Proposals of Office of the Attorney General.
9. December 20 Statement of Nationwide Insurance Company.
10. Proposals Recommended to 1991 General Assembly and Endorsed in Concept by the Joint Subcommittee.

SENATE JOINT RESOLUTION NO. 61

Continuing the Joint Subcommittee Studying the Availability and Affordability of Motor Vehicle Insurance and unisex ratings on insurance premiums in Virginia.

Agreed to by the Senate, March 9, 1990
Agreed to by the House of Delegates, March 7, 1990

WHEREAS, the 1989 Session of the General Assembly established, pursuant to Senate Joint Resolution 223, a joint subcommittee to study (i) the availability and affordability of motor vehicle insurance and (ii) rate design and rating formula issues involving motor vehicle insurance; and

WHEREAS, the joint subcommittee heard considerable testimony on the two areas of study and on numerous related issues, including the need for comparative information about the premiums charged and the quality of service offered by motor vehicle insurers, the criteria for placement in the Virginia Automobile Insurance Plan, automobile theft and insurance fraud, intoxicated motorists, uninsured motorists, the merits of allowing policies to exclude a named driver from coverage, the collateral source rule, the stacking of coverages, policy cancellations and nonrenewals, point surcharges, and problems affecting the settlement of insurance claims; and

WHEREAS, the Bureau of Insurance and the Office of the Attorney General continue to receive numerous complaints concerning point surcharges, terminations of coverage, and the settlement of claims; and

WHEREAS, the insurance industry has proposed cost containment measures on which there is considerable debate; and

WHEREAS, there is a need to conduct hearings at convenient locations within the Commonwealth to give interested citizens an opportunity to comment; and

WHEREAS, although there appears to be some agreement on a number of issues as a result of the joint subcommittee's deliberations, there are still other issues that need more thorough and detailed study; and

WHEREAS, citizens throughout the Commonwealth are still experiencing difficulties in obtaining and retaining affordable motor vehicle insurance and in securing payment of motor vehicle insurance claims, and these difficulties threaten the economic well-being of individual citizens and the public interest; and

WHEREAS, the level of insurance premiums and the ratings used to determine these premiums are of interest to the citizens of the Commonwealth; and

WHEREAS, some consumers do not understand or approve of the ratings systems used to arrive at auto, health, life and casualty, and other insurance premiums; and

WHEREAS, unisex rating of premiums prevents insurance companies from using gender as a rating factor for pricing insurance coverage; and

WHEREAS, some states have adopted unisex ratings on automobile insurance; and

WHEREAS, some evidence suggests that unisex ratings have caused an increase in automobile insurance premiums for women and have resulted in lower premiums for men; and

WHEREAS, some evidence suggests that unisex ratings would result in higher health insurance premiums for men and would lead to lower health insurance premiums for women; and

WHEREAS, the General Assembly of Virginia should explore the concept of unisex rating and its potential impact on insurance premiums for its citizens; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the joint subcommittee established in 1989 pursuant to Senate Joint Resolution No. 223 be continued to study (i) the means of ensuring the availability and affordability of motor vehicle insurance in the Commonwealth; (ii) the means of ensuring that the rating practices and rating formulas utilized by insurers do not unfairly restrict the availability of affordable motor vehicle insurance; and (iii) the potential impact of unisex rating of insurance products in Virginia by collecting, assimilating, and summarizing relevant information on this subject which has been prepared and distributed by various state and federal regulatory agencies.

The joint subcommittee shall consist of eleven members to be appointed as follows: four members from the Senate Commerce and Labor Committee, to be appointed by the Senate Committee on Privileges and Elections; five members from the House Corporation, Insurance and Banking Committee, to be appointed by the Speaker of the House; and two members representing the general public, to be appointed by the Governor.

The joint subcommittee shall complete its work prior to December 15, 1990, and report its findings and recommendations to the Governor and the 1991 Session of the General

Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

The indirect costs of this study are estimated to be $10,650; the direct costs of this study shall not exceed $6,480.

National Organization for Women, Inc.

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TESTIMONY ON UNISEX AUTOMOBILE INSURANCE

by

Virginia National Organization for Women

to

The Joint Subcommittee of the Virginia General Assembly
Studying Motor Vehicle Insurance and Unisex Ratings
Richmond, Virginia
July 2, 1990

Good morning. I am Twiss Butler from the headquarters of the National Organization for Women. I appreciate the opportunity to appear before this committee today on behalf of Virginia NOW to discuss unisex automobile insurance. With me is Dr. Patrick Butler, also of the NOW Insurance Project, who will join me in responding to questions and comments you may have concerning this presentation.

First, do women really get a break on auto insurance? Insurers say women pay less because they have fewer accidents than men. They threaten that what they call "unisex" premiums -- charging both sexes the same car-year rate -- would cost women more. They cite the increases of 30% and more in young women's premiums when their accident costs were merged with young men's in Montana in 1985 and Pennsylvania in 1989. Insurers do not cite, however, the equally significant fact that it was only 20 percent of cars in these states that were affected by the change to unisex. Why? Because four out of five cars already were unisex-rated in those states as they have always been in Virginia.

This evidence agrees with the reality we wish to stress -- that most women on average are already overcharged by 30% -- about $150 a year on a state-average $500 premium. These overcharges, however, are neither caused nor remedied by the car-year rates insurers apply on a sex-divided basis to a small minority of cars. Instead, the overcharges result from the fact that individual premiums are not proportioned to the actual mileage driven by each car and recorded on its odometer.

Why does the National Organization for Women want insurers to read the meter on each car? It's not because women are "safer" drivers. In fact, per-mile accident rates for men and women are about the same, so driver sex should not make any difference. We want odometers read because the odometer is the car's

exposure meter measuring, as nothing else can, the car's exposure on the road to the hazards against which it is insured.

The significance of that mile-by-mile exposure, is exemplified by comparing the average accident involvement of men and women. Not just in youth, but at every age in their driving lifetime, men as a group drive twice as many miles and therefore have twice as many accidents as women. This 2:1 relationship shows on a large scale that accidents are proportional to mileage. That fact is not an argument for sex discrimination.

The more a car is exposed to risk on the highway, the greater its probability of accident and its cost to insure. Insurers use cents-per-mile rates for some commercial vehicles, with premiums calculated directly from odometer readings. For cars, however, they simply predict what the average driving will be in the coming year and then charge the same car-year rate for all cars in each class (defined by territory, use of car, etc.). Although some cars are driven very little while others far exceed the average mileage for their class, there is no premium adjustment at the end of the policy period. In each rating class, cars driven fewer miles than average are thus forced to subsidize the higher cost of insuring cars driven more miles than the class average.

If power companies were allowed to do business this way, they could ignore meters and charge all households a single per-month rate without measuring how much electricity each actually used. (Households with few appliances would be forced to subsidize households with many, there would be little incentive for individuals to curb use of electricity, and lower-income households would have an affordability problem paying for the average electric use.)

Of course insurers know that most owners of cars driven less than average mileage are those with the least money -- women, older people, and poorer people. They also know that insurance law against discrimination forbids them to shift costs among customers but they argue that it's not practical to read odometers. What they do not admit publicly, however, is that overcharging these small customers helps keep prices low to facilitate competition for the favored customers -- typically adult men who drive more miles but also spend more money on other types of insurance. (Why are insurers hesitating to up-rate car-phone users?)

Although it is argued that competition on price lowers prices, the reality is that it lowers the insurance cost of driving for some while raising it for others. This is the reality referred to, after all, by assertions that unisex pricing costs women more.

On average, in fact, women now pay twice as much per mile as men for identical coverage at the "Adult" unisex car-year rates currently paid by the large majority of Virginia policyholders. For example, with a $700 premium the price is 10 cents per mile for the 7,000 miles typical for women but only 5 cents per mile for the 14,000 miles typical for men. Looked at another way, it costs women two years of premiums for the same mileage that men get for one year's premium.

So-called "low-mileage" discounts used by some direct writers create the misimpression that insurers already price on mileage, but these token discounts simply refer to policyholders' estimates of future mileage. They are unverifiable and, since they have nothing to do with measuring actual mileage, produce cost-data which are highly misleading when used as if in reference to actual mileage.

Stopping the systematic overcharging of women requires a remedy that is sex-neutral, objective and easily enforceable. This goal can be achieved by converting class rates from dollars per year to cents per mile for all current classes defined by garaging territory, car value and use. Class rate (say 5 cents per mile for full coverage, pleasure use, in Richmond) times exact number of miles driven (say 11,100 miles) would determine the final premium payment ($555).

How about fraud? Since car mileage has always been the basis for money transactions such as warranty determination and resale value, odometer fraud is punished by severe fines and jail under existing federal and state law. Licensed private garages already test and read odometers during safety inspections done at a nominal fee. Insurance companies can compete on service by offering efficient arrangements, and both parties to the transaction would have a stake in accuracy.

No complicated law is needed. Adding just one sentence to the Insurance Code on Rate Regulation would make insurance companies measure the protection they sell: "For driving coverages of private passenger automobiles, the exposure unit shall be the mile as recorded on the odometer of the insured car." (A bill with this amendment was introduced in the Pennsylvania Senate in May.)

Ending the overcharging and disproving the myth that sex discrimination is a break for women are not the only benefits offered by metered premiums. The cost burden imposed on low-mileage drivers to keep premiums down for higher-mileage drivers currently contributes to the increase in uninsured cars in urban areas. The same unjustified cost burden falls on low-mileage drivers in all geographic areas, the large majority of whom are women, low-income, and older drivers.

Whether at urban or rural rates, premiums proportioned to odometer readings would allow consumers to control their auto insurance expenditures to the same extent they can now control expenditures for gasoline. Insurers' premium income would be limited to the insurance protection that each car has actually consumed by driving. It would no longer be possible for insurers to reap windfall profits from the decrease in accidents that occurs whenever a gasoline shortage or price increase, or an economic downturn causes people to curtail their driving. Moreover, metered premiums would provide for the first time a valid statistical baseline for meaningful cost comparisons among territories and other risk classes. Finally, at a time of rising concern over air quality and the production of greenhouse gases, metered premiums would nearly double the savings on gasoline as a positive economic incentive to drive less, a change beneficial to the environment as well as to the wallet.

This completes our formal presentation. We trust that committee members have each already received copies of the proposed "Metered Premiums" amendment to the Virginia rate law, as well as its Pennsylvania counterpart and two short articles on the concept. We are also providing today reprints of the three journal articles which document the analysis, as well as copies of two reviews prepared for the C Committee of the National Association of Insurance Commissioners on compatibility of the mileage exposure unit with risk classification and other topics used as red herrings in discussion of the mileage exposure unit. They provide more detailed discussion of aspects that the committee may wish to consider in greater depth. Note that one of these papers documents NOW's opposition to the very popular idea of pricing by Driver Record -- as mandated by California's Proposition 103 -- because such pricing greatly aggravates the overcharging of women while, as one actuary put it, amounting to "an organized renunciation of insurance." Finally, we would be glad to respond to your questions, and we respectfully request a very brief opportunity to respond at the end of the session to any significant issues raised in subsequent testimony which we have not already addressed.

Thank you.

EXPOSURE UNIT COMPATIBILITY WITH RISK CLASSIFICATION

Review prepared by
National Organization for Women
May 25, 1990
for
National Association of Insurance Commissioners (NAIC)

Does conversion to the car-mile exposure unit preclude risk classification?

In the interest of its members and the general public, the National Organization for Women since 1985 has advocated conversion of the exposure unit for class rates from the car-year to the car-mile for on-the-road coverages. To oppose this, insurers are making false, unsubstantiated, and damaging allegations that NOW advocates eliminating territorial and all other classifications.

What NOW Advocates

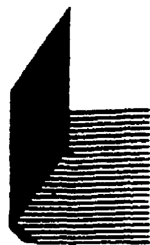
To accomplish conversion to car-mile exposure units, NOW seeks amendment of each state's statutory equivalent to the NAIC-All Industry Advisory Committee model CASUALTY AND SURETY RATE REGULATORY BILL (May 18, 1946) (77 Proceedings 397) by adding one sentence (underlined) to the end of Section 3 (a) 3:

> Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. <u>For driving coverages of private passenger automobiles, the exposure unit shall be the mile as recorded on the odometer of the insured car.</u>

(January 1990 legislative draft of Pennsylvania bill (earlier wording) is Attachment A.)

In November 1985, Pennsylvania NOW testified for this one-sentence amendment (earlier wording) to Section 3 before the House insurance committee. In September 1986, Pennsylvania NOW brought suit before the insurance department against five automobile insurance rate-makers, seeking conversion of the exposure unit for their class rates from the car-year to the car-mile as relief to alleged group discrimination against women whose cars in the adult ("unisex") classes are predominantly driven less than the average mileage for their class.

The factual view that NOW holds of what the car-mile exposure unit is and how it works has been extensively published, beginning in 1988. This view is fully documented with citations to professional texts concerning the use of the exposure unit as the measure of individual risk transfer to the insurance pool for premium calculation as defined. Its use is also documented in premium calculations for other lines of insurance, particularly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NATIONAL
UNDERWRITER

Measure Exposure For Premium Credibility

BY PATRICK BUTLER

The automobile insurance industry admits that its credibility is seriously challenged by California's Proposition 103 and by enactment of similarly draconian but ineffective "reforms" in other states.

Like advocates of these reforms, however, the industry misidentifies the source of dissatisfaction as a problem of overall high insurance cost and "unaffordability."

In fact, the average premium paid per car-mile, depending on coverage and territory, ranges from about 2 to 10 cents. These costs are on a par with the car-mile costs, depending on price and fuel efficiency, consumers pay for gasoline.

Although the price of gasoline is an important affordability consideration for lower-income automobile users, there is no consumer revolt against the gasoline industry.

What is the difference?

While consumers cannot control gasoline prices, they can and do control what they spend on gasoline by the amount of driving they do. In contrast, consumers have no real control over their expenditures for automobile insurance.

They are given to understand that premiums somehow relate to the cost of individual risk. But without a believable translation to cost, premiums are perceived as arbitrary taxes on car ownership.

It would be logically accurate, however, to say that a company's costs depend on how much each car it insures is driven. When a car is not driven, no risk is transferred to the insurance pool. The more a car is driven, the more risk is transferred to the pool, mile by mile.

But this simple truth is not shared with consumers. Insurers occasionally acknowledge the connection between their costs and the amount of driving, but only on an aggregate level.

In response to Proposition 103's mandate for reduced costs, for example, an official of the National Association of Independent Insurers protested that "We cannot tell motorists to drive less," and went on to suggest that society "may need to build better public transportation systems and create incentives to use them."

This statement is also an admission that class premiums provide no economic incentive for any motorist to drive less. Every car must pay the same premium as all others in its risk class, no matter how much or how little it is subsequently exposed on the road to the chance of accidents (Table 1).

Consumer resentment at having to buy something very expensive that can't be understood has encouraged a search for alternative payment methods that make more sense.

Collecting premiums by taxing gasoline has political appeal, especially in high cost territories, because consumers readily perceive that a car not being driven cannot have an accident.

The number of gallons used by a car would be the measure of the on-the-road risk it has transferred to the general insurance pool. The cents-per-gallon premium would be total insurance cost divided by total number of gallons used by all of the cars insured.

An insurance tax on gasoline has some practical drawbacks, however. Since the tax would approximately double the cost of gasoline, it would have to be implemented nationally. Otherwise, service stations near a

TABLE 1
CONSUMER'S COST WITH ANNUAL PREMIUMS

Miles driven (two odometer readings)	Sum of base annual premiums[1]		Class multiplier[2]		Consumer's Cost	
					Premium	Cents-per mile
2,500	$348	x	.95	=	$331	13.2
5,000	$348	x	.95	=	$331	6.6
10,000	$348	x	1.10	=	$383	3.8
15,000	$348	x	1.10	=	$383	2.6
20,000	$348	x	1.10	=	$383	1.9

Note: Class premiums & multipliers validated by a company actuary.

[1] State Farm Mutual Insurance Company, 1986 for Harrisburg, Penns. (Territory 28), required coverages plus full comprehensive and $100 deductible collision coverage of a 1985 model, rating group 9 car.

[2] Adult (driver sex not a factor), pleasure-use, single-car class. Discount (—0.15) applied for "low estimated future mileage" sub-class.

state line would not survive in any state that initiated the tax before adjacent states did.

Furthermore, since the insurance surtax would more than triple the current average gasoline tax of 25 cents per gallon, increased efforts would be needed to prevent fradulent use of untaxed motor fuels.

There are insurance drawbacks as well. Without additional technology, premium payment at the gasoline pump would preclude risk classification of cars.

There could be no distinction in the cents-per-gallon rate for differences such as car value, amount of coverage, and the "type of miles" supposedly captured by the existing territorial and use classes. All cars would pay the same per-gallon rate.

The car-mile premium is an alternative to the gas-tax premium that is compatible with risk classification. Insurance texts describe the car-mile as an "exposure unit" to be pooled in risk classes.

According to a Chartered Property and Casualty Underwriter textbook, "an exposure unit is a measure of the loss exposure assumed by an insurer. The premium for a policy is calculated by multiplying the rate or rates by the number of exposure units."

The present premium system has no exposure unit to measure the amount of individual risk transferred to the risk pool by driving. Annual premiums simply represent the total cost of a class divided by the number of cars pooled in it.

Premiums therefore mix cost effects from two sources.

One is the average hazard of the driving conditions for the cars in the class, which could be expressed in terms of accidents or insurance cost per million car miles. Since accidents are random, the cost effects of different driving conditions cannot be quantified for individual cars but must be pooled for statistical credibility.

The other source of cost merged in class premiums is the on-the-road exposure of each car, which is individually measurable by the car-mile exposure unit.

Conversion of class premiums to the car-mile exposure unit is straightforward, as can be illustrated where existing premiums use separate expense fees.

The car-mile rate for on-the-road coverage equals the annual premium divided by a one-time assumed 10,000 annual mile average for the class (Table 2). Subsequent cents-per-mile rates would then be determined from class costs divided by total miles driven by the cars in the class.

Since car mileage has always been the basis for money transactions such as warranty determination and resale value, odometer fraud is punished by severe fines and jail under existing federal and state law.

Licensed private garages already test and read odometers during safety inspections done at a nominal fee. The odometer would be read initially for new customers and thereafter for each billing. Competition on service should obviously push development of convenient and efficient arrangements.

Any fears about mileage misrepresentation by customers (or agents) say more about today's "mileage" discount classes based on unverifiable estimates of future mileage, than about a system using verified odometer mileage to calculate premiums.

With the premium tied to exposure, the parties to the insurance contract — insurer and insured — would have an equal stake in an accurate, objective measurement of exposure.

Where agents are concerned, the commission and fee-for-service systems should be compatible with premiums proportioned to odometer mileage.

At present, an agent's professional credibility is continually undercut by the necessity of trying to justify the calculation of automobile insurance premiums as a logical process related to individual risk.

Offering discretionary discounts to placate customers may be effective in deflecting demands for an explanation, but the practice increases consumer distrust in the validity of premium calculation. However rationally the system may relate to sales and marketing plans, customers correctly suspect that the system is illogical and arbitrary for themselves.

For a transaction to be successful, all parties must be convinced that the deal is on the square. The current system—a single premium for all cars in a class risk pool with no measure of individual exposure—puts the credibility of the entire insurance industry on the line.

When the failure of the Proposition 103 reform becomes undeniable, will the frustrated public vote to do away with insurance risk pools, and use gasoline purchase alone to measure exposure?

Or, will automobile insurers convert their pooling units from cars to car-miles to provide consumers with premiums credibly related to individual exposure to risk?

Setting rates for gasoline or for automobile insurance protection is not a consumer prerogative, but deciding how much of either to buy certainly ought to be.

Mr. Butler is a sex discrimination issues analyst at the Washington, D.C., headquarters of the National Organization for Women (NOW).

TABLE 2
CONSUMER'S COST WITH CAR-MILE RATES

Miles driven (two odometer readings)		Car-mile rate[1] (Cents)		Annual charge[2]		Consumer's Cost: Premium	Consumer's Cost: Cents-per mile
2,500	x	3.56	+	$86	=	$175	7.0
5,000	x	3.56	+	$86	=	$264	5.3
10,000	x	3.56	+	$86	=	$442[3]	4.4
15,000	x	3.56	+	$86	=	$620	4.1
20,000	x	3.56	+	$86	=	$798	4.0

Note: Class premiums & multipliers validated by an ISO actuary

[1]Insurance Services Office, 1986, Harrisburg, Penns. (Territory 7) sum of base annual premiums for on-the-road coverages (liability + 1st party + UM + collision = $356) times 1.00 multiplier for the Adult Pleasure-Use class and divided by an assumed 10,000 annual mile average for cars in the class in the Harrisburg territory

[2]Sum of expense fees by coverage ($70) + class multiplier times the comprehensive base rate per year ($16).

[3]$442 is the same premium that is assessed currently for all annual mileages for the Adult Pleasure-Use class

those for which the amount of physical exposure to chance of accidental loss is not known in advance. (Rates are set in advance.)

Unsubstantiated Allegations About What NOW Advocates

Despite the record and documentation, allegations are being made by some insurance professionals that the car-mile exposure unit would have different effects from those shown by the examples NOW has published. These allegations are made without reference to NOW's published examples, and they are not substantiated by counter examples as to the effects alleged. These unsubstantiated allegations state, in effect, that the car-mile unit of exposure precludes risk classification. For example:

> Unsubstantiated allegation by a regulator, Feb. 24, 1989: Pennsylvania Insurance Commissioner Constance Foster: "The National Organization for Women continues to advocate a rating system that uses driving mileage as the sole criterion for automobile insurance....[I]t would appear to be replacing one means of unfair discrimination with another." (Attachment B.)
>
> Unsubstantiated allegation by an insurance company association, July 31, 1989: President of the Insurance Federation of Pennsylvania Henry G. Hager: "NOW's so-called 'solution' of relying only on mileage would be disastrous for all residents of Northwestern Pennsylvania. This is a primarily rural area where people may drive more miles but still have fewer accidents than in such urban areas as Philadelphia." (Attachment C.)
>
> Unsubstantiated allegation by a company actuary, March 27, 1990: Michael LaMonica, FCAS and assistant vice president, Allstate Insurance Co., suggested that the car-mile exposure unit is actuarially unsound because it precludes accounting for "type of miles" and car use, which are currently rated through territorial and use classifications. The 1973 study of California drivers apparently offered by Mr. LaMonica as substantiation *does not* find that number of miles and type of miles are incompatible or redundant as predictors. In fact, the report makes a case for using risk classification *in conjunction with* miles driven as the quantitative measure of exposure.[1]

---

1. Burg, University of California, *The Effects of Exposure to Risk on Driving Record*, 1973 (Prepared for the California State Department of Public Works & the Federal Highway Administration, and distributed by U.S. Dep't of Commerce, Nat'l Tech. Info. Service as PB--236--483.)

The introduction observes:

> One reason for using miles driven as a synonym for exposure is that it is logical, and conceptually simple; another reason, and a good one, is that previous research has clearly shown that driving record variables such as accidents of record and convictions for traffic violations are consistently related to *number of miles driven*.

Id. at 1, (emphasis added).

The introduction gives as the reason for the study a growing feeling among traffic safety researchers that there "may be potentially significant contributions to accident causation attributable to 'qualitative' exposure variables, i.e., *type* of driving." *Id.* at 1, (emphasis original).

The study does not examine differences by driver's place of residence (territorial classification), but it does call into question insurers' assertion that commuting is more hazardous than other types of driving (use classification) by finding that "% to and from work driving" has little value in predicting driving records. *Id.* at 21.

Type of miles is a statistical concept in which it is necessary to aggregate accident experience for a large number of *measured miles* driven in order to have a credible measurement of accident probability per car mile for a class. (The 1084-claims standard for full credibility of a class rate would require 217 million car-miles exposure for PDL coverage, using 0.05 claims and 10,000 miles per car-year as class averages.)

Allegations should be substantiated or repudiated

Except for vague threats of cost-shifting among territories and other classifications, these assertions by insurance professionals provide no specifics regarding the effect of implementation on premiums. The misleading impression is created, however, that a car-mile exposure unit would require each company to have one car-mile rate for a state, such as 5 cents per car-mile for the state's mandated coverage. (The company statewide rate of course could increase according to optional coverages such as collision and increased liability limits.) If true, this would mean that premiums for rural cars would increase for all cars but those driven the lowest annual mileages, and premiums for urban cars would decrease for all cars but those driven the highest annual mileages.[2]

The fact that the above allegations are greatly at odds with the accepted explanation of how exposure units are used -- "The premium for a policy is calculated by multiplying the [class] rate or rates by the number of exposure units" -- gives those making such allegations the burden of explaining how they would obtain a rate without classification of claim costs.[3]

# # #

2. A hypothetical example illustrates this statement. To indicate who would pay more and who less through conversion of car-year territorial rates to an alleged single statewide 5 cents per car-mile rate, current car-mile costs for consumers are shown under typical territorial premiums in the table below. The changes in annual premium that would occur depend on annual miles driven and are indicated as follows: (–) less premium, (+) more premium, (=) no premium change.

	Rural	Statewide avg.	Urban
Current annual premium	$250	$500	$1000
Annual miles driven	insured's current cents-per-car-mile cost		
2,500	10.0 (–)	20.0 (–)	40.0 (–)
5,000	5.0 (=)	10.0 (–)	20.0 (–)
10,000	2.5 (+)	5.0 (=)	10.0 (–)
15,000	1.7 (+)	3.3 (+)	6.7 (–)
20,000	1.2 (+)	2.5 (+)	5.0 (=)
25,000	1.0 (+)	2.0 (+)	4.0 (+)

Obviously, if a state should somehow become a single car-mile rating territory, marketing and underwriting decisions would bring about a de facto re-creation of territorial and other classes The phenomenon has been described for Michigan, where territorial rate differentials were statutorily capped at about half of what insurers used previously.

3. Webb, Launie, Rokes, and Baglini, "Exposure Units," *Insurance Company Operations*, CPCU 5, Vol. II, American Institute for Property and Liability Underwriters, 1984 (pages 24-25).

Another author explains: "[I]t is first necessary to classify the risk based on whatever the rating variables are for the risk under consideration. Once the risk's classification is known, the rate for that classification is multiplied by the number of exposure units to produce the premium." Bouska, "Exposure Bases Revisited," 76 PROC. CASUALTY ACTUARIAL SOC'Y. 1989 (preprint, page 8).

1 Amending the act of June 11, 1947 (P.L.538, No.246), entitled
2 "An act relating to the regulation of rates for insurance
3 which may be written by stock or mutual casualty insurance
4 companies, associations or exchanges, including fidelity,
5 surety and guaranty bonds and all other forms of motor
6 vehicle insurance, and title insurance; to rating and
7 advisory organizations; conferring on the Insurance
8 Commissioner the power and duty of supervising and regulating
9 persons, associations, companies and corporations, and of
10 enforcing the provisions of this act; prescribing and
11 regulating the practice and procedure before the
12 commissioner, and procedure for review by the courts; giving
13 the Court of Common Pleas of Dauphin County exclusive
14 jurisdiction over certain proceedings; prescribing penalties
15 and providing for enforcement thereof, and repealing
16 inconsistent acts," further providing for the use of miles
17 traveled in rate calculation.

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. Section 3(c) of the act of June 11, 1947
21 (P.L.538, No.246), known as The Casualty and Surety Rate
22 Regulatory Act, amended April 14, 1986 (P.L.80, No.27), is
23 amended to read:

24 Section 3. Making of Rates.--All rates shall be made in
25 accordance with the following provisions:
1 * * *

2 (c) Risks may be grouped by classifications for the
3 establishment of rates and minimum premiums. Classification
4 rates may be modified to produce rates for individual risks in
5 accordance with rating plans which establish standards for
6 measuring variations in hazards or expense provisions, or both.
7 Such standards may measure any differences among risks that can
8 be demonstrated to have a probable effect upon losses or
9 expenses. The exposure units for calculation of private
10 passenger automobile insurance premiums at the appropriate
11 classification rates shall be the mile by audited odometer
12 readings for driving coverages and the year for nondriving
13 coverages.

14 * * *
15 Section 2. This act shall take effect in 60 days.

COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
HARRISBURG

THE COMMISSIONER

February 24, 1989

Chris Niebrzydowski, President
Pennsylvania - National Organization for Women
P. O. Box 17326
Pittsburgh, PA 15235

Dear Ms. Niebrzydowski:

I have reviewed your letter to Governor Casey regarding the implementation of genderless rates for automobile insurance. The Casey Administration does not regard the elimination of an overt reference to the gender of a person in automobile rating as an "unfortunate consequence of the Equal Rights Amendment." Equal rights for women has been a cornerstone of the Casey Administration.

The publication of the Insurance Department, "Questions and Answers About Genderless Insurance," explains genderless automobile rating. To consumers whose policies could be affected by new genderless rates, it explains, using simple examples, how and why their insurance rates will be different.

The National Organization for Women continues to advocate a rating system that uses driving mileage as the sole criterion for automobile insurance. After a full adjudicatory hearing, I have found this argument flawed and ruled accordingly. The Commonwealth Court has upheld my ruling. I do not believe that the substitution of mileage for territory, age, marital status, type of usage, and the other factors presently used to rate automobile insurance, including mileage, to be fair or equitable. In fact, it would appear to be replacing one means of unfair discrimination with another.

INSURANCE COMMISSIONER

I am proud to enforce the Equal Rights Amendment of the Pennsylvania Constitution in this instance, and in any instance of gender discrimination. Genderless rates mark the elimination of another unwarranted use of gender distinction in our society.

Sincerely,

Constance B. Foster

JUL 31 1989

ERIE PA
ERIE DAILY TIMES
D. 42,264

Unisex insurance prices

Your June 25 article on unisex auto insurance rates accurately described the problem that results when insurers are denied the use of valid factors in determining rates. In the case of auto insuurance, the recent prohibition of considering gender as a factor in setting rates has resulted, unfortunately and unfairly, in young women facing significant increases — despite the fact that these women have better driving records than their male counterparts.

It was surprising to read that the National Organization for Women, having supported the overturn of the law, is now trying to disavow the results of its actions. Even more surprising is NOW's contention that rates based solely on mileage will somehow return young women to their previous lower rates.

The facts point to the contrary:

Throughout the debate on gender-based vs. unisex auto rates, all sides on the issue — including NOW — have realized that a switch to unisex rating increases the premiums for young women. Despite knowing this, NOW has consistently opposed gender-based auto rates.

[NOW's co-called "solution" of relying only on mileage would be disastrous for all residents of Northwestern Pennsylvania. This is a primarily rural area where people may drive more miles but still have fewer accidents than in such urban areas as Philadelphia. The NOW approach nonetheless requires these people to pay more than the city drivers.]

The only fair way to price insurance is to consider all objective and proven factors, nothing more and nothing less. In the case of auto insurance, this means consideration of more than how far a car is driven. It also means consideration of when, where and who is driving the car.

Henry G. Hager
President and CEO
The Insurance Federation
of Pennsylvania, Inc.

EDITORIAL

Insurance premiums must reflect the amount of risk

Side 2

SEP 1[illegible] [illegible]
EVENING SUN
HANOVER, PA

The Pennsylvania National Organization for Women has accused state Insurance Commissioner Constance Foster of making statements that falsify the court record in Pennsylvania NOW vs. State Farm and pit rural and urban drivers against each other to block needed reform in automobile insurance.

NOW claims Foster said that NOW continues to advocate a rating system that uses driving mileage as the sole criterion for automobile insurance and that she does not believe that the substitution of mileage for territory to be fair or equitable.

NOW president Chris Niebrzydowski says her group advocates basing the rate for each class on cents-per-mile rather than dollars-per-year in order to tie premiums to each car's consumption of insurance protection within its area and use class.

We think NOW is correct.

In virtually all other areas, we pay for what we use. We pay electric, water and sewer and telephone bills based on consumption. Why not pay for automobile insurance based on use?

The driver who commutes 50 to 60 miles to and from work certainly is a greater risk than the driver to travels a fraction of that distance or who walks to work, and certainly drivers in metropolitan areas are at greater risk than drivers in rural areas.

We think insurance premiums should fairly and accurately reflect the amount of risk.

NOW also maintains that women are overcharged as a group along with all low mileage drivers within existing territories and other rating classes because the current pricing system measures the car's exposure on the road by the year instead of the mile as measured by the odometer.

Statistics indicate women are safer drivers than men, at least they have fewer reported accident claims.

The new unisex rates do not differentiate between the sexes, and its unlikely that unisex will be repealed. Howevever, we agree with NOW that use is a fair way to determine insurance rates. We should all pay for what we use, but we shouldn't have to pay for the other guy.

NOW wants mileage measured, not emphasized

JAN 11 1989
POTTSVILLE, PA
REPUBLICAN
D. 23,720

To the Editor:

A Dec. 23 Associated Press report misrepresents Pennsylvania National Organization for Women's (NOW's) auto insurance lawsuit as seeking "greater emphasis on mileage when setting rates." Wrong. The lawsuit wants mileage measured, not "emphasized." An odometer is either read or it isn't and consumers may well ask why insurers do not read car odometers as they do some commercial vehicle odometers.

For cars, insurers simply predict the average mileage that will be driven and then charge all cars in a class the same premium. They do not adjust premiums at the end of the policy period although some cars were driven hardly at all while others far exceed the class average mileage.

If power companies were "regulated" that way, they could ignore electric meters and charge all households the same price without measuring how much electricity each actually used.

Why should the National Organization for Women want insurers to read odometers? Because women at all ages average half men's mileage and accidents. As a group, women pay twice as much per mile as men for insuring their cars under the adult unisex pricing currently applied to 80 percent of cars. As individuals, all below average mileage drivers in each price class are forced to subsidize the higher cost of insuring those who drive above the average mileage.

Price discrimination is prohibited by insurance law. On behalf of adult women who have always been overcharged as a group the way young women soon will be, NOW's lawsuit demands that the state enforce the law that requires insurers to measure the protection they sell. Equality is paying for what you get and getting what you pay for. And for insuring cars, that requires odometer measurement, not "emphasis."

Chris Niebrzydowski
President
Pennsylvania National
Organization for Women

FAKE UNISEX: OVERCHARGING WOMEN ISN'T UNISEX!

Per-Mile Automobile Insurance Amendment
Virginia -- May 1990

AMENDMENT (underlined):

Virginia Insurance Code, Title 38.2. Chapter 19, Regulation of Rates, Sections 1900-1928.

Section 1900 B. The purposes of this chapter are to: 1. Protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;

. . . .

Section 1904 C.(ii) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. For driving coverages of private passenger automobiles, the exposure unit shall be the mile as recorded on the odometer of the insured car.

ANALYSIS

What the Amendment Does. By specifying the unit of exposure, the Amendment requires insurers to convert their class rates from dollars-per-year to cents-per-mile for on-the-road insurance protection. According to textbooks, "an exposure unit is a measure of the loss exposure assumed by an insurer. The premium for a policy is calculated by multiplying the rate or rates by the number of exposure units." (Rates are based on classifications by territory, use, car-type, etc.) Use of miles "would require that the odometer of each car be checked at the beginning and end of each rating period." (American Institute for Property & Liability Underwriters, *Insurance Company Operations, Exposure Units*, CPCU 5 (1984), Vol II, page 24.) (The present premium system has no exposure unit to measure the amount of individual risk transferred to the class risk pool by driving. Annual premiums simply represent the total cost of a class divided by the number of cars pooled in it.)

What the Amendment Does Not Do. It does not alter class definitions, nor does it transfer claim costs (or premium dollars) across boundaries defined by territory or any other classification. Like the car-year exposure unit currently used, the car-mile can neither account for variation in hazard occurring in different driving situations ("type of miles") nor specify who has actually driven the car, regardless of which driver class it is assigned to.

Why the Amendment is Needed. Under car-year rates, cars driven less than the average mileage for their rate class (same territory, use, driver characteristics, etc.) subsidize insurance protection for cars driven more than the class average mileage. The purpose of the Rate Act--preventing "unfair discrimination"--is fulfilled by requiring conversion to cents-per-mile class rates and odometer measurement of the driving exposure of each car.

The cost burden imposed on low-mileage drivers to keep premiums down for higher-mileage drivers contributes to the increase in uninsured cars in urban territories. The same unjustified cost burden falls on low-mileage drivers in all geographic areas, the large majority of whom are low income, women, and older drivers.

Premiums proportioned to odometer readings, whether at urban or rural rates, would allow consumers to control their insurance expenditures to the same extent they control expenditures for gasoline. Insurers' premium income would be limited to the insurance protection that each car has actually consumed by driving. The windfall profits insurers now reap from gasoline price increases or shortages would no longer be possible.

NOW Insurance Project
1000 16th St. NW, Suite 700
Washington, DC 20036 tel. 202/331-0066

Unmetered Premiums Subsidize Overuse of Automobile Transportation

Reprint from

Contingencies

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By Patrick Butler

VOTER APPROVAL OF CALIFORNIA'S PROPOSITION 103 in 1988 signaled strong consumer rejection of the current automobile insurance pricing system. Nevertheless, insurers are refusing to admit that this stinging rebuke indicates a need for fundamental change. Shortly after the election, Terry Tyrpin, assistant general counsel for the National Association of Independent Insurers (NAII), protested that, "One thing we should not do is allow ourselves to accept the full, or even the major responsibility for containing insurance costs . . . We cannot tell motorists to drive less." Tyrpin went on to suggest that in order to reduce insurance costs, society "may need to build better public transportation systems and create incentives to use them."

The industry has yet to comment on what happened to automobile insurance when ridership on public transportation in California rose dramatically—128,000 more rider-trips daily for several weeks on the Bay Area Rapid Transit—after the October 1989 earthquake. The NAII statement clearly assumes that insurers' costs would be less if motorists would cut down on car use. It tacitly admits, however, that the industry practice of charging fixed premiums in advance gives the individual motorist no economic incentive to drive less.

It is generally recognized that unmetered provision of a good or service leads to overuse. In 1968, Columbia University Economics Professor William Vickrey concluded "that the manner in which premiums are computed and paid fails miserably to bring home to the automobile user the costs he imposes in a manner that will appropriately influence his decisions." In the 1980s, the overuse of automobile transportation has prompted increasing concern about its effect on the environment. The search for workable disincentives has focused, for lack of alternatives, on gasoline surcharges, more toll roads, and restriction on car access to cities.

In fact, millions of cars are already driven very little. Of vehicles available to households in the United States, excluding motorcycles, 8% (8.3 million in 1977) are driven less than 1,000 miles annually, and 20% (21 million) are driven less than 3,000 miles per year. On the other hand, while the average mileage for cars is approximately 10,000 miles per year, about 7 million cars are driven more than 23,000 miles annually. Older cars average fewer miles, and produce fewer insurance claims. However, according to U.S. Department of Transportation data (1977), 1 million newer cars, one to three years old and probably bought for reliability, are also driven very sparingly—less than 1,000 miles in a year.

Patrick Butler is on the staff of the National Organization for Women (NOW), Washington, DC.

Car-Year Rates

How does the current system of premiums accommodate this very broad range in amount of exposure to risk of accidents? The fact that the ratio of men's to women's annual mileage (and, therefore, involvement in accidents) is about 2:1 at all ages is given crude recognition by setting prices according to the sex of one of the car's drivers—but this practice is restricted (illogically) to 20% of cars, generally those with younger, unmarried drivers.

For the 80% of cars assigned to the "adult" risk classes, for which pricing has always been unisex, broad classifications are defined by car-use categories such as "drive to work," "pleasure," and whether or not the policy covers more than one car. Some insurers "recognize" low mileage with a 15% discount class, based on unverifiable policyholder (or agent) estimates that the car will be driven less than 7,500 or 8,000 miles in the coming year. Other insurers have given up the discount because, owing to price competition, it tends to be awarded to most customers.

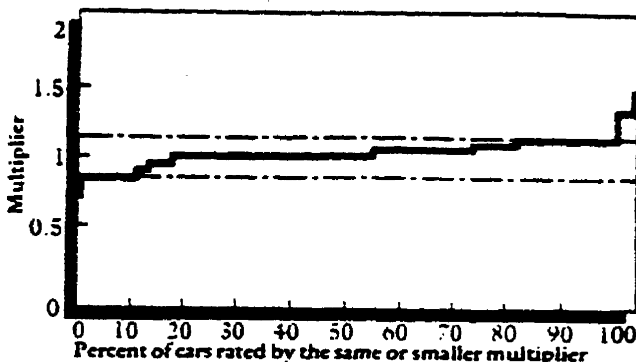
Although the unisex "adult" class multipliers, which multiply the territorial base rates, typically range from 0.65 (farm use, multicar discount) to 1.50 (business use, single car), most cars are in the large "pleasure use" and "distance-to-work" classes, with mid-range multipliers. Actual distributions of insured cars by multiplier size show that more than nine out of ten cars are insured at multipliers within about 15% of the average multiplier (1.0, Figure 1). Therefore, most "adult" cars rated by insurers are in a price range defined by the size of token discounts and surcharges. Even if classification could somehow distinguish differences in annual mileage—which it cannot—the class differentials would not come close to matching the 100% difference between women's and men's average mileage.

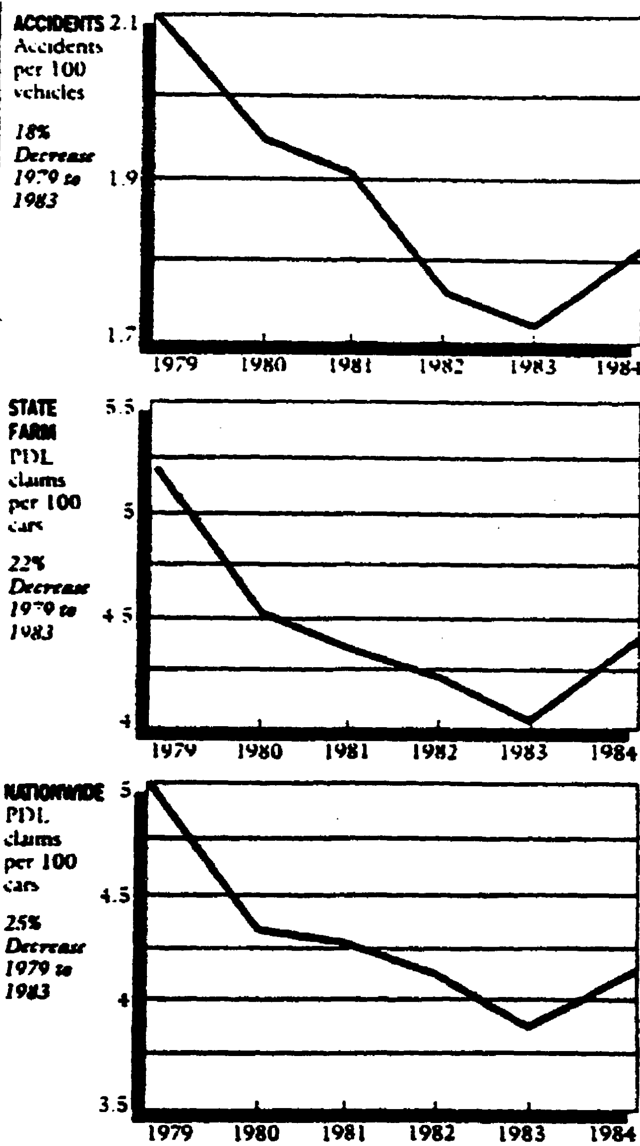
Within the risk classes themselves, the premium paid typically shows little or no variation with the annual mileage the insured car has been driven. The result is a very large range in the per-mile insurance cost of operation to the owners (Table 1). Viewed another way, cars in the same class pay very different premium amounts for identical driving exposure, depending on how many years each car takes to accumulate that exposure. For example, cars driven 6,000 miles annually are charged nearly four times more premium for 24,000 miles of insurance protection than cars driven the 24,000 miles in one year.

Mileage Determines Insurers' Costs

While premium charges are indifferent to the amount of driving done during the year, insurers' costs are not. During World War II, for example, gasoline rationing abruptly forced motorists to cut back their driving. Insurers implicitly acknowledged the relationship between mileage and costs when they responded by moving quickly to make the price of liability insurance vary with the gasoline allocation for the car. Later, claim frequency data substantiated the correlation between gasoline and insurance consumption.

Again, in 1973-74, temporary gasoline shortages





sharply reduced driving and accident claims. But there was no corresponding change in insurance costs for consumers. Premiums that anticipated a higher level of driving had already been collected. The Louisiana legislature and several insurance commissioners later tried, with only limited success, to retrieve refunds from the windfall profits reaped by insurers.

At a technical conference in 1982, Allstate Insurance's research vice president described how economic adversity for consumers allows the company to anticipate fewer claims:

> *[P]eople tend to do less pleasure driving when unemployment rises, cutting the accident rate. Similarly, as gasoline prices rise, miles driven falls, which again cuts the accident rate. In effect, both variables are surrogates for miles driven or exposure.*

These economic effects were demonstrated in Pennsylvania from 1979 to 1983. The statewide averages for accidents and claims decreased about 20% over a period of four years of declining prosperity and rising gasoline prices (Figure 2).

Cents-per-mile premiums would end systematic overcharging of lower-mileage drivers—predominantly low-income people, women, and older men.

Because some people in hard-hit areas of the state cut their driving sharply to save gas money, the sudden decrease in claims must have produced windfall profits for their insurers. Since future premiums were based on past state average costs, however, after several years consumers across the state may have paid premiums set a few percent lower than otherwise as a result of fewer claims.

But what about the individuals who cut back drastically on their driving because of loss of work, illness, or other difficulties? Under the current system of car-year rates, economic reverses for individual customers can produce profitable cost decreases for insurers. These decreases help to keep cost levels down for all consumers, but provide no savings in premium for those who were in fact responsible for the lower costs. Moreover, what about the cars whose annual mileage is perennially below average for their risk class? It should be obvious that they perennially subsidize the costs of covering cars driven above the average mileage.

When times are good and gasoline prices are low, auto insurers anticipate increased driving and build the expected costs into their rate requests. In its 1986 request for approval of a rate increase in Pennsylvania, for example, Nationwide Insurance Company explained that: "As people spend more time on the road, they will have more accidents." In effect, insurers routinely insure themselves at the expense of consumers against the future possibility that more driving will mean increased costs.

The consistent relationship between amount of driving and number of accidents is a fact kept well hidden from the public. Insurers make consumers feel responsible for premium increases by blaming "skyrocketing" increases in fraud, medical costs, and lawsuits. If consumers were told instead that premiums were rising because average driving had increased, many could logically object that "I'm not driving any more than I used to. Why should I have to pay more for insurance because others are raising the average?"

For California drivers, last October's earthquake accomplished what fixed premiums cannot provide sufficient incentive to do. Tens of thousands of motorists forsook their cars for public transportation when earthquake damage closed bridges and roads in the San Francisco Bay area. Because driving decreased, the number of accident claims will also decrease, thus lowering costs for automobile insurers. If individual premiums were cost based, the benefits of these cost savings would be passed along to the drivers responsible for them, but the system doesn't work that way. Instead, these drivers had to add the cost of transit fares to premiums already paid.

Remedy for Poor Economics

Any system that promotes such cost shifting and works contrary to public policy demands a genuine remedy. It is not necessary to add an insurance surcharge to gasoline prices in order to tie premiums to driving. Unlike gas-tax insurance, use of the mile as the unit of exposure for calculating premiums would be compatible with risk classifications such as territory and car value. Number of miles driven multiplied by the car's class rate—5 cents per mile, for example—would give the final premium for on-the-road coverages.

It is a favorite maxim of insurers that "competition lowers prices." But this is only half true. Insurance price competition lowers some people's prices by raising the prices for others. Insurers' refusal to use odometer miles as the objective record of the physical exposure of the car lets companies apply cost savings from women's lower average mileage to subsidize price competition for men's business.

Conversion to metered premiums is straightforward, as can be illustrated with present premiums that separate administrative expenses from territorial base prices by coverage (Table 2). Per-mile class rates can be obtained from the total car-year rates for the on-the-road coverages simply by assuming an average annual mileage for the cars in the territorial and use class.

For low-mileage drivers, the economic significance of car-mile premiums is clear (Table 3). The annual premium for the 3,000-mile car would decrease by more than half, while cars driven the class-average annual mileage would see no change in premium. The currently subsidized high-mileage cars would pay more. Their owners, however, would be as likely to complain publicly about having to

Table 1

Effect of Car Mileage on Premium Cost—Car-Year Rates

Annual Mileage Driven		Sum of Base Car-Year Rates*		Class Multiplier**		Consumer's Cost: Premium	Consumer's Cost: Cents-per-Mile
3,000		$347.6	×	.95	=	$330	11.0
6,000		$347.6	·	.95	=	$330	5.5
9,000		$347.6	·	1.10	=	$382	4.2
12,000		$347.6	·	1.10	=	$382	3.2
18,000		$347.6	·	1.10	=	$382	2.1
24,000		$347.6	·	1.10	=	$382	1.6

*State Farm Mutual Insurance Company, 1986, for Harrisburg, Pennsylvania (Territory 28), required coverages plus full comprehensive and $100 deductible collision coverage of a 1985 model, rating group 9 car.

**Adult pleasure-use, single-car class. Discount (-0.15) applied for "low estimated future mileage."

Table 2

Base Car-Year Rates—Insurance Services Office (ISO)

Pennsylvania 1986	Required Coverage: Liability 15/30/5		Required Coverage: First-Party Benefits	Required Coverage: Uninsured Car UM		Physical Damage (1986 5-5 car): Comprehensive $100 Deductible		Physical Damage (1986 5-5 car): Collision $200 Deductible		Total of Fees and Base Prices
Statewide Expense Fee	$34	-	$10		-	$6	-	$20	=	$70
Harrisburg UM (fixed)				$22					=	$22
Base Rates	$136	-	$62		-	$16	-	$136	=	$350

Table 3

Effect of Car Mileage on Premium Cost—Car-Mile Rates

Car Mileage, by Two Odometer Readings		Car-Mile Rate (Cents)*		Fixed Annual Charge**		Consumer's Cost: Premium	Consumer's Cost: Cents-per-Mile
3,000	×	3.56	-	$86	=	$193	6.4
6,000	×	3.56	-	$86	=	$300	5.0
9,000	×	3.56	-	$86	=	$406	4.5
10,000	×	3.56	-	$86	=	$442	4.4
12,000	×	3.56	-	$86	=	$513	4.3
18,000	×	3.56	-	$86	=	$727	4.0
24,000	×	3.56	-	$86	=	$940	3.9

*Sum of Harrisburg territory base prices for on-the-road coverages (Table 2: $136 + $62 + $22 + $136 = $356) times the multiplier (1.00) for the Adult Pleasure-Use class and divided by an assumed 10,000 annual mile average for cars in the class in the Harrisburg territory.

**Expense fees plus Comprehensive base car-year rate ($70 + $16).

$442 is the same premium that is assessed currently for all annual mileages.

pay for the amount of insurance protection they use as to complain publicly about having to pay for the gasoline they use. Of course, the odometer would have to be read initially for new customers and thereafter for each billing, but competition among insurers would push development of convenient and efficient arrangements.

Objections that metering is impractical are groundless. No state bureaucracy helps utility companies read meters. ate garages already test and read odometers during y inspections done at a nominal fee. Odometer mileage is currently the basis for money transactions such as warranty determination and resale value. Under existing law, odometer fraud is punishable by severe fines and jail.

Cents-per-mile premiums would end systematic overcharging of lower-mileage drivers—predominantly low-income people, women, and older men—and provide for the first time a valid statistical baseline for meaningful cost comparisons among territories and other risk classifications. Also, metered premiums would let consumers control their automobile insurance expenditures to the same extent they can now control their expenditures for gasoline. Furthermore, metered premiums would furnish strong economic incentives for decreased use of cars, while strengthening support for public transportation and environmental improvement.

Appendix 3

SENATE JOINT RESOLUTION NO. 61
JOINT SUBCOMMITTEE STUDYING MOTOR VEHICLE INSURANCE
AND UNISEX RATINGS

STATEMENT OF GLENN M. WALKER, ASSISTANT VICE PRESIDENT,
OF
GOVERNMENT EMPLOYEES INSURANCE COMPANY

December 20, 1990

Mr. Chairman, members of the Joint Subcommittee: My name is Glenn M. Walker and I am Assistant Vice President for Government Employees Insurance Company, a personal lines insurer writing automobile and homeowners insurance in Virginia. I am also a Fellow of the Casualty Actuarial Society. According to Best's Executive Service based on 1989 data, GEICO, as the company is better known as, and its three affiliated companies had 7.8% of the private passenger automobile insurance market share in Virginia and was the 5th largest writer. As of November 30, 1990, GEICO had 168,125 voluntary and 9,101 assigned risk automobile policies in force in the state. On behalf of GEICO and its affiliated companies, I want to thank-you for the opportunity to appear here today.

It is my understanding that automobile insurance companies doing business in Virginia have been requested to provide this Subcommittee information as to how mileage is currently utilized in their rate making process for private passenger automobile insurance. I am here today to explain the applicability of the mileage factor by GEICO and why I believe maintenance of GEICO's current utilization of the mileage factor in our rating method is preferable.

Rate making for an insurance company as opposed to almost any other type of business is complicated by the fact that the insurer must price the product before the true costs are known. Therefore, before I explain specifically about the mileage factor, a brief and simplified description of the rate making process is necessary.

First, an actuary is required to forecast future claims and their attendant expenses. This is a most difficult task which is largely dependent on the amount of relevant information available, otherwise his predictions are unreliable or not credible.

Having estimated future loss payments for the particular state under review, the next step is to add an amount to cover the insurer's expenses and to allow for a reasonable profit. With the knowledge of the overall amount needed, a comparison is made with the amount the current premium rates produce to determine increases or decreases. Next the rate is allocated by coverage to territory. This is done because years of statistical data has shown that loss frequency and severity varies by state and within a state. Since GEICO uses cost based pricing to assure fair rates, it subdivides Virginia into geographical territories and allocates the needed rate change to each to provide a specific base rate by territory.

Finally, prices for individual drivers are determined and this is where mileage as a factor comes into play. Since equity is

paramount, the aim is to charge a person according to his or her expected costs. Drivers are grouped by various characteristics or classifications, including age, gender, marital status, motor vehicle records, use of the vehicle and mileage. Vehicles are also classified by make, model and age.

Mileage has not always been used by GEICO in the rate making process. In fact, in the 1970's, when GEICO amended its class plan to make anticipated annual mileage a rating factor, it was considered a pioneer as many of our competitors - and the Rating Bureau - did not use annual mileage in automobile insurance rates. GEICO amended is class plan in Virginia to consider annual mileage in 1976.

It stood to reason that if a policyholder would drive fewer miles, then his exposure to loss would be reduced. GEICO believed it could gain a competitive advantage for these short annual mileage drivers, without sacrificing profitability, if it granted them a lower rate. Initially, we selected 7,500 miles per year as the threshold. By that I mean that an adult driver would qualify for our short annual mileage classification if his or her expected driving miles for the coming year is less than 7,500 miles. Drivers whose expected mileage exceeds 7,500 miles would be classified as long annual mileage. GEICO's present rating plan does not consider annual mileage among younger drivers. For all non-

commuting adult classes (over age 21 to 29 depending on the sex and marital status) the rate for short annual mileage is 15.8% below the rate for long annual mileage class.

More recently, we have experimented with alternate methods of reflecting annual mileage in a policyholder's premium. Our Mature Driver program allows for five separate categories of annual mileage expectation for drivers who no longer use their cars to drive to work with thresholds placed at 3,000 6,000 9,000 and 12,000 miles. The lower the policyholder's annual mileage expectation, the lower the premium we will charge.

A second manner in which mileage is reflected in GEICO's rating plan is with regard to the type of driving by the policyholder. For example, a driver who drives, say, 10,000 miles a year largely during times when the roads are relatively clear will incur statistically fewer accidents than a driver who drives the same 10,000 miles largely during rush hour. In order to reflect this decreased exposure, we have four categories of weekly commuting mileage with thresholds at 30, 100 and 200 commuting miles per week. Again, the lower the commuting mileage, the lower the premium we will charge. Among short annual mileage adult drivers, the rate for non-commuters is 24% below the rate for a driver whose commuting mileage exceeds 200 miles per week.

GEICO believes that the present method of reflecting mileage in our rates is the best method. I am aware that there is an alternate proposal before Subcommittee to utilize so-called "metered" rating in insurance company rating plans. In response to this, I draw your attention to years of actuarial literature replete with statements regarding risk classification variables:

1). A policyholder should not be easily able to manipulate or misrepresent his or her classification, and

2). The cost of administering a rating variable should be reasonable in relation to the benefits received.

Seeing that annual mileage is well within the policyholder's ability to manipulate or misrepresent, a mileage verification program would be imperative. The additional cost of this verification program would likely exceed the reduced premium benefit for all but a precious few policyholders.

To illustrate this point, I quote from the 1990 textbook published by the Casualty Actuarial Society: Foundations of Casualty Actuarial Science:

> "Another important practical consideration is administrative expense. The cost of obtaining and verifying information may exceed the value of the additional accuracy. For example, driving mileage may be a very good indicator of cost. It is probably too expensive to obtain and verify, however. Assume that drivers driving under 7,500 miles per year cost 20% less than those who drive 7,501 to 12,000 miles, who in turn cost 20% less than those who drive more than 12,000 miles. Assume also that the middle group costs $100 per

> year and that it costs $20 per driver to obtain, process and verify annual mileage data. In a system utilizing mileage, drivers driving under 7,500 would pay $100 (their previous cost of $80 plus $20 for the additional expense), the middle group would pay $120 and the highest cost group, $145. Nobody would pay less than before! Although this example may be extreme, it demonstrates that added expense to classify may not serve insureds (or insurers) any better than not classifying."

GEICO is a company which is fully committed to providing low cost insurance. A keystone in the low cost strategy is the ability to eliminate as much overhead expense as possible. In my opinion, GEICO cannot implement metered rating without severely impairing our objective to keep overhead low. As a consequence, our ability to continue providing low cost insurance would be impaired as our overhead increases. In the long run, do not assume that a single policyholder in the Commonwealth of Virginia would receive a premium lower that he or she pays today if metered rates were imposed onto insurance company rating practices. Therefore, I recommend that no change be made in the Commonwealth of Virginia mandating that insurance companies use metered rates. I recommend that insurance companies continue to be permitted to reflect mileage in their rating structures as they do today.

I thank you for your attention. If you have questions pertaining to this issue, I will gladly try to answer them.

Appendix 4

JOINT SUBCOMMITTEE STUDYING MOTOR VEHICLE INSURANCE
AND UNISEX RATINGS (SJR 61)

Statement of State Farm Mutual Automobile Insurance Company

Re: Unisex Rating and Mileage as a Rating Factor

Richmond, Virginia
December 20, 1990

On behalf of the State Farm Mutual Automobile Insurance Companies, we appreciate the opportunity to address the Joint Subcommittee. As the largest insurer of automobiles in Virginia, we have an utmost interest in these proceedings.

With this statement, we plan to provide some background information on the importance of gender and mileage as rating criteria for automobile insurance as well as comment upon the testimony of the National Organization for Women.

I. Background

The use of gender as a rating factor has endured for decades because it is a powerful predictor of the probability of loss associated with insured cars, especially cars operated by youthful males, and because no alternative factors have been identified to adequately replace it. Gender is not a surrogate for mileage or for any other factor. To eliminate gender as a rating factor will not result in individuals being rated individually. Rather, the result would simply be to group cars operated by youthful men and youthful women together in a manner which does not create fair pricing to owners of either category of vehicle.

Automobile insurance provides a mechanism by which useful but risky activities can proceed with the protection for risk afforded at a reasonable price. Since an insurance company insures a great number of risks, the risk for the insurance company per claim is less than that for the risk of an individual because the total uncertainty is reduced.

With automobile insurance, no one knows whether any particular person will have an accident. No one can predict with absolute certainty the severity or cost of a particular accident. If the occurrence, timing, and severity were known in advance, no economic uncertainty would exist. Each individual then would pay the actual future loss and there would be no reason for insurance. Insurers, however, deal with the probability of loss.

For practical and legal reasons, auto insurance contracts generally insure the car rather than the driver. Insurers determine the price to charge for auto insurance based upon the available claim data, often referred to as loss data or loss experience.

Review of this data enables the insurer to classify risk. Risk classification is the grouping of risks with similar risk characteristics for the purposes of setting the prices. Risk classification permits insurers to more accurately price the insurance product and to compete effectively. Since the Virginia auto insurance market is competitive, different insurers use different classification and rating systems. Risks are classified because the actual accident history of an individual risk, standing alone, is statistically insignificant to determine accurately the probability of loss. Auto insurers classify cars by type of auto, extent of coverage, use of auto, and driver characteristics. Gender is only one of many rating factors. It is one of several factors relating to driver characteristics.

Advocates for unisex rating will claim that Montana's unisex rating law illustrates the potential for fairness. William Raspberry in an editorial in the Washington Post, September 9, 1987, entitled "But Who Gets Stuck With the Cost of Insurance?," argued to the contrary. He wrote, "The imposition of unisex auto insurance rates in Montana, for example, turned out to be a boon for young men, whose premiums came down, and a burden for young women, whose rates soared. As a matter of fact, the Montana legislature voted to repeal the unisex law, only to have the repeal vetoed by the governor." If it is such a fair law, then why did the Montana legislature vote for repeal?

As for Virginia, we have attached Exhibit I which is an estimate of the annual premium changes for youthful drivers resulting from the elimination of gender as a rating factor.

II. Gender Is Not A Surrogate For Mileage

Gender has been used as a rating factor in the Commonwealth of Virginia and throughout the country for several decades. Several states have through regulatory proceedings reviewed the advisability of eliminating sex as a rating factor. In every instance, use of sex has been continued.

Five states (Hawaii, Massachusetts, Michigan, Montana, and North Carolina) have adopted legislation which prohibits the use of gender as a rating factor. Nevertheless, no documentation of the sufficiency of another factor to replace gender has ever been presented.

In Pennsylvania, the state supreme court held that the Commissioner had the discretion to conclude that the term "unfairly discriminatory" in a section of the rating law did not permit the use of sex as a rating factor. Hartford Accident & Indemnity Co. v. Insurance Commissioner, 482 A.2d 542 (1984). After that decision, both the Commissioner and the legislature held public hearings to investigate the use of gender as a rating factor. At the hearings, evidence was presented that cars operated by young male drivers generated significantly higher losses than those operated by young female drivers. In addition, the impact of eliminating gender as a rating factor on the fairness of rates and the availability of insurance was fully aired. Importantly, Acting Insurance Commissioner Grode appeared before the House Insurance Committee. He testified that the use of sex as a rating factor was actuarially sound and that mileage could not adequately replace gender as a rating factor. At the time of the testimony, the Pennsylvania Insurance Department had reviewed 132 unisex filings that followed the court's Hartford decision. Acting Commissioner Grode concluded that 600,000 young women drivers would be affected by the change to unisex rates. The average rate for cars operated by those young women would increase by one-third. Moreover, the premiums for 85,000 to 95,000 cars operated by young women would increase by more than fifty percent. Finally, premiums for cars operated by young women would increase, in the aggregate, by approximately $90 million. Since the young male drivers outnumbered the young female drivers by a large number, the corresponding percentage decrease in rates for cars operated by young men was much smaller.

The end result of these hearings in Pennsylvania in 1986 was the enactment of amendments to the rating law that permitted, but did not require, the use of sex as a rating factor. Unfortunately, the efforts of the legislature and the Department of Insurance in Pennsylvania were overruled by the Pennsylvania Supreme Court.

III. Mileage As A Rating Factor

A. Findings in Pennsylvania

The issue of the insurers' use of mileage as a rating factor has already received its public evidentiary hearing. The Pennsylvania National Organization of Women filed a proceeding before the Pennsylvania Department of Insurance alleging that the use of gender violated the state Equal Rights Amendment and that the insurers failed to give mileage due consideration. In fact, the National Organization of Women then advocated a cents-per-mile charge which is very similar to their proposal here in Virginia. Pa. NOW v. State Farm, et al., Docket No. R86-9-6. Respondents in that action included four insurers (State Farm Mutual Automobile Insurance Company, Nationwide Mutual Insurance Company, Allstate Insurance Company and Liberty Mutual Fire Insurance Company) and the rating organization Insurance Services Office, Inc.

After a full and complete evidentiary hearing, the Commissioner issued an order and adjudication. The Commissioner found that although mileage is a relevant rating factor, risk of loss is affected not only by mileage but also by road, traffic and weather conditions and by the skill and care of the driver. Although women drive fewer miles than men, on average, and have fewer automobile accidents, the Commissioner concluded that the insurers' rates reflect, with reasonable accuracy, the difference in expected losses and expenses between low and high mileage vehicles, are not excessive and do not unfairly discriminate against women or drivers of low mileage vehicles. Specifically, the Commissioner stated:

> "There is no evidence that a mileage exposure base would produce rates which are fairer or more equitable in relationship to the onerous burdens and substantial costs of implementing and maintaining the proposed rating change.
>
> The Commissioner finds that Defendants classification of risks into two mileage categories, and its further consideration of mileage in its use classifications, multi-car discounts, and commuter mileage is rationally related to actual or reasonably anticipated experience, reflects with reasonable accuracy the differences and expected losses and exposures, and gives due consideration to mileage as a rating factor."

B. Explanation of Use of Mileage as a Rating Factor

The fundamental flaw with the N.O.W. approach is in their argument that auto insurance rates should vary in direct proportion to the number of miles driven. This concept is contrary to the evidence and is not actuarially sound. Again, in Pennsylvania the finding of fact was:

> "Risk of loss is not directly proportional to miles driven, e.g. vehicles driven 20,000 miles are not involved in twice as many accidents as vehicles driven 10,000 miles, and do not incur twice the losses."

The data used by N.O.W. to support their approach is inappropriate for insurance ratemaking for several reasons. As for the primary reason, the Pennsylvania Commissioner stated, "Plaintiffs refuse to recognize that vehicles, not drivers, are insured. The typical family automobile is driven by both men and women, and insured under one policy." Of course, the Commissioner cited several other criticisms of the N.O.W. data.

B. Medical payments coverage for accidents in a non-owned car.

The same benefits available to an insured when that insured is injured as a result of maintenance or use of his or her own vehicle are also available while the insured is using a non-owned car. An example would be where the named insured borrowed a neighbor's car and was injured through the use or maintenance of that vehicle. The coverage purchased would apply to medical expenses while using the neighbor's car which is not the described automobile in the policy. The mileage of the described car in the policy, in this case, would have no bearing on the exposure.

This coverage is also available when an insured is injured as a result of the use or maintenance of a temporary substitute car. There is an exposure any time an insured is using a substitute vehicle, even though the insured vehicle is out of service. Example: An insured would have a valid claim for medical expenses that are incurred as a result of an accident while using a rental vehicle.

C. Medical payments coverage for newly acquired cars.

Medical coverage extends to a car newly owned by an insured. In some instances, the company is not aware of the purchase of the new car, yet if an injury resulted from the use or maintenance within 30 days of the purchase, coverage would extend. The miles driven on the described vehicle in the policy has no effect on the exposure.

D. Medical payments coverage for injury when struck as a pedestrian.

Medical payments coverage is also applicable for insureds who are hit as a pedestrian. If an insured was struck by a motor vehicle while crossing the street, the medical payments coverage available through the car policy would apply. One can see where exposure, in this case, exists when an insured is a pedestrian, and has no relationship whatsoever with the mileage of the insured vehicle.

E. Loss of income coverage for injury arising from the use or maintenance of the insured vehicle while parked.

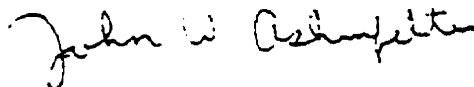
An insured is entitled to income loss benefits which are a result of bodily injury arising from the insured vehicle while parked. Example: In the process of changing a tire, the jack slips and seriously injures the insured. Under the conditions of the coverage, income lost as a result of the injury would be a covered loss. Again, the mileage of the vehicle does not reflect the exposure.

In addition to metered premiums and the elimination of gender as a rating factor, the National Organization of Women has also argued that the driving record is an inappropriate rating factor. Nonetheless, State Farm's experience clearly supports the appropriateness of this factor. Furthermore, various industry studies have shown the validity of the driving record as a rating factor.

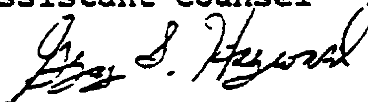
IV. Conclusion

For these reasons, State Farm Mutual Automobile Insurance Company contends that unisex rating is not actuarially sound, that the current use of mileage as a rating factor is actuarially sound and does not unfairly discriminate, and that the N.O.W. approach is not an adequate substitute for the proposed elimination of gender as a rating factor nor is it consistent with actuarial principles.

Respectfully submitted by,



John W. Ashenfelter
Assistant Counsel



Gregory L. Hayward
Actuary

JWA/ejc

Enclosure

A way to measure whether or not the rates ought to be proportional to the number of miles driven is to review our own claim data and compare the miles driven to the experience. Our class plan denotes "short" annual mileage as 7,500 miles or less annually and "long" annual mileage as over 7,500 miles. Our experience supports approximately a 17% rate differential between long and short annual mileage classifications on the major coverages.

Although we do not know the actual number of miles driven for each of these groups, we can make some estimates based on our distribution of business and the national average. If we assume that those driving 7,500 miles or less average 5,000 miles/year, then those who drive more than 7,500 miles/year would average 11,918 miles per year. The ratio of the average mileage figures is 2.38. In other words, the long mileage drivers drive 2.38 times the number of miles as short mileage drivers. If the proportional theory was correct, our data would support a rate differential of 2.38. Nevertheless, our experience supports approximately a 17% rate differential. If we assume the short mileage average is 3,750 miles driven, the midpoint of the mileage range, then the ration of long to short is 3.31. This result is again substantially more than the data supports. It is clear that the rate should not be directly proportional to the number of miles driven.

Some aspects of coverage simply are not affected by miles driven in the insured vehicle. Exhibit II lists various causes of loss that are not related to the number of miles the insured vehicle is driven.

Another argument against mileage as an exposure is the administrative costs. A massive number of odometer readings would be necessary (at the beginning and end of each policy period; when vehicles are purchased, sold, and junked; or whenever an insured changes insurance companies). A grave concern is whether the odometer is accurate, been tampered with, or disconnected. A law providing a stiff penalty for such activity would be necessary. Insurers would face very difficult billing problems in trying to match the bill to the odometer readings and in having retroactive adjustments to premiums.

Auto insurance in Virginia is very competitive and is sold in a free market. If the N.O.W. rating approach is better, then some companies should have adopted it with the hopes of gaining a competitive advantage. The absence of private market activity casts doubt that the approach is actuarially sound and/or economically feasible.

VIRGINIA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, BLOOMINGTON, ILLINOIS

I. LIABILITY COVERAGE

A. Coverage for the use of other cars.

Insureds have coverage for the use of non-owned cars within the framework established by policy contract. Miles driven in the insured vehicle would in no way measure the exposure relating to the use of covered non-owned cars. Insureds also have coverage when using a temporary substitute car. In these situations the owned vehicle is out of use. No miles are being put on the insured vehicle, but exposures continue to exist because of the use of the temporary substitute car.

B. Accident while insured car is parked.

Liability coverage promises to pay for damages an insured is liable to pay because of an accident resulting from the ownership, maintenance or use of the insured car. Exposure exists when the car is parked; e.g., the car is illegally parked and hit by third party. Even though no miles were being put on the car, we would be obligated to defend the suit and pay any damages for which the insured is liable.

C. Trailer coverage.

Certain trailers are covered while owned by an insured. This coverage extension for trailers applies while the trailer is parked. This exposure is not affected by miles driven in the insured vehicle. This exposure exists 24 hours a day and seven days a week regardless of whether the insured vehicle is being driven or is parked.

II. FIRST PARTY COVERAGES

A. Medical payments coverage while insured car is parked.

Medical expenses for injury arising from the use or maintenance of an insured vehicle are payable. Use or maintenance does not at all imply that the injury must occur while the car is being driven, e.g., injury that resulted from an insured doing routine mechanical work to his car.

K. Death, dismemberment, and loss of sight coverage for injury when struck as a pedestrian.

Pedestrian coverage clearly illustrates that miles driven in the insured auto is not a reflection of the exposure present. Benefits are payable under this coverage if the injury is a result of being struck as a pedestrian.

L. Death, dismemberment, and loss of sight coverage for a newly acquired car.

Newly acquired coverage is applicable to insureds who replace an existing insured vehicle or purchase an added vehicle. Miles driven in the former insured vehicle cannot possibly measure the exposure on a newly acquired car.

III. UNINSURED MOTOR VEHICLE COVERAGE

A. Uninsured motor vehicle coverage when struck as a pedestrian.

Uninsured motor vehicle coverage applies when an insured is struck by a motor vehicle that is uninsured. Mileage on the insured vehicle in no way measures exposure when the insured qualifies as a pedestrian. Example: An insured is injured by an uninsured vehicle while walking home from work. The insured vehicle is not involved in the accident, yet the UM coverage of the insured vehicle extends to the insured pedestrian.

B. Uninsured motor vehicle coverage for non-owned cars.

A loss to an insured arising out of an accident with an uninsured motor vehicle is covered while that insured is operating a non-owned vehicle. This non-owned vehicle could either be a borrowed or rented car.

C. Underinsured motor vehicle coverage when struck as a pedestrian.

If the insured is struck as a pedestrian and the limits of the motor vehicle responsible is not enough to satisfy the insured's damages, he or she is eligible for underinsured motor vehicle coverage. As a pedestrian, exposure to loss is not related to the mileage of the insured vehicle.

F. Loss of income coverage for injury arising out of the use or maintenance of a non-owned vehicle.

This coverage promises to pay income loss benefits as a result of bodily injury arising out of the use or maintenance of a motor vehicle. The scope of motor vehicle includes cars other than the insured vehicle. Example: The insured is test driving a vehicle and is involved in an accident. Because of the injury, the insured had to hire a substitute to perform self-employment services. While the insured vehicle was not involved in the accident, the benefits of the policy are still applicable.

G. Loss of income coverage for injury when struck as a pedestrian.

Loss of income coverage will pay income loss benefits when an insured is struck as a pedestrian. Miles driven can hardly determine exposure, when in this instance, an insured's injury has nothing to do with the operation of the insured vehicle.

H. Loss of income coverage for newly acquired cars.

Loss of income benefits from the insured auto described in the policy would transfer to a newly acquired vehicle purchased to replace the described vehicle. An insured would have a valid claim for income loss benefits if the injury suffered arose from an accident that happened the day of purchase. The coverage would transfer from the former vehicle to the newly purchased car. Mileage on the former vehicle is not necessarily an indicator of the exposure that exists on the newly acquired car.

I. Death, dismemberment, and loss of sight coverage for injury arising from the maintenance or use of the insured vehicle while parked.

Dismemberment to an insured could easily result while the insured vehicle was parked. Example: Upon exiting the vehicle, an insured accidentally closes the car door on his or her hand, severing two fingers. This is a covered loss and shows that exposures still exist when the vehicle is not being driven.

J. Death, dismemberment, and loss of sight coverage for injury arising out of the maintenance or use of a non-owned car.

Miles driven in the insured auto is no measure of the exposure present with regard to a non-owned car. This coverage is applicable to an insured whose death was a result of injuries suffered while using a non-owned vehicle.

STATE FARM MUTUAL AUTOMOBILE INS. CO.

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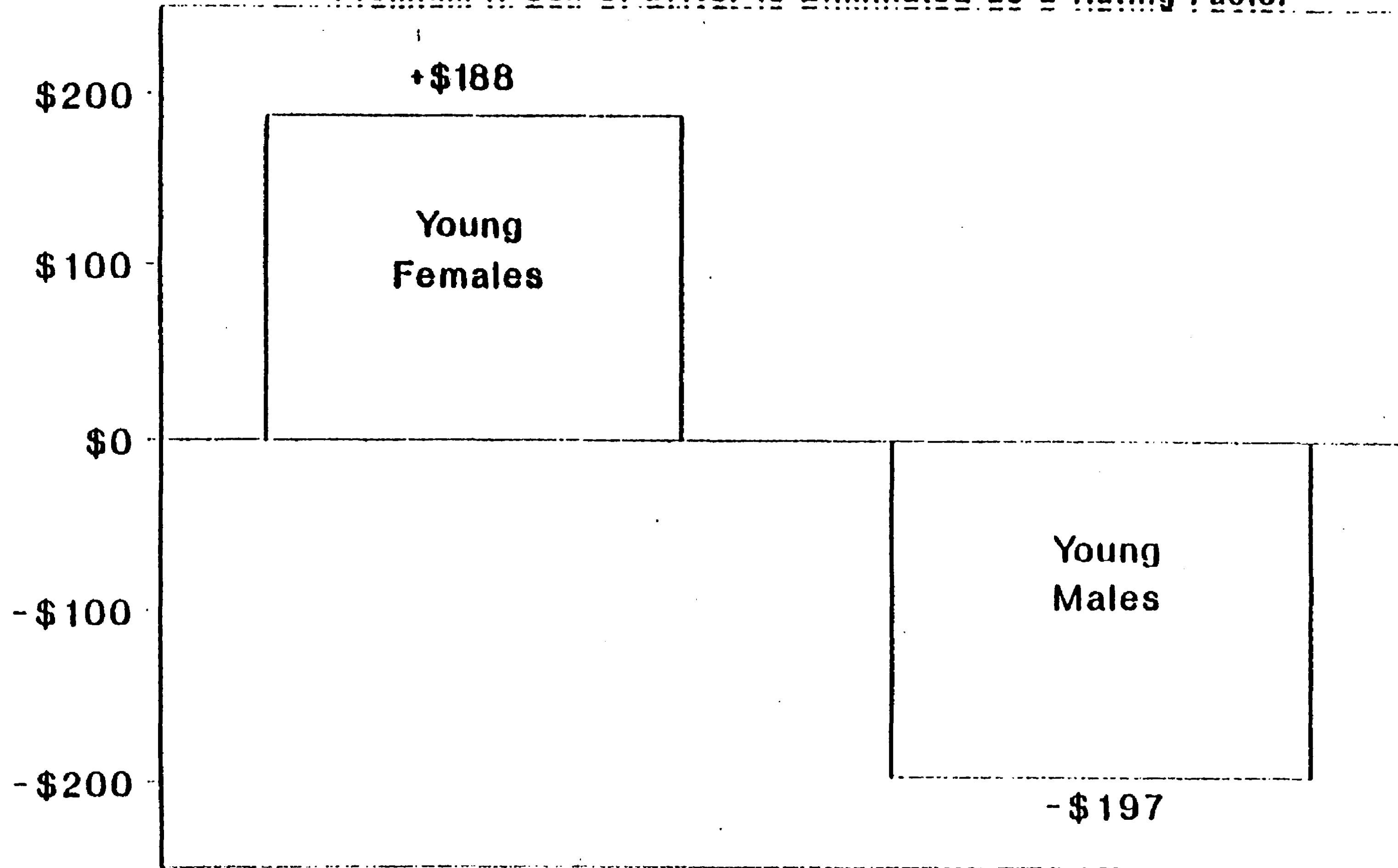

D. Underinsured motor vehicle coverage for non-owned cars.

An underinsured motor vehicle claim could arise while the insured is driving a non-owned car. The exposure exists on the non-owned vehicle and has no relationship to the mileage of the described vehicle in the policy. Example: An insured borrows a car from a friend and is involved in an accident with a motor vehicle whose liability limits are not enough to fully compensate the insured. Even though the insured vehicle is not involved, coverage is extended.

IV. PHYSICAL DAMAGE COVERAGE

A. Collision coverage for parked vehicles.

There are an infinite number of situations where collision loss could occur to the insured vehicle while parked. Since this chance of loss exists while the vehicle is parked, the use of mileage as a measure of the total exposure would distort the true picture.

B. Collision coverage for non-owned cars.

In certain situations, collision coverage applies to a non-owned vehicle. An example would be a temporary substitute vehicle. If an insured accidentally damaged a friend's car that was borrowed while the insured vehicle was under repair, collision coverage from the insured vehicle would cover the damage to the borrowed car. The mileage of the insured vehicle has no bearing on the exposure to loss.

C. Comprehensive coverage for parked vehicles.

As is the case with collision coverage, many comprehensive losses occur while the insured vehicle is parked. Most of the perils listed as covered under comprehensive coverage can cause loss to a parked vehicle.

D. Comprehensive coverage for non-owned cars.

Comprehensive coverage would be applicable to those losses occurring while the insured is operating a non-owned vehicle. Coverage could be extended for a glass breakage loss which occurred while an insured was driving a neighbor's vehicle.

E. Collision coverage on a newly acquired car.

In the situation where an insured replaces the described insured vehicle with a new vehicle, and loss due to collision occurs, coverage from the former vehicle could be applied. Miles driven in the former vehicle is not a true indication of the exposure that exists on the replacement car.

F. Comprehensive coverage on a newly acquired car.

Similar to collision coverage, there is an exposure when the insured is operating a newly acquired car. If there is a loss to a newly added vehicle, the insured may select coverage from any of his insured vehicles to apply to the loss.

G. Car rental and travel expense coverage.

One provision of the car rental and travel expense coverage promises to pay the deductible amount an insured is required to pay the owner of a rental car in the case of a comprehensive or collision loss while the insured is operating the rental vehicle. This exposure is present while the insured vehicle is not being driven.

H. Non-owned trailer coverage.

The policy promises to apply any physical damage coverage an insured carries to a non-owned trailer while the insured is using it. An insured does not have to be pulling the trailer in order for coverage to apply. Again, this exposure exists 24 hours a day and seven days a week regardless of whether the insured vehicle is being driven or parked.

Appendix 5

Prepared Statement of Robert H. Joost

to the

Joint Subcommittee Studying Motor Vehicle Insurance,

September 26, 1990, Fairfax, Virginia

1208 Geranium Street, N.W.
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Thank you. I appreciate the opportunity to appear today before the Joint Subcommittee. I am here as an expert on no-fault auto insurance and on choice in auto insurance. The opinions I express are my own and not those of any insurance company nor of any of my former employers. My opinions in full will be set forth in print in a treatise entitled "Automobile Insurance and No-Fault Laws." Last January, the Lawyer's Cooperative Publishing Company commissioned me to write the second edition of the treatise they published under that name in 1974.

I have been involved with auto insurance issues for a long time. In 1962, I was hired as special counsel by the national association of trial lawyers now known as ATLA, the Association of Trial Lawyers of America. From 1962 to 1971, I spent almost 10 years with ATLA, and a plaintiffs' personal injury law firm trying to understand and justify our system of motor vehicle insurance and victim compensation. In 1971, I left ATLA because I concluded that the present system, the system trial lawyers favor, is unfair, inefficient, and overpriced in comparison to its benefits. I testified to that end in 1971, before the U.S. Senate Commerce Committee, and I then spent five years with that committee as its legislative counsel.

In the early 1970s, 26 States, including Virginia, enacted no-fault auto insurance laws. Unfortunately, most of them were flawed or defective in one way or another. Virginia was one of the very

few that gave motorists the option of rejecting the $7,200 of PIP [Personal Injury Protection] or no-fault coverage that Virginia insurers were required to offer. (Arkansas, Kentucky, New Hampshire, South Dakota, Texas, Washington, and Wisconsin were the others that gave motorists a choice.) Of the States that balanced or offset the additional premium cost of PIP insurance by limiting lawsuits in tort, only one, Kentucky, gave motorists the option of rejecting the PIP insurance.

The most important thing about all of the auto insurance laws enacted in the 1970s was that they supplemented, rather than replaced, the existing laws with respect to insurance. The existing laws called for the payment of benefits from insurance only upon the establishment of fault or liability. Each of the 26 States that passed PIP laws ended up with a mixed system - part liability and part PIP - although the mix differed from State to State. In 1987, for example, in **Michigan**, approximately 88% of the claims were paid under coverages that pay benefits without regard to fault (PIP and Medical Payments (MP)), whereas in **Virginia**, approximately 41.8% of the claims were paid under coverages that pay benefits without regard to fault (PIP and MP). In **Virginia** 58.2 % of the claims were paid under BI (bodily injury) liability insurance, while in **Michigan** only 12% were paid under BI liability insurance.

I think you would all agree with me that each owner of a motor vehicle should be required either to buy auto insurance or to pay a very large uninsured motorist registration fee. You probably

agree with me that the Virginia PIP insurance law is a good law because it give motorists a choice whether or not to buy PIP insurance. You may not agree, however, that motorists should have the same right of choice with respect to liability insurance. Each owner should maintain auto insurance or pay a special registration fee, but each owner who chooses to buy insurance should have the right to decide for himself or herself which kind of insurance to buy.

I think it is a misuse of the power of the State to induce poor and moderate-income people to buy a policy of auto insurance for the benefit of strangers (that is what liability insurance is), when these people could never, as a practical matter, be forced to pay strangers the amount the insurance company is required to pay under that policy. I do not think it is a proper use of the power of government to do indirectly what can not be done directly.

I must say that Virginia's law in this regard is better than the compulsory insurance laws of 38 other States; Virginia gives the poor or moderate-income person a choice, which the 38 compulsory States do not. The poor or moderate-income motorist in Virginia can pay a special registration fee or pay a larger amount to buy liability insurance for the benefit of strangers. I urge you to expand your very good law by broadening the choice, for all motorists.

In my opinion, the Commonwealth of Virginia should go even further. It should allow poor and moderate-income people to buy the kind of insurance they need, instead of the kind that other

people want them to buy. The insurance they need is insurance that will pay the cost of their own hospital and medical care and which will reimburse them for lost wages if they are injured in an accident. If motor vehicle owners won't buy either PIP or liability insurance, they should be charged an extra $400 or more to register their cars, as Virginia does now.

The well-to-do, by contrast with the poor, want liability insurance because it will protect them from the risk of losing their property if they cause injury to another when they are at fault. They want others to carry liability insurance also, so that they will be able to recover if they are injured through the fault of someone else. The well-to-do should be allowed to choose such coverage, but I do not think that their choice should be imposed on others.

Professor Jeffrey O'Connell of the University of Virginia Law School, one of the authors of the original no-fault proposal, agreed with me in 1984 that each motorist should be given the right to choose which kind of auto insurance he or she wanted. We developed our idea and published it in 1986 in the Virginia Law Review under the title **Giving Motorists A Choice Between Fault and No-Fault Insurance**. I expanded on the idea in an article published recently in the San Diego Law Review under the title **Choosing the Best Auto Insurance Choice System**. In that article, I suggested that there were seven or eight different ways a State could offer its motorists meaningful choice. I have made copies of each of these articles for the members of the Subcommittee, along with

copies of this statement. If anyone thinks of any questions regarding them after I leave this hearing, please call or write me and I promise to reply promptly.

There are several ways to reduce premium rates for auto insurance. Virginia's rates are already the most reasonable in the D.C. metropolitan area, but they could be further reduced. Let me summarize several ways this could be done.

First, reduce hospital and medical costs. The largest category of payment in an auto personal injury case is hospital and medical expenses. According to the CPI (Consumer Price Index), the cost of hospital and medical services has risen much faster than the general rate of inflation. If we could hold the annual increase in the cost of hospital and medical services to the general inflation rate, and if we could eliminate unnecessary and expensive diagnostic tests, all forms of auto insurance (liability and PIP) would be cheaper. New York and several other States have attempted to deal with this problem by providing for cost controls for hospital and medical expenses in workers compensation and PIP claims. Medical cost controls in Virginia would probably save some money, and that saving might be passed on by insurance companies in the form of lower premiums, but don't count on it. Medical cost controls would be costly to administer, and there would be no guarantee that the consumer would benefit. Furthermore, under an overwhelmingly liability-based system, which is what Virginia has, the bulk of every damage payment by settlement or jury verdict is for what is called "pain and suffering" or general damages.

General damages are always higher in amount than special damages, which is the term used to describe medical and hospital costs and wage loss reimbursements. (There is a looseleaf publication called Jury Verdict Research which shows how generous or stingy the average jury is with respect to general damages in relation to special damages. Virginia juries are pretty tight-fisted, which is one reason your insurance rates are lower than those in DC and Maryland.) Putting cost controls and hospital and medical charges, i.e. reducing special damages, will probably not reduce overall damages very much because they will not necessarily reduce general damages; even in Virginia general damages are much larger than special damages. Accordingly, I do not recommend medical cost controls.

Second, require each motorist who buys insurance in Virginia to buy a significant amount of no-fault auto insurance, which would allow an applicable victim to sue for damages in tort if he or she suffers a serious injury or incurs medical expenses above a certain amount. At best count, 19 States presently require each motorist to buy a significant amount of no-fault insurance. Although some of the mandatory no-fault laws work well, there are problems with most of them. I do not recommend that the Joint Subcommittee recommend mandatory no-fault.

Third, reduce the amount of auto insurance that a Virginia motorist is required to maintain. The cost of auto insurance in Virginia could be reduced by simply reducing the compulsory amount. At the present time, each Virginia motorist is required to maintain

$25,000 worth of liability insurance for each person whom he or she negligently injures or kills and $50,000 for all the persons injured or killed in one accident. Twenty-two other States have lower financial responsibility limits than Virginia: Alabama, Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Louisiana, Massachusetts, Mississippi, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah, Vermont, and West Virginia. If the Virginia legislature lowered the $25,000/$50,000 amount, insurance premiums would go down. The Joint Subcommittee could recommend reduction, for that reason. I take no position on that since even $25,000 will not compensate a victim who suffers brain injuries or becomes a quadriplegic or paraplegic. I do recommend, however, that motorists be allowed to reject liability insurance completely, regardless of the limits, if they choose to be insured with PIP.

Fourth, allow the people of Virginia to choose how much money they want to receive if they are involved in an auto accident, and how much they want to pay in auto insurance premiums. Let them choose between **full recovery** (economic damages plus noneconomic damages) or **economic recovery** (economic damages only). The people who choose full recovery will pay higher premiums than those who choose economic recovery, because they stand to get higher benefits in case of an injury. The people who choose economic recovery will pay lower premiums because they will get fewer benefits if they are injured in an auto accident. This choice is not permitted by present Virginia law. Current Virginia law does not allow a

motorist to waive the right to sue for pain and suffering (noneconomic damages) in return for lower premiums.

Fifth, recommend, as I said earlier, that the legislature treat bodily injury liability insurance the same way it now treats PIP insurance. Make it optional. Continue to encourage Virginia motorists to buy auto insurance, by making them pay extra registration fees for failure to insure and set those fees slightly lower than the cost of insurance. But, if a motorist decides to buy insurance, give him or her a choice as to what kind of insurance it will be, PIP or BI liability. I think that the PIP insurance minimum should be set at a higher amount than the present $7,200, and I think that the liability insurance minimum should, if you want to lower average premiums, be set at a lower amount than the present $25,000 for any one victim. The financial responsibility limit for each victim under PIP insurance should be the same as the financial responsibility limit for any one victim under liability insurance. The choice between the two kinds of insurance should be a fair one.

Insurance companies should, in my opinion, be required to offer far more than this amount. People who want to buy higher limits should be able to. I think each company licensed to sell insurance in Virginia should be required to offer up to at least $250,000 in PIP limits and in BI liability limits.

There are a number of technical problems that arise when you give motorists a choice as to the kind of insurance they may buy.

One such problem is that of the motorist who refuses to make

a choice. In New Jersey, the first State in recent memory to enact a choice law, more than 20% of the State's motorists did not register a choice for 1989. The New Jersey law went into effect on January 1, 1989 amid a lot of talk and publicity, but the talk and publicity did not result in everybody registering a choice. The non-choosers were given the "default position" established in the New Jersey law. I think that every choice law has to make registering a choice a condition of driving and it has to have a default position. My suggestion is, if you recommend choice by selection, set forth the following default position: The motorist who fails to register a choice but who buys insurance should get the kind of insurance which the commissioner of insurance finds is the least expensive for the average good driver.

Another technical problem with choice laws of certain kinds is how to deal with a situation that involves a collision between a liability-insured driver and a PIP-insured driver. There is no problem when a liability-insured driver collides with another liability-insured driver. Their claims are dealt with the same way they are under current law. There is also no problem when a PIP-insured driver collides with another PIP-insured driver. Neither is permitted to sue the other, except for excess economic loss. Each must recover all losses, except for excess economic loss, from his or her own insurer.

There is a problem, however, when a liability insured collides with a PIP insured. The liability insured could score a windfall in that situation. The victim who is a liability insured would

have much lower rates than a PIP insured because (1) he or she would not have to pay his or her own PIP losses (the PIP insured would have to if the PIP insured was at fault), (2) and he or she could not be sued by a victim who is a PIP insured even if the liability insured was at fault. The PIP insured would suffer a corresponding disadvantage because he or she could be sued by a liability insured and, at the same time, would have to pay for all PIP losses.

The best solution to this inequity may be to pick a choice system based on rejection rather than one that is based on selection. Alternatively, adopt something Professor O'Connell and I developed and named "connector" insurance because it connects liability insurance, which is a third-party coverage, and PIP insurance, which is a first-party coverage. If a liability insured was injured by a negligent PIP insured, he or she would recover full tort damages from his or her own insurance company under connector insurance, which is , to get technical, a first party liability insurance policy that is very similar to an uninsured motorist policy. Connector insurance keeps the insurance pool for PIP policies separate from the pool for liability policies and thus prevents the liability insured from enjoying a windfall. The liability insured still comes out ahead because he or she cannot be sued by a PIP insured, but rates for the two kinds of insurance will be within the same range.

Kentucky, the only state to have choice insurance for a long time (the Kentucky law was passed in 1975), has a right of

rejection, rather than a right of selection, choice law. With the Kentucky form, you don't need connector insurance and you don't need to have a default position. Under the Kentucky model, every motorist who buys auto insurance gets $10,000 of PIP insurance, unless he or she rejects that coverage in favor of retaining an unrestricted right to sue at tort and buys $10,000 of liability insurance instead of $10,000 of PIP insurance. If a Kentucky motorist retains the PIP insurance, he or she will, in case of accident, recover for medical expenses and lost wages, but is prohibited from suing anybody else in tort unless the loss is greater than $10,000.

One advantage of the Kentucky approach is that it has been tested, and has worked for almost 15 years. A second advantage of the Kentucky approach is that it is more understandable since it doesn't require liability insureds to buy connector insurance and it doesn't have a default position. A third advantage may be that this approach is in the process of being politically field-tested elsewhere. Watch the election returns in November 1990 in the State of Arizona because a modified and improved version of the Kentucky auto insurance law is on referendum ballot in that State. Approximately 140,000 valid signatures were collected to put this bill on the ballot as an initiative.

I describe a half dozen more choice models in my San Diego Law Review article, but I regard the two I have outlined as the most viable. I would be happy to answer your questions.

Appendix 6

NO FAULT:

A FLAWED SYSTEM

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SUMMARY

No fault auto insurance is a flawed and failed alternative to the traditional tort system. After reviewing the experience of states that have had no fault for as long as two decades, this conclusion is inevitable.

Contrary to no fault, the tort system is based on time-honored values held by every Virginian. It holds an individual responsible for his actions. It offers a deterrent to unsafe driving practices. It lays the burden of increased auto insurance premiums resulting from careless driving where it ought to be -- with the unsafe driver. It offers full compensation to the injured victim from the one who caused his injuries. No fault undermines these principles.

No fault fails to keep the promises made by no fault proponents. It has not compensated victims faster or better. It has not lowered auto insurance premiums. It has not reduced litigation. It is neither logical nor fair.

Optional no fault is the same failed concept wrapped in a shiny new package. It doesn't cure any of the shortcomings of the original plan. In fact, it creates new problems.

denying or delaying payment on valid claims to extract the maximum advantage from their investment of premium dollars.

In Virginia, limited medical payments benefits are payable to the policyholder as no fault benefits. Disputes consistently arise in Virginia's courts on the reasonableness of medical expenses. Thus, Virginia's own experience clearly demonstrates that no fault does not reduce or eliminate arguments.

No Fault Does Not Lower Premiums

Proponents of no fault claim that, by eliminating payment for non-economic damages and by allegedly reducing litigation, auto insurance premiums in no fault states will be lower than premiums in tort states. Both common sense and statistics belie this claim.

Michigan has a no fault system which has been held up as a model for the rest of the country to follow. Yet, Michigan had the 19th highest premiums in 1988, and has experienced a higher growth rate than most tort states. In fact, Michigan is experiencing a citizens' revolt. A petition signed by 290,000 citizens demanded 20 - 30% rate rollbacks and a repeal of the insurance industry's anti-trust exemption. Michigan's governor has submitted his own proposal to roll back rates by 20%.

The Florida no fault law has also been cited as a model law. Yet, the complaints of Florida's policyholders about high rates and inadequate benefit levels led to the creation of a special commission to address numerous concerns about the state's auto insurance laws. That commission has not yet issued a report.

A 1985 Department of Transportation report demonstrates that no fault premiums are 10 - 40% higher than premiums in tort states.

A logical analysis of no fault indicates that it does not result in a savings. People injured by negligent drivers in a no fault state do receive less compensation, which theoretically would result in lower premiums. However, the pool of claimants is expanded to include negligent drivers. Any savings the insurance companies may realize on an individual claim would be more than offset by the increased number of claimants in a no fault state.

It is important to remember that comprehensive and collision coverage comprise approximately 40% of an auto insurance premium. As the price of cars increases, so does the price of fixing damaged cars or replacing them if stolen. Thus, consumer dissatisfaction with rates in all states will continue due, in large measure, to coverages which would not be affected in any way by no fault insurance.

No Fault Does Not Provide Compensation to More People

A 1985 Rand study confirms that no fault systems do not compensate significantly more people than traditional tort systems. While 87% of injured victims in no fault states are compensated, fully 80% of those in tort states receive damages. Sweeping reforms are hardly justified by this small differential, particularly when guilty drivers account for the increase.

While it provides benefits to at-fault drivers who are barred from compensation in a tort system, it excludes large groups of innocent victims.

Because victims recover from their own insurance policies in no fault states, uninsured motorists are flatly denied recovery, regardless of fault. If Virginia were a no fault state (with its other laws remaining the same) a person who elected to pay the Uninsured Motorist Fee and was subsequently injured by a negligent driver would receive no compensation for his injury.

Similarly, children, elderly parents and other family members of uninsured drivers, as well as those who do not even own a car, cannot recover from the reckless driver who injures them.

Most no fault states also exclude from compensation non-

NO FAULT FLAWS

Policymakers in a number of states were sold no fault based on some combination of the following promises: it will lower premiums; it will compensate more victims, faster and better; it will reduce litigation. With some states having more than 20 years of experience with no fault, it has become obvious that none of the forms of no fault has delivered on these promises. In fact, several states have repealed no fault laws. Other no fault states are experiencing consumer revolts because of skyrocketing premiums and inadequate benefits.

As discussed in the following pages, the major flaw with no fault is that it does not work.

No Fault Does Not Reduce Litigation

No fault does not eliminate controversies; it merely creates new and different controversies. For example, in states with modified no fault, disputes often arise over whether the threshold for serious injury has been met. This is not an issue in a traditional tort-based system.

No fault does not reduce court cases and court costs according to a study of appellate decisions in four no fault states and two tort states (Insurance Counsel Journal, July 1986).

In a traditional tort state, most auto accidents are settled prior to trial. Small claims are often settled without the assistance of counsel. Fully 43% of all accidents in both tort and no fault states involve small claims with an economic loss of less than $500 (All Industry Research Advisory Council 1989 closed claims study).

In larger claims, fault may not be the major issue; more often, damages are at issue. Attempting to eliminate the question of who caused the accident does nothing to resolve arguments over fair compensation.

While plaintiffs' attorneys are often blamed for litigation, insurance companies actually provoke the filing of suits by

When injuries are deemed more "serious," the victim may recover from the negligent driver who caused his injuries. Whether an injury is considered minor or serious is determined in a variety of ways, depending on the state.

Some modified no fault states have a dollar threshold. Tort actions may be initiated only after the victim's medical bills exceed a certain amount, ranging from $400 - $2,500, depending on the state plan.

Other states require the victim to be disabled for a particular period of time to enter the tort system. This is referred to as a disability threshold.

In verbal threshold states, the victim's injuries must meet a statutory definition of "serious" to recover from the at fault driver. Generally, this definition refers to a loss of bodily function, permanent disfigurement, or death.

Massachusetts, New York and Florida are examples of states which have adopted forms of modified no fault.

Add-On No Fault

In add-on states, the victim can recover some benefits from his

own insurance company, and is allowed access to the tort system without restrictions.

Virginia is an add-on state since limited medical bills are paid by the victim's own insurer under the medical payments provisions of his policy but the victim retains the right to recover from the negligent driver.

Optional No Fault

As the newest concept in no fault insurance, an optional no fault (or "choice") system requires a policyholder to elect either a traditional tort-based policy or a no fault policy at the time of purchase. Insureds who elect tort policies theoretically retain the right to recover losses from an at fault driver should they be injured in an auto accident. Those who elect a no fault policy agree that their own policy will provide for limited coverage of medical expenses and lost wages.

New Jersey and Kentucky have some form of an optional no fault plan.

No fault not only reduces compensation paid to innocent victims, but compounds the problem by compensating the driver who caused the injury.

No Fault Does Not Increase the Speed of Compensation

The 1989 All Industry Research Advisory Council study of closed claims clearly demonstrates that the speed with which victims are compensated is essentially the same in tort and no fault states. Fully 90% of all claims under $2,500 receive full compensation within one year in both tort and no fault states. For claims over $2,500, the difference is insignificant: 60% of these claims in no fault states compared with 57% in tort states are settled within one year.

permissive users (a teenage son who is injured by a drunk driver when he takes the family car without permission), as well as motorcycle drivers and their passengers. As a result, injured victims in these classes do not recover for injuries caused by a guilty motorist.

Additionally, no fault benefits are often payable only after other sources of coverage are exhausted. Federal and state benefit programs, private health and disability benefits, and employer-provided leave benefits pay first. Then, and only then, do no fault policies begin to provide coverage. As a result, no fault merely shifts costs from the auto insurer to the employer and the government.

No Fault Does Not Provide Fair or Adequate Compensation

Proponents of no fault would have consumers believe that, under no fault, out of pocket expenses are fully compensated. In fact, this is not the case.

Even in Michigan, with some of the most liberal no fault benefits in the country, injured victims are not fully compensated for the direct costs of their injuries. While medical expenses are covered for life, work loss is only covered at 85% of gross wages for a period of three years, and may not exceed $2,808 per month in 1990 dollars. Replacement services (e.g. child care) are also only covered for three years, and payments may not exceed $20 per day.

The standard Florida no fault policy limits medical benefits to $10,000, regardless of whether reasonable medical expenses exceed this amount. This contrasts with Virginia's minimum liability insurance of $25,000. Additionally, in Florida only 80% of medical expenses (up to $10,000) and 60% of lost wages are reimbursable.

No fault forbids compensation for intangible losses. Victims of another's recklessness receive no compensation for pain, inconvenience, deterioration of quality of life or other losses that do not have a fixed price attached to them.

The Virginia General Assembly is being asked to consider turning its back on the values embodied in the tort system. It is being asked to consider a system which is not only antithetical to those values, but has proven ineffective in fairly compensating those injured in auto accidents through no fault of their own.

THE NO FAULT CONCEPT

No fault auto insurance is a method of compensating people who are injured in auto accidents. Under most no fault plans, the innocent victim recovers a limited percentage of his financial losses (generally some portion of his medical costs, lost wages, and other types of expenses) from his own insurance company, and is prohibited from seeking compensation from the negligent driver who caused the injuries. There are, in models or practice, several types of no-fault:

Theoretical or "Pure" No Fault

Although no state has a pure no fault statute, the theory provides for a complete abolition of the concept of fault and the negligence system. The victim recovers all of his "reasonable" medical expenses and lost wages from his own insurer. Under this model, compensation for intangible losses is barred.

Traditional or Modified No Fault

In states which have adopted modified no fault auto insurance, tort actions are precluded when "minor" injuries are sustained. In these cases, the victim recovers from his own insurer.

No Fault Does Not Return Significantly More of Each Premium Dollar to the Consumer

Data from the 1985 Department of Transportation Report shows that 43.2 cents of each premium dollar is returned to the consumer in tort states compared to 50.2 cents in no fault states. In light of the finding that premiums in no fault states are as much as 40% higher than tort states, the 7% difference represents little, if any, improvement.

No fault proponents argue that insurance company defense costs and plaintiff contingency fee arrangements with lawyers consume too much of each claim. Yet, the plaintiff lawyer, acting as an advocate for the injured victim, and the threat of a lawsuit are often the only incentives insurance companies have to offer a fair and prompt settlement. It appears that the price paid for this appropriate and necessary constraint on the actions of insurers is minimal, at most.

No Fault Does Not Offer Deterrence or Incentive

It is well documented and commonly accepted that the tort system provides an incentive for careful, non-injurious behavior and a deterrent to negligent behavior. While some deny that deterrence is a factor in driving behavior, recent studies indicate that it is a significant influence.

Studies done in 1982 conclude that adoption of no fault may have increased auto accident deaths by as much as 15% in some states, and 20% in New Zealand.

While drivers may not consciously consider potential lawsuits as they obey speed limits, stop at red lights, and pass legally and carefully, they are very aware of the effect of a moving violation or at fault accident on their liability insurance premiums.

No fault abdicates any attempt to deter negligent driving. States that switch to no fault run the risk of higher accident rates in the name of reform.

No Fault is Not Logical Or Fair

Costs in a traditional tort system are paid through higher premiums allocated to the drivers who cause the most injuries. Under no fault, these costs result in higher premiums for everyone. This unfairly penalizes some categories of drivers by forcing them to pay a larger portion of the total costs of auto accidents in order to subsidize whole other categories of drivers who will be undercharged relative to the actual damages they inflict.

In a tort state, a person who has been convicted of driving while under the influence of drugs or alcohol pays through significantly higher auto insurance premiums. In a no fault state, not only are his insurance premiums underwritten in part by all other drivers, but he is compensated for any injuries from an accident caused by his drunk driving. The innocent victim of his negligence cannot recover fully, and any recovery must come from the victim's own policy.

No fault overrides the fundamental legal principle that preservation of order in a civilized society requires that individuals be held responsible for their own conduct.

Moreover, no fault unfairly discriminates against whole classes of individuals since it compensates only for damages that can be measured directly in out-of-pocket losses. Children, college students, homemakers, and the unemployed and underemployed are hit the hardest since they cannot recover for impairment of future earning capacity.

The tort system provides compensation for losses without a fixed price but which are just as real as an economic loss. Unless an injured victim meets the threshold for "serious" injury, no compensation is allowed for such losses.

THE MICHIGAN NO FAULT EXPERIENCE AND CONSUMER REVOLT

Michigan adopted a no fault law in 1973 that has been praised by the insurance industry as a model. Michigan insurers, however, seek to substantially limit the rights and privileges of policyholders and expand the rights and privileges of insurers at each session of the Michigan legislature. As stated previously, Michigan citizens have forcefully voiced their displeasure with the no fault statute by demanding rate rollbacks. A closer look at the statute offers insights into its failures.

The Michigan No Fault Law in Brief

Under Michigan's no fault plan, automobile accidents produce two potential claims. The first claim is for no fault, or first party benefits paid under the injured person's own auto insurance policy. Michigan's first party benefits are the most comprehensive wage loss and medical expense no fault coverages in the country.

The second claim, a traditional negligence action, is a recovery for non-economic (pain and suffering, loss of function, denial of everyday enjoyment of life) losses. This recovery is from the negligent driver and is available only in the case of a serious, or "threshold," injury. Three types of threshold injuries are

outlined by statute: death, permanent serious disfigurement, or serious impairment of body function.

First party no fault benefits cover medical expenses for life. Other losses are compensable only for a three-year period: wage loss, replacement service expenses, and survivor's loss benefits when an auto accident has resulted in death.

Even these allowable expenses are not without limitation, however. Medical expenses must be deemed "reasonable" by the insurer to result in reimbursement. Wage loss is compensable at only 85% of gross pay, and may not exceed a 1990 amount of $2,808 per month unless higher benefit levels are purchased. Replacement service expenses can be recovered at a maximum of $20 per day, and survivors loss is capped at the same level as lost wages and covers only the loss of tangible things of economic value.

Failures of the Michigan No Fault Law

Litigation: Despite promises of simplicity, confusion abounds among consumers, lawyers, and judges. This is typified by the number of cases reaching the appellate level. From 1975-81, a total of 260 disputes over first party (no fault) coverage reached the Supreme Court or the Court of Appeals. Since 1982,

OPTIONAL NO FAULT: NO OPTION AT ALL

Optional no fault was proposed in 1986 in a Virginia Law Review article by Jeffrey O'Connell and Robert H. Joost. Since then, Virginia Knauer, a former Reagan-administration consumer advisor, has added her voice to the proposal through Project New Start. Yet, the concept has not been widely adopted. Only Kentucky and New Jersey have some form of the optional no fault plan, and New Jersey's current governor was elected on an insurance reform platform, even after optional no fault was in place.

In Arizona, the legislature defeated optional no fault when they realized the problems that would arise. The only way no fault proponents could keep the issue alive was to make it a November ballot initiative.

Very simply, optional no fault offers a "choice" between a traditional tort-based policy and a no fault policy. But that is where the simplicity ends.

A no fault insured gives up his right to recover damages from a guilty party, and is afforded immunity when he negligently injures any other driver. On the other hand, the traditional tort based insured theoretically retains his right to recover

for his injuries from another driver who causes them, and retains responsibility for any injuries he may cause through the negligent operation of a motor vehicle.

Problems will surface on the first day that there is a mixture of no fault and tort-based drivers on the road. Suppose a tort-based policyholder is injured by a reckless driver who has signed away responsibility for his negligence by purchasing a no fault policy. The injured victim believes he has kept his right to recover for his injuries from a guilty driver. If the guilty driver has no fault insurance, however, he is immune.

As a result, the tort-based policyholder must buy an additional type of coverage, sometimes referred to as "connector coverage," to insure his own injuries caused by negligent no fault drivers. And then, his recovery will be through his own auto insurance policy. This connector coverage is an additional expense which further minimizes the "choice" offered to consumers.

Tort-based policies would offer coverage for injuries under several circumstances, including:

1. When a tort driver negligently collides with another tort driver, the injured victim would recover for his injuries from the negligent driver's policy.

that number has tripled. An additional 237 appellate decisions concerned threshold issues.

At the trial court level, Michigan's largest insurer (with 23% of the market) litigated 10,007 first party claims from 1980-87. If this represents a percentage of cases equivalent to market share, approximately 43,000 first party claims went to court during the same period -- 5,375 per year.

The 1986 study reported in the <u>Insurance Counsel Journal</u> concluded that "Michigan must be an acute disappointment to the proponents of auto accident reparation acts" as a result of the level of litigation.

It is not surprising that many no fault benefits are in dispute. The law is so complicated that most citizens, and many in the legal profession, are unaware of the nuances of the law.

Consumers Are at a Disadvantage: The Michigan law has no disclosure requirements, so the insurer is not legally obligated to inform the claimant of the benefits to which he is entitled. Nor are there sanctions for an insurer's failure to meet its obligations to its insured. As a result, insurance companies are able to stall for months before adequately compensating first party claims.

Premium Costs: Michigan has the 19th highest auto insurance premiums of the 50 states and the District of Columbia. Additionally, premiums have risen at a faster rate than average over the past decade. For the lowest risk drivers in most Michigan cities, premiums more than doubled during the last half of the 1980's.

In an attempt to hold down rates, insurance companies proposed legislation that would severely reduce benefits and limit rights in exchange for a 25% reduction on personal injury protection and bodily injury liability rates. This is a clear statement that the only way no fault saves money is through the dramatic reduction of benefits to injured victims.

2. When a no fault driver negligently collides with a tort driver, the injured victim's connector coverage would provide coverage for the injuries.

Rates in Opt-In, Opt-Out States Leave the Consumer With No Choice

Optional no fault proponents sell their proposals on the basis that freedom of choice is as central to Americans as the principle of holding one accountable for his actions. Yet, premiums in optional no fault systems will leave the insurance consumer with no real choice.

Under opt-in, opt-out proposals, the entire burden for collisions between tort and no fault drivers is borne by the tort driver. The alternative exists to have the no fault policyholder purchase connector coverage. Undoubtedly, the goal of the proposals is to cause the tort policy to cost more so more drivers will opt for no fault, despite its proven inadequacies.

And it is clear that the tort policies will start out costing substantially more than the no fault policies because they pay for everyone's negligence. This problem is compounded over time. As more and more unsafe drivers (those who would pay concomitantly higher premiums in the tort system) opt for the less expensive, no fault policies, premiums for the traditional

tort policies will skyrocket. The consumer who wants to protect the public as well as himself will be left with no real choice because the tort policy is prohibitively expensive.

This is the Kentucky experience. This state adopted an optional no fault law in which the common law right to recover from a negligent motorist remains for both parties when a no fault and tort driver collide. True no fault exists, on the other hand, when two no fault drivers collide. Fully 99% of Kentucky motorists choose no fault because of the significant rate differential. Kentucky consumers are making an economic decision that looks good today, but will come back to haunt them when they begin to experience increasing insurance rates, inadequate benefit levels, less than full recoveries, uncooperative insurance companies, and the multitude of other problems discussed earlier.

Other Major Problems With Opt-In, Opt-Out Systems

Pedestrians, Passengers, and Bicyclists: An apparent gap exists for injuries caused by a no fault driver to pedestrians, passengers and bicyclists who do not have automobile insurance because their family does not own a car. And, no fault proponents argue that "permitting the insured's coverage choice to bind guests, passengers, pedestrians or bicyclists injured in his car is not a good idea." (O'Connell and Joost, Virginia Law

Review, 1986). For coverage in these cases, a no fault driver would have to purchase an additional liability policy, causing further confusion.

Out-of-State Drivers: When a person from a traditional tort state travels in an optional no fault state, he runs the risk of injury by a negligent no fault driver. He would not have the connector coverage required to compensate his injuries in this case. And, the question of whether one state can take away the rights of citizens of another state remains unanswered. The negligent no fault driver is immune from suit in his home state, but what about suit in the victim's home state? Current proposals fail to address this eventuality.

Project New Start

Virginia Knauer's Project New Start also advocates an optional no fault plan. Project New Start is backing the Arizona choice ballot initiative, and has been active in two other states and announced plans to move into at least three more states.
New Start claims that it has received enthusiastic support from consumer groups. This contention is suspect, to say the least. Many early New Start endorsers have disassociated themselves from the group (e.g. National Insurance Consumers Organization, Consumer Federation of America, Consumers Union).

The Connecticut Law Revision Commission has issued a review and report on New Start's proposed Choice Plan. Its conclusion is that the system has a number of significant problems: Project New Start materials are ambiguous and contradictory and its claims are unsubstantiated. The Commission has recommended that the proposed opt-in, opt-out plan not be considered in Connecticut.

Summary of Opt-In, Opt-Out No Fault

No fault laws in state after state have failed to reduce premiums as promised, failed to increase speed of compensation as promised, failed to compensate more victims as promised, and failed to deliver on all its other promises. This has resulted in the re-packaging of original no fault proposals as opt-in, opt-out plans.

The new opt-in, opt-out state can expect to create an entirely new system encompassing the known problems with no fault insurance, expected problems with the merging of two systems, and the inevitable and unanticipated problems of any new system.

Model Regulation Service — July 1989

GROUP PERSONAL LINES PROPERTY AND CASUALTY INSURANCE MODEL ACT

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Section 1. Group Personal Lines Property and Casualty Insurance Definition

Except as provided in Section 2, no policy of group personal lines property and casualty insurance shall be issued or delivered in this state unless it conforms to one of the following descriptions:

A. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term "employees" shall include directors of a corporate employer and retired employees. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees, or from both. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, except those who reject such coverage in writing.

B. A policy issued to a labor union or similar employee organization, which shall be deemed to be the policyholder, to insure members of such union or organization for the benefit of persons other than the union or organization or any of its officials, representatives, or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or organization, or all of any class or classes thereof.

(2) The premium for the policy shall be paid either from funds of the union or organization, or from funds contributed by the insured members specifically for their insurance, or from both. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, except those who reject such coverage in writing.

C. A policy issued to a trust, or to the trustee(s) of a fund, established or adopted by two or more employers, or by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, which trust or trustee(s) shall be deemed the policyholder, to insure employees of the employers or members of the unions or organizations for the benefit of persons other than the employers or the unions or organizations, subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes thereof. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term "employees" shall include directors of a corporate employer and retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid from funds contributed by the employer or employers of the insured persons, or by the union or unions or similar employee organizations, or by both, or from funds contributed by the insured persons or from both the insured persons and the employer(s) or union(s) or similar employee organization(s). A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, except those who reject such coverage in writing.

D. A policy issued to an association or to a trust or to the trustee(s) of a fund established, created or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of one hundred persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance, shall have been in active existence for at least one year, and shall have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees. The policy shall be subject to the following requirements:

(1) The policy may insure members of such association or associations, employees thereof or employees of members, or one or more of the preceding or all of any class or classes thereof for the benefit of persons other than the employees' employer.

(2) The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the insured persons or from both the insured persons and the association, associations, or employer members. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, except those who reject such coverage in writing.

(3) If compensation of any kind will or may be paid to the policyholder in connection with the group policy, the insurer shall cause to be distributed to prospective insureds a written notice that compensation will or may be paid. Such notice shall be distributed (i) whether compensation is direct or indirect, and (ii) whether such compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the direction of the policyholder or any entity affiliated with the policyholder by ownership, contract or employment. The notice required by this subsection shall be placed on or accompany any document designed for the enrollment of prospective insureds.

E. The definition of an eligible employee or member may include the spouse of such eligible employee or member.

Section 2. Qualifications For Groups Other Than Those Defined in Section 1

Group personal lines property and casualty insurance offered to a resident of this state under a group personal lines property and casualty insurance policy issued or delivered to a group other than one described in Section 1 shall be subject to the following requirements:

A. No such group personal lines property and casualty insurance policy shall be issued or delivered in this state unless the Commissioner finds that:

(1) The issuance of such group policy is not contrary to the best interest of the public;

(2) The issuance of the group policy would result in economies of acquisition or administration; and

(3) The benefits are reasonable in relation to the premiums charged.

B. No such group personal lines property and casualty insurance coverage may be offered in this state by an insurer under a policy issued or delivered in another state unless this state or another state having requirements substantially similar to those contained in Paragraphs (1), (2) and (3) of Subsection A has made a determination that such requirements have been met

Note: If a state adopting this Model Act does not want to accept another state's determination of a group's qualification under Subsection 2A, the state should delete in Subsection 2B the following text: "or another state having requirements substantially similar to those contained in Paragraphs (1), (2) and (3) of Subsection A."

C. The premium for the policy shall be paid either from the policyholder's funds or from funds contributed by the covered persons, or from both.

D. If compensation of any kind will or may be paid to the policyholder in connection with the group policy, the insurer shall cause to be distributed to prospective insureds, a written notice that compensation will or may be paid. Such notice shall be distributed (i) whether compensation is direct or indirect, and (ii) whether such compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the direction of the policyholder or any entity affiliated with the policyholder by ownership, contract or employment. The notice required by this subsection shall be placed on or accompany any document designed for the enrollment of prospective insureds.

Section 3. Master Policy

A. A master policy shall be issued to the policyholder. Eligible employees or members insured under such master policy shall receive certificates of coverage setting forth a statement as to the insurance protection to which they are entitled.

B. No master policy or certificate of insurance shall be issued or delivered in this state unless the master policy form, together with all forms for riders, certificates and endorsements to the master policy form, shall have met the applicable filing requirements in this state. Subsequent amendments to the master policy form or forms for riders, certificates and endorsements to the master policy form shall not be issued or delivered until they have met the applicable filing requirements in this state.

C. The master policy shall set forth the coverages, exclusions and conditions of the insurance provided therein, together with the terms and conditions of the agreement between the policyholder and the insurer. The master policy shall make express provisions for the following:

(1) Method(s) of premium collection;

(2) Enrollment period, effective date provisions and eligibility standards for employees or members;

(3) Termination of the master policy; and

(4) Conversion privileges of the employees or members.

D. If the master policy provides for remittance of premium by the policyholder, failure of the policyholder to remit premiums when due shall not be regarded as nonpayment of premium by the employee or member who has made his contribution on a timely basis.

Section 4. Policy Coverage

A. The master policy shall provide a basic package of coverages and limits that are available to all eligible employees or members. Such package shall include at least the minimum coverages and limits of insurance as required by law in that employee's or member's state of residence or in the state where the subject property is located.

if applicable. In addition, the master policy may provide additional coverages and/or limits to be available at an increased premium to employees or members who qualify under the terms of the master policy.

B. The master policy shall provide coverage for all eligible employees or members who elect coverage during their initial period of eligibility, which period shall not be less than thirty-one days. Employees or members who do not elect coverage during such initial period and later request coverage shall be subject to the insurer's underwriting standards.

C. Coverage under the master policy may be reduced only as to all members of a class, and may never be reduced to a level below the limits required by applicable law.

D. Coverage under the master policy may be terminated as to an employee or member only for:

(1) Failure of the employee or member to make required premium contributions;

(2) Termination of the master policy in its entirety or as to the class to which the employee or member belongs;

(3) Discontinuance of the employee's or member's membership in a class eligible for coverage; or

(4) Termination of employment or membership.

E. If optional coverages and/or limits are available by law in an employee's or member's state of residence, the policyholder's acceptance or rejection of such optional coverages and/or limits on behalf of the group shall be binding on the employees or members. If the policyholder rejects any coverages and/or limits that are required by law to be provided unless rejected by the named insured, notice of such rejection shall be given to the employees or members at or before the time their certificates of coverage are delivered.

F. Stacking of coverages or limits among separate certificates of insurance is prohibited under a master policy of group personal lines property and casualty insurance; except that, if separate certificates under the same master policy are issued to relatives living in the same household, the state law pertaining to stacking of individual policies shall apply to those certificates.

Section 5. Group Rating

A. No master policy or certificate of insurance shall be issued or delivered in this state unless the rating plan and amendments thereto used in the determination of such master policy premium shall have met the applicable filing requirements in this state.

B. Group insurance premium rates shall not be unfairly discriminatory if adjusted to reflect past and prospective loss experience or group expense factors, or if averaged broadly among persons insured under the master policy. Nor shall such rates be deemed to be unfairly discriminatory if they do not reflect individual rating factors including surcharges and discounts required for individual personal lines property and casualty insurance policies.

C. Experience refunds or dividends may be paid to the policyholder of a group personal lines property and casualty insurance policy, if the insurer's experience under that policy justifies such experience refunds or dividends. However, if an experience refund or dividend is declared, it shall be applied by the policyholder for the sole benefit of the insured employees or members to the extent that such experience refund or dividend exceeds the policyholder's contribution to premium for the period covered by such experience refund or dividend.

Section 6. Duties and Limitations of Insurers

A. An insurer issuing or delivering group personal lines property and casualty insurance shall maintain separate statistics as to the loss and expense experience pertinent thereto.

B. No insurer shall issue or deliver a group personal lines property and casualty insurance policy if it is a condition of employment or of membership in a group that any employee or member purchase insurance pursuant to such policy, or if any employee or member shall be subject to any penalty by reason of his non-participation.

C. No insurer shall issue or deliver a group personal lines property and casualty insurance policy if:

(1) The purchase of insurance available under such policy is contingent upon the purchase of any other insurance, product or service; or

(2) The purchase or price of any other insurance, product or service is contingent upon the purchase of insurance available under the group personal lines property and casualty insurance policy.

This provision shall not be deemed to prohibit the reasonable requirement of safety devices, such as heat detectors, lightning rods, theft prevention equipment and the like. Neither shall this provision be deemed to prohibit the marketing of "package" or "combination" policies.

D. The insurer's experience from its group personal lines property and casualty insurance policies shall be included in the determination of the insurer's participation in the applicable residual market plans.

E. For purposes of premium taxes, the insurer shall allocate premiums in accordance with the rules applicable to individual personal lines property and casualty insurance policies, except that any required allocation may be based on an annual survey of insureds. Premiums shall be apportioned among states without differentiation between policyholder or employee or member contributions.

Section 7. Solicitation, Negotiation or Sale

A. No person shall act in this state as an insurance agent or broker in connection with the solicitation, negotiation or sale of any group personal lines property and casualty insurance policy unless such person is duly licensed in this state as an agent or broker for the applicable lines of insurance; provided however, that none of the following activities engaged in by (i) the insurer or its employees, or (ii) the poli-

cyholder or its employees, shall require the licensing of such entities or persons as insurance agents or brokers:

(1) Endorsement or recommendation of the master policy to employees or members:

(2) Distribution to employees or members, by mail or otherwise, of information pertaining to the master policy;

(3) Collection of contributions toward premium through payroll deductions or other appropriate means, and remittance of the premium to an insurer; or

(4) Receipt of reimbursement from an insurer for actual, reasonable expenses incurred for administrative services, which would otherwise be performed by the insurer with respect to the master policy. However, nothing herein shall supersede any applicable law or regulation that prohibits or regulates splitting of commissions with unlicensed persons, or rebating commissions or premiums.

B. No countersignature requirements shall apply to a group personal lines property and casualty insurance policy that is issued or delivered in this state pursuant to the provisions of this Act.

Section 8. Conversion

A. Each employee or member covered under the master policy whose coverage thereunder shall terminate for any reason other than the failure to make required contributions toward premiums or at the request of the employee or member, shall receive from the insurer thirty days prior written notice of termination or ineligibility. The notice shall state the reason(s) for discontinuance of coverage under the master policy, and shall explain the employee's or member's options for conversion to an individual policy.

B. Provided that, within thirty days after receipt of such notice of termination or ineligibility, application is made and the first premium is paid to the insurer, the employee or member shall be entitled to have issued to him by the insurer, or an affiliate within the same group of insurers, an individual policy, effective upon termination or ineligibility, with coverages and limits at least equal to the minimum coverages and limits of insurance as required by the applicable state law

C. No individual notice of termination as provided in Section 8A and no conversion privilege as provided in Section 8B shall be required if the master policy is replaced by another master policy within thirty days. Coverage under the prior master policy shall terminate when the replacement master policy becomes effective.

Section 9. Regulatory Jurisdiction

A. No master policy or certificate of insurance shall be issued or delivered in this state unless issued or delivered by an insurer which is duly licensed in this state to write the lines of insurance covered by the master policy.

B. This Act shall not apply to the mass marketing or any other type of marketing of individual personal lines property and casualty insurance policies.

C. This Act shall not apply to policies of credit property or credit casualty insurance which insure the debtors of a creditor or creditors with respect to their indebtedness.

D. Nothing in this Act shall limit the authority of the Insurance Commissioner with respect to complaints or disputes involving residents of this state arising out of a master policy that has been issued or delivered in another state.

E. The Insurance Commissioner is authorized after due notice and hearing to promulgate such regulations as may be necessary to carry out the provisions of this Act.

Section 10. Effective Date

This Act shall take effect ninety days after its enactment. No master policy or certificate of insurance shall be issued or delivered in this state after the effective date unless issued or delivered in compliance with this Act. A master policy or certificate that is lawfully in effect on the effective date of this Act shall comply with the provisions of this Act within twelve months of the effective date.

Legislative History (all references are to the Proceedings of the NAIC).

1987 Proc. I 11, 19, 736, 737-741 (adopted).

GROUP PERSONAL LINES PROPERTY AND CASUALTY INSURANCE MODEL ACT

The date in parentheses is the effective date of the legislation or regulation, with latest amendments.

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Alabama	NO ACTION TO DATE	
Alaska	NO ACTION TO DATE	
Arizona	NO ACTION TO DATE	
Arkansas	NO ACTION TO DATE	
California	NO ACTION TO DATE	
Colorado		COLO. ADMIN. INS. REG. 72-8 (1972).
Connecticut	NO ACTION TO DATE	
Delaware	NO ACTION TO DATE	
D.C.	NO ACTION TO DATE	
Florida	NO ACTION TO DATE	
Georgia	NO ACTION TO DATE	
Guam	NO ACTION TO DATE	
Hawaii	NO ACTION TO DATE	
Idaho	NO ACTION TO DATE	
Illinois		ILL. REV. STAT. ch. I.C. §§ 388a to 388g (1977) (Auto only).
Indiana	NO ACTION TO DATE	
Iowa	NO ACTION TO DATE	
Kansas	NO ACTION TO DATE	
Kentucky	NO ACTION TO DATE	

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NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Louisiana		LA REV. STAT. ANN. § 22:1534 (1970).
Maine	NO ACTION TO DATE	
Maryland	NO ACTION TO DATE	
Massachusetts		MASS. GEN. LAWS ch. 175 § 193R (1973/1983).
Michigan	NO ACTION TO DATE	
Minnesota	NO ACTION TO DATE	
Mississippi	NO ACTION TO DATE	
Missouri	NO ACTION TO DATE	
Montana	NO ACTION TO DATE	
Nebraska	NO ACTION TO DATE	
Nevada	NO ACTION TO DATE	
New Hampshire		N.H. REV. STAT. ANN. §§ 407-B:1 to 407-B:7 (1969)(Auto).
New Jersey	NO ACTION TO DATE	
New Mexico	NO ACTION TO DATE	
New York	NO ACTION TO DATE	
North Carolina	NO ACTION TO DATE	
North Dakota	NO ACTION TO DATE	
Ohio	NO ACTION TO DATE	
Oklahoma	NO ACTION TO DATE	
Oregon	NO ACTION TO DATE	

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GROUP PERSONAL LINES PROPERTY AND CASUALTY INSURANCE MODEL ACT

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Pennsylvania	NO ACTION TO DATE	
Puerto Rico	NO ACTION TO DATE	
Rhode Island	NO ACTION TO DATE	
South Carolina	NO ACTION TO DATE	
South Dakota		S.D. CODIFIED LAWS ANN. § 58-24-45.1 (1966/1979).
Tennessee	NO ACTION TO DATE	
Texas		TEX. INS. CODE ANN. art. 21.77 (1979) (Age 55 and older, auto).
Utah	NO ACTION TO DATE	
Vermont	NO ACTION TO DATE	
Virgin Islands	NO ACTION TO DATE	
Virginia	NO ACTION TO DATE	
Washington	NO ACTION TO DATE	
West Virginia	NO ACTION TO DATE	
Wisconsin	NO ACTION TO DATE	
Wyoming	NO ACTION TO DATE	

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Proposals of the
Office of the Attorney General
to the
SJR 61 Joint Subcommittee Studying
Motor Vehicle Insurance and Unisex Rating

December 20, 1990

I. ADMINISTRATIVE PROPOSALS

A. PROPOSALS TO REDUCE AUTO INSURANCE LOSSES

1. Development and Presentation of Joint OAG/BOI/Industry Insurance Fraud Education Program for Commonwealth's Attorneys

The goal of this jointly-sponsored education program would be to enhance the Commonwealth's capability to fight auto insurance fraud and, as a result, reduce the costs consumers pay for auto insurance. The program contemplated would be a seminar or conference (possibly in conjunction with conferences normally scheduled for Commonwealth's attorneys) to focus on fraud detection and prosecution techniques. Experts from the insurance industry and from specialized government agencies (such as the state fraud bureaus) would be the speakers.

2. Promotion of Public/Private Sector Cooperation in Bringing About the "LOJACK PROGRAM"

The Virginia State Police and the Department of Information Technology are in the process of contracting with The LoJack Corporation to implement an automated system for tracking stolen motor vehicles. It is expected that the program will coordinate law enforcement efforts in Virginia, Maryland, and D.C. Eventually, motorists who wish to avail themselves of the automated tracking system will have the opportunity to install Lojack units in their automobiles. Discussions with insurance industry representatives suggest that auto insurance discounts will be provided to insureds who install tracking systems in their vehicles.

B. PROPOSALS TO ENHANCE CONSUMER INFORMATION

1. Wider Distribution of BOI Auto Insurance Consumer Guide

a. Provide additional copies to DMV field offices.

The goal is to make copies more freely available. If motorists have ready access to the Guide and do not have to request copies from DMV personnel, then the Guide will be disseminated more widely and competition will be served.

b. Insert a prominent notice in all DMV mail registrations that announce the availability of the Consumer Guide.

Since DMV already provides notice to registrants of insurance requirements in motor vehicle registration materials, adding more language on the availability of the Guide from the BOI appears to be practical. DMV seems amenable to working with our office and the BOI on this.

c. Distribute BOI Consumer Guide to drivers' education students.

This would put the Guide into the hands, and hopefully the homes, of every new driver in the Commonwealth, a group likely to experience increasing premiums.

2. Periodic Publication in State and Regional Newspapers of Comparative Auto Premium Price Information

The goal is the widest possible dissemination of the fact that a significant disparity in prices exists for comparable coverage and that, therefore, it pays to shop around. We have proposed to the SCC that the ads be sponsored by the SCC and OAG. The Department of Agriculture and Consumer Services and DMV would also be asked to participate.

3. Publication of VAIP (Assigned Risk Plan) Consumer Pamphlet

The goal is to disseminate more information about the assigned risk plan than is presently provided on the VAIP application. We have discussed with the BOI several means for accomplishing this.

II. LEGISLATIVE PROPOSALS

A. INDUSTRY-FUNDED PROGRAM TO HELP ELIMINATE AUTO THEFT ("HEAT")

The State Farm Insurance Companies and Nationwide Insurance Company have provided data to the Office of Attorney General relating to their 1989 and 1990 Virginia auto theft-related losses. That information is summarized below:

	1989	1990 YTD
State Farm		(As of 7/31/90)
# Theft-related claims	7,018	4,354
Amount paid	$6,067,497	$4,193,317
Nationwide (family policies)		(As of 9/1/90)
# Theft-related claims	1,590	1,436
Amount paid	$1,652,169	$1,437,547

The Department of State Police report in the latest edition of Crime in Virginia that there were 18,951 offenses of motor vehicle theft in the Commonwealth in 1989. The value attributed to those crimes was $111,911,694. These data suggest that the costs associated with auto theft in the Commonwealth are increasing and that the impact this has on auto insurance premiums is significant. Faced with similar problems, several states have launched cooperative programs that team the insurance industry, law enforcement authorities and the public in efforts to reduce auto theft losses. The New Jersey Insurance Department, for example, has recently announced the establishment of a statewide tip-reward program modeled on a successful program initiated in Michigan in 1985. Similar programs have been implemented in several Florida and Texas communities.

These industry-funded programs, known as "HEAT" programs (for "Help Eliminate Auto Theft"), establish toll-free telephone hotlines to receive tips relating to auto thefts, theft rings and "chop shop" operations. HEAT Hotlines are staffed by law enforcement personnel who relay information to local police agencies and submit tip information to the program's reward committee or agency. Informants' identities are kept confidential, and testimony is voluntary.

Because of the success of HEAT programs elsewhere in reducing auto theft-related losses, we recommend that the State Corporation Commission be authorized to collect assessments from motor vehicle insurers to fund a statewide "HEAT" program in the Commonwealth. The Department of State Police has expressed interest in administering this program.

PROPOSAL: Establish an insurance industry-funded program to receive and reward information leading to the arrest and conviction of auto thieves and "chop shop" operators.

- **To provide funding for a HEAT program, authorize the State Corporation Commission to collect assessments from motor vehicle insurers, which are based upon the number of vehicles insured against theft annually by each insurer.**

- **Authorize the Superintendent of the Department of State Police to control and administer the HEAT Fund and to appoint an advisory committee.**

- **Require that the Fund be used to establish and operate the tip-reward program and permit any excess funds to be used for auto theft law enforcement and related activities.**

- **Establish a toll-free HEAT Hotline to State Police and a protocol for directing tip information to local law enforcement agencies.**

- **Develop media program to inform the public about HEAT.**

B. AUTHORIZATION FOR GROUP MOTOR VEHICLE INSURANCE POLICIES

No provision of Virginia law prohibits the writing of group motor vehicle insurance policies. On the other hand, it has been contended that our insurance laws do not facilitate true group motor vehicle insurance coverage, because they were designed to apply to the "typical family auto insurance policy," *i.e.*, an individually underwritten policy of insurance coverage. While Virginia has specific statutes authorizing group

accident and sickness insurance policies and group life insurance policies, there is no law specifically authorizing and facilitating the writing of group auto insurance policies.

With insurance costs continuing to require significant portions of family incomes, group auto insurance could present an attractive alternative for some consumers. Group auto insurance is not new. The popularity of group auto insurance products has experienced rounds of resurgence and declines since the 1920s. Presently, more than a dozen states permit group auto insurance to be written, and those laws take a number of different forms.

We have reviewed varying state statutes dealing with group auto insurance, as well as the Group Personal Lines Property and Casualty Insurance Model Act promulgated by the National Association of Insurance Commissioners ("NAIC"). While fully addressing the rights and obligations of the parties to a group auto insurance arrangement, the NAIC Model Act appears to include several important consumer protection provisions that we believe are important to the group auto insurance concept.

Therefore, to promote healthy competition among insurers and to faciliate expansion of the range of auto insurance products available to the public, we recommend that Virginia enact legislation specifically authorizing group motor vehicle insurance policies.

Proposal: Amend Title 38.2 by adding provisions based on the NAIC Group Personal Lines Property and Casualty Insurance Model Act that specifically authorize and facilitate the marketing of group motor vehicle insurance policies as follows:

- **Authorize group policies to be issued to employers, employee groups, other associations (provided certain conditions are met), or trusts established by one or more of the above.**

- **Deem the employer, association, trust or trustee the policyholder, and issue to the policyholder a master policy. Each insured employee or member would receive a comprehensive certificate of insurance specifying his/her coverage.**

- **Direct that master policies and related forms be filed with the Commission.**

- **Require policies to provide at least minimum coverages and limits required by law.**

- **Prohibit a reduction of coverage or termination for an individual insured unless the insured fails to pay the premium contribution or unless employment or membership terminates.**

- **Encourage rates to be developed on a group basis, but permit insurers to apply reasonable underwriting standards to disqualify certain employees or members from group coverage.**

- **Require conversion to an individual policy if coverage under the group policy is involuntarily terminated for a reason other than nonpayment of premium.**

C. CIVIL REMEDY FOR INSURER'S BAD FAITH FAILURE TO PAY CLAIM

When the Joint Subcommittee met in October 1989, the Office of the Attorney General expressed concern about what should be done when an insurer fails to fulfill its obligation to pay an auto insurance claim in a reasonable and timely fashion to its own insured or to an injured third party. Each year, the Bureau of Insurance and our Insurance and Utilities Regulatory Section receive scores of written complaints and telephone calls from citizens concerning the handling of policyholder claims. While the sum total of such claims -- let alone each individual claim -- seems insignificant when compared to the large amount of auto insurance premiums collected and claims paid annually in Virginia, each of these complaints can represent a major financial difficulty for those involved. Lienholders, for example, still want loans repaid for vehicles that have been totalled, damaged vehicles must be repaired or replaced, and doctors and hospitals expect prompt payment for medical care provided.

Complaints directed to the Attorney General and the Bureau of Insurance, as well as citizen testimony to this Subcommittee, suggest that something is wrong with the way some insurers handle automobile insurance claims. We have heard reports of ignored letters, unreturned phone calls, seemingly arbitrary reversals of position, agonizing delays and utter frustration. Furthermore, it is probably fair to assume that we receive reports reflecting only a portion of the problem.

The Bureau of Insurance can penalize insurers that demonstrate a pattern of unfair claims practices. It can also be helpful in getting some of these complaints resolved. But <u>Virginia law only provides a specific private sanction for an auto insurer's bad faith misconduct in failing to pay a claim in one limited set of circumstances -- when the amount of the claim totals no more than $1,000.</u> For such claims, an insured or third-party claimant can resort to court and obtain a "penalty" against an insurer -- double the amount of the claim. Attorney's fees and costs can also be awarded.

Thus, the Code of Virginia presently limits an insurer's liability to an insured or third party claimant to a total of only $2,000 (plus reasonable fees and costs) for a <u>bad faith</u> failure to pay a claim, and a right to this remedy may be asserted only by persons with small claims of $1,000 or less.

Our Office has advanced the concept of simply lifting the $1,000 cap and permitting a civil sanction of double the legal rate of interest (along with attorney's fees and costs) on larger claims where a court has found a bad faith failure to settle. However, the insurance industry has objected strenuously, arguing that lifting the cap would lead to higher litigation costs for the entire system, especially where third party claimants would be eligible to seek such sanctions. We have been sensitive to such concerns, at least where third parties would be eligible for such awards.

However, the first party situation is different. There, a fiduciary relationship between the insurance company and the insured causes special concern about the lack of civil sanctions available to the insured when the insurance company refuses to settle in good faith.

Accordingly, we have proposed a right for all insureds to seek a civil sanctions when insurers, acting in bad faith, fail to pay claims reasonably and promptly.

> PROPOSAL: Amend § 8.01-66.1 of the Code of Virginia to permit an insured a remedy for a bad faith failure of an insurer to pay a claim totalling more than $1,000. (See proposal attached)

• **An insurer found to have denied payment of a claim in excess of $1000 to an insured, in bad faith, shall be liable to the insured for the amount due plus interest at double the legal interest rate, together with reasonable attorney's fees and expenses.**

III. ADDITIONAL PROPOSALS REMAINING UNDER CONSIDERATION

A. DEVELOPMENT OF NAAG MODEL AUTO INSURANCE CONSUMER INFORMATION DISCLOSURE STATUTE

The NAAG Model is pending in the NAAG Insurance Committee. California is in the process of implementing computerized consumer information system.

B. DEVELOPMENT OF CIVIL OR CRIMINAL INSURANCE FRAUD STATUTE

It has been suggested that specific legislation directed to insurance fraud may enhance enforcement efforts. No legislation is being recommended at this time.

SJR61sc-ho

PROPOSAL II.A. 12/20/90

ASSESSMENT TO FUND "HEAT" PROGRAM

§ 38.2-414. Assessments to fund program to reduce losses from motor vehicle thefts.-- A. To provide funds to establish and operate a statewide program to receive and reward information leading to the arrest and conviction of persons who commit motor vehicle theft-related crimes in Virginia, each insurer licensed to write insurance coverage as defined in § 38.2-124 shall, prior to April 1 of each year, pay an assessment equal to twenty-five cents multiplied by the insurer's total earned car years of motor vehicle comprehensive insurance written in this Commonwealth during the preceding calendar year.

B. Assessments received pursuant to subsection A of this section, and all other moneys received by the Commission for the same purpose, shall be segregated and placed in a fund to be known as the Help Eliminate Automobile Theft Fund, hereinafter referred to as the HEAT Fund.

C. The HEAT Fund shall be controlled and administered by the Superintendent of the Department of State Police. The Superintendent shall appoint an advisory committee of seven members to assist the Superintendent in developing and reviewing annually the plan of operation for the HEAT Fund program.

D. Money in the HEAT Fund shall be expended as follows:

1. To pay the costs of establishing and operating a program to receive and reward information leading to the arrest and conviction of persons who commit motor vehicle theft-related crimes in Virginia.

12/20/90

2. Any uncommitted funds remaining in the HEAT Fund on March 31 of each year may be transferred to the Department of Criminal Justice Services for the following purposes: (i) providing financial support to the Department of State Police and local law enforcement agencies for motor vehicle theft enforcement efforts, (ii) providing financial support to local prosecutors or judicial agencies for programs designed to reduce the incidence of motor vehicle theft, and (iii) conducting educational programs to inform vehicle owners of methods of preventing motor vehicle theft.

SJR61heat

PROPOSAL II.B.

12/20/90

PROPOSAL TO AMEND TITLE 38.2 TO ADD CHAPTER 54. GROUP MOTOR VEHICLE INSURANCE

§ 38.2-5400. Group motor vehicle insurance to meet requirements of this chapter. -- No group motor vehicle insurance policy shall be delivered or issued for delivery in this Commonwealth unless it conforms to the requirements of this chapter.

§ 38.2-5401. Group motor vehicle insurance permitted; conditions. -- A. Except as provided in § 38.2-5402, no group motor vehicle insurance policy shall be delivered or issued for delivery in this Commonwealth unless it conforms to one of the following descriptions:

1. A policy may be issued to an employer, or to the trustee(s) of a fund established by an employer, to insure employees of the employer for the benefit of persons other than the employer. The employer or trustee(s) shall be deemed the policyholder. The policy shall be subject to the following requirements:

a. The employees eligible to apply for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof. The policy may provide that the term "employees" shall include (i) employees of a subsidiary corporation; (ii) employees, individual proprietors and partners of an affiliated corporation, proprietorship or partnership if the business of the employer and of the affiliated corporation, proprietorship or partnership are under common control; (iii) an

individual proprietor or partners if the employer is an individual proprietorship or partnership; (iv) directors of a corporate employer; (v) elected or appointed officials if the employer is a public body; and (vi) retired employees.

b. The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees, or from both. If a policy provides that no part of the premium shall be derived from funds contributed by the insured employees, the policy shall insure all eligible employees, except those who reject such coverage in writing.

2. A policy may be issued to an employee organization to insure members of such organization for the benefit of persons other than the organization or any of its officials, representatives, or agents. The employee organization shall be deemed the policyholder. The policy shall be subject to the following requirements:

a. All of the members of the organization, or all of any class of members, shall be eligible to apply for insurance under the policy.

b. The premiums for the policy shall be paid either from funds of the organization, or from funds contributed by the insured members specifically for their insurance, or from both. If a policy provides that no part of the premium shall be derived from funds contributed by the insured members specifically for their insurance, the policy shall insure all eligible members, except those who reject such coverage in writing.

3. A policy may be issued to a trust, or to the trustee(s) of a fund established by two or more employers, or by one or more employee organizations, or by one or more employers and one or more employee organizations, to insure employees of the employer(s) or members of the organization(s) for the benefit of persons other than the employer(s) or the organization(s). The trust or trustee(s) shall be deemed the policyholder. The policy shall be subject to the following requirements:

a. All of the employees of the employer(s) or all of the members of the organizations, or all of any class of employees or members, shall be eligible to apply for insurance under the policy. The policy may provide that the term "employees" shall include (i) employees of a subsidiary corporation; (ii) employees, individual proprietors and partners of an affiliated corporation, proprietorship or partnership if the business of any employer and of an affiliated corporation, proprietorship or partnership are under common control; (iii) an individual proprietor or partners if any employer is an individual proprietorship or partnership; (iv) directors of a corporate employer; (v) elected or appointed officials if any employer is a public body; (vi) retired employees; and (vii) the trustees or their employees, or both, if their duties are principally connected with the trusteeship.

b. The premium for the policy shall be paid from funds contributed by the employer(s) of the insured persons, or by the organization(s), or by both, or from funds contributed by the insured persons or from funds contributed by insured persons and

the employer(s) or organization(s). If the policy provides that no part of the premium shall be derived from funds contributed by the insured persons specifically for their insurance, the policy shall insure all eligible persons, except those who reject such coverage in writing.

4. A policy may be issued to an association or to a trust or to the trustee(s) of a fund established for the benefit of members of one or more associations. The association, trust or trustee(s) shall be deemed the policyholder. The association(s) shall have at the outset a total membership of one hundred persons and have been organized and maintained in good faith for purposes other than obtaining insurance. Each shall have been in existence for at least one year, and each shall have a constitution and bylaws that provide that (i) the association(s) hold regular meetings not less than annually to further purposes of the members, (ii) the association(s) collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board(s) and committees. The policy shall be subject to the following requirements:

a. The policy shall insure qualified members of such association(s), qualified employees thereof, or qualified employees of members, or one or more of the preceding or all qualified persons comprising any class of members or employees, for the benefit of persons other than the association(s) and the employees' employer.

b. The premium for the policy shall be paid from funds contributed by the association(s) or by employer members, or by both, or from funds contributed by the insured persons or by both insured persons and the association(s) or employer members. If a policy provides that no part of the premium shall be derived from funds contributed by insured persons specifically for their insurance, the policy shall insure all eligible persons, except those who reject such coverage in writing.

B. The definition of an eligible employee or member may include the spouse or a dependent child of such eligible employee or member.

C. An insurer may establish reasonable underwriting standards applicable to a group motor vehicle insurance policy and apply such standards in determining whether an otherwise eligible employee or member qualifies for coverage under the policy.

§ 38.2-5402. Applicability to other groups. -- Group motor vehicle insurance offered to a resident of this Commonwealth under a group motor vehicle insurance policy issued or delivered to a group other than that described in § 38.2-5401 shall be subject to the following requirements:

A. No such group motor vehicle insurance policy shall be delivered or issued for delivery in this Commonwealth unless the Commission finds that:

1. The issuance of such policy is not contrary to the best interests of the public;

2. The issuance of the policy would result in economies of acquisition or administration; and

3. The benefits are reasonable in relation to the premiums charged.

B. No such group motor vehicle insurance may be offered in this Commonwealth by an insurer under a policy delivered or issued for delivery in another state unless the Commission has made a determination that the requirements of subsection A of this section have been met.

C. The premium for a policy issued pursuant to this section shall be paid either from the policyholder's funds or from funds contributed by the insured persons, or from both.

§ 38.2-5403. Compensation paid to the policyholder. -- If compensation of any kind will or may be paid to the policyholder in connection with the group policy, the insurer shall cause to be distributed to prospective insureds a written notice that such compensation will or may be paid. Such notice shall be distributed (i) whether the compensation is direct or indirect, and (ii) whether the compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the

direction of the policyholder or an entity affilated with the policyholder by ownership, contract or employment. The notice required shall be placed on or accompany each document designed for the enrollment of prospective insureds.

§ 38.2-5404. Master group motor vehicle insurance policy. -- A. A master group motor vehicle insurance policy shall be issued to the policyholder. Each employee or member insured under such master policy shall receive from the insurer a certificate of coverage that (i) designates each motor vehicle to which the employee's or member's coverage applies and (ii) states the insurance protection to which the employee or member is entitled.

B. No master policy or certificate of insurance shall be delivered or issued for delivery in this Commonwealth unless the master policy form, together with all forms for riders, certificates and endorsements to the master policy form, has been filed with the Commission as provided in § 38.2-316. No amendments to the master policy form and no amended forms for riders, certificates and endorsements to the master policy form shall be issued or delivered unless so filed with the Commission.

C. Each master motor vehicle insurance policy shall state the coverages, exclusions, and conditions of the insurance provided therein, together with the terms and conditions of the agreement between the policyholder and the insurer. Each master policy shall expressly provide for (i) the method of premium collection; (ii) the enrollment period, effective date pro-

visions, and eligibility standards for employees or members; (iii) the underwriting standards applied in determining qualification for coverage; (iv) termination of the master policy; and (v) conversion privileges of the employees or members.

D. If the master policy provides for remittance of premium by the policyholder, failure of the policyholder to remit premiums when due shall not be regarded as nonpayment of premium by an employee or member who has made his contribution on a timely basis.

§ 38.2-5405. Coverage required. -- A. No master group motor vehicle insurance policy shall be delivered or issued for delivery in this Commonwealth unless it provides to each person insured at least the minimum coverages and limits of insurance as required by §§ 46.2-472 and 38.2-2206 and it complies with all other applicable and not inconsistent laws of the Commonwealth. In addition, the master policy may provide additional coverages or limits that may be available at an increased premium to employees or members who qualify for such under the terms of the master policy.

B. The master policy shall provide coverage for all qualified employees or members who elect coverage during their initial period of eligibility, which period shall not be less than thirty-one days. Qualified employees or members who do not elect coverage during such initial period and later request

coverage shall be included under the master policy at the insurer's discretion.

C. Coverage under the master policy may be reduced only as to all persons insured and may never be reduced to a level below the limits of coverage required by law.

D. Coverage under the master policy may be terminated as to an employee or member only for:

1. Failure of the employee or member to make required contributions;

2. Termination of the master policy in its entirety or as to the class to which the employee or member belongs;

3. Discontinuation of the employee's or member's membership in a class eligible for coverage; or

4. Termination of employment or membership.

E. The policyholder's acceptance or rejection, on behalf of the group, of coverages or limits in addition to those required by law, shall be binding on the employees or members.

F. Stacking of coverages or limits among separate certificates of insurance under a master group motor vehicle insurance policy is prohibited.

§ 38.2-5406. Group Rating -- A. No master policy or certificate of insurance shall be issued or delivered in this Commonwealth unless the rating plan, supplementary rate information, and amendments thereto used in the determination of such master

policy premium shall have been filed with the Commission as required under § 38.2-1906.

B. Group motor vehicle insurance insurance rates shall not be deemed unfairly discriminatory because such rates are adjusted to reflect past and prospective loss experience or group expense factors or are averaged broadly among persons insured under the master policy. Such rates shall not be deemed to be unfairly discriminatory because they do not reflect individual rating factors, including surcharges and discounts, required for individual motor vehicle insurance policies.

C. Experience refunds or dividends may be paid to the policyholder of a group motor vehicle insurance policy, if the insurer's experience under that policy justifies such experience refunds or dividends. However, if an experience refund or dividend is declared, it shall be applied by the policyholder for the sole benefit of the insured employees or members to the extent that such experience refund or dividend exceeds the policyholder's contribution to premium for the period covered by such experience refund or dividend.

§ 38.2-5407. Duties and limitations of insurers -- A. An insurer issuing or delivering group motor vehicle insurance shall maintain separate statistics as to the loss and expense experience pertinent thereto.

B. No insurer shall issue or deliver a group motor vehicle insurance policy if it is a condition of employment or of

membership in a group that any employee or member purchase insurance pursuant to such policy, or if any employee or member shall be subject to any penalty by reason of his non-participation.

C. No insurer shall issue or deliver a group motor vehicle insurance policy if:

1. The purchase of insurance available under such policy is contingent upon the purchase of any other insurance, product or service; or

2. The purchase or price of any other insurance, product or service is contingent upon the purchase of insurance available under the group motor vehicle insurance policy.

This provision shall not be deemed to prohibit the reasonable requirement of safety devices, theft prevention equipment and the like. Neither shall this provision be deemed to prohibit the marketing of "package" or "combination" policies.

D. The insurer's experience from its group motor vehicle insurance policies shall be included in the determination of the insurer's participation in any applicable residual market plans.

E. For purposes of premium taxes, the insurer shall allocate premiums in accordance with the rules applicable to individual motor vehicle insurance policies, except that any required allocation may be based on an annual survey of insureds. Premiums shall be apportioned among states without differentiation between policyholder or employee or member contributions.

§ 38.2-5408. Solicitation, negotiation and sale -- A. No person shall act in this Commonwealth as an insurance agent or broker in connection with the solicitation, negotiation or sale of any group motor vehicle insurance policy unless such person is duly licensed in this Commonwealth as an agent or broker for motor vehicle insurance; provided however, that none of the following activities engaged in by (i) the insurer or its employees, or (ii) the policyholder or its employees, shall require the licensing of such entities or persons as insurance agents or brokers:

1. Endorsement or recommendation of the master policy to employees or members;

2. Distribution to employees or members, by mail or otherwise, of information pertaining to the master policy;

3. Collection of contributions toward premium through payroll deductions or other appropriate means, and remittance of the premium to an insurer; or

4. Receipt of reimbursement from an insurer for actual, reasonable expenses incurred for administrative services, which would otherwise be performed by the insurer with respect to the master policy. However, nothing herein shall supersede the provisions of §§ 38.2-509 and 38.2-1812 or any applicable regulation that prohibits or regulates rebating commissions or premiums or splitting of commissions with unlicensed persons.

B. No countersignature requirements shall apply to a group motor vehicle insurance policy that is issued or delivered in this state pursuant to the provisions of this chapter.

§ 38.2-5409. Conversion -- A. Each employee or member covered under the master policy whose coverage thereunder shall terminate for any reason other than the failure to make required contributions toward premiums or at the request of the employee or member, shall receive from the insurer written notice of termination or ineligibility at least thirty days in advance of the date of termination or ineligibility. The notice shall state the reason(s) for discontinuance of coverage under the master policy, and shall explain the employee's or member's options for conversion to an individual policy.

B. Provided that, within thirty days after receipt of such notice of termination or ineligibility, application is made and the first premium is paid to the insurer, the employee or member shall be entitled to have issued to him by the insurer, or an affiliate within the same group of insurers, an individual motor vehicle insurance policy, effective upon termination or ineligibility, with coverages and limits at least equal to the minimum coverages and limits of insurance as required by law.

C. No individual notice of termination as provided in subsection A of this section and no conversion privilege as provided in subsection B of this section shall be required if the master policy is replaced by another master policy, provided that coverage under the prior master policy terminates when the replacement master policy becomes effective.

§ 38.2-5410. Insurer license required; Commission jurisdiction. -- A. No master policy or certificate of insurance shall be issued or delivered in this Commonwealth unless issued or delivered by an insurer that is duly licensed to write and engaged in writing motor vehicle insurance in this Commonwealth.

B. This chapter shall not apply to the mass marketing or any other type of marketing of individual motor vehicle insurance policies.

C. This chapter shall not apply to policies of credit insurance that insure debtors of a creditor or creditors with respect to their indebtedness.

D. Nothing in this chapter shall limit the authority of the Commission with respect to complaints or disputes involving residents of this Commonwealth arising out of a master policy that has been issued or delivered in another state.

E. The Commission is authorized after due notice and hearing to promulgate such regulations as may be necessary to carry out the provisions of this chapter.

[NOTE: 38.2-316 MUST ALSO BE AMENDED TO INCLUDE GROUP AUTO POLICIES]

PROPOSAL II.C. 12/20/90

AMENDMENT TO "BAD FAITH SETTLEMENT" STATUTE

§ 8.01-66.1.: ~~Action against insurer~~ Remedy for arbitrary refusal of ~~small~~ motor vehicle accident claim. -- A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 of the Code of Virginia denies, refuses or fails to pay to its insured a claim of $ 1,000 or less in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in an amount double the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, together with reasonable attorney's fees and expenses.

The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance, when the amount of the claim therefor is $ 1,000 or less and the refusal was not made in good faith.

B. Notwithstanding the provisions of subsection A herein, whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to a third party claimant, on behalf of an insured to whom such company has issued a policy of motor vehicle liability insurance, a claim of $ 1,000 or less made by such third party

claimant and if the judge of a court of proper jurisdiction finds that the insured is liable for the claim, the third party claimant shall have a cause of action against the insurance company. If the judge finds that such denial, refusal or failure to pay was not made in good faith, the company, in addition to the liability assumed by the company under the provisions of the insured's policy of motor vehicle liability insurance, shall be liable to the third party claimant in an amount double the amount of the judgment awarded the third party claimant, together with reasonable attorney's fees and expenses.

C. Notwithstanding the provisions of subsections A and B above, whenever any person who has paid a fee to the Department of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.2-706 or any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability insurance pursuant to the provisions of Title 46.2 or any person who is required and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 46.2 denies, refuses or fails to pay to a claimant a claim of $ 1,000 or less made by such claimant as a result of a motor vehicle accident; and if the trial judge of a court of proper jurisdiction finds that such denial, refusal or failure to pay was not made in good faith, such person shall be liable to the claimant in an amount double the amount otherwise due and payable together with reasonable attorney's fees and expenses.

For the purposes of this subsection C "person" shall mean and include any natural person, firm, partnership, association or corporation.

D. Whenever a court of proper jurisdiction finds that an insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a claim of more than $1,000 in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, plus interest on the amount due at double the rate provided in § 6.1-330.53 from the date that the claim was submitted to the insurer or its authorized agent, together with reasonable attorney's fees and expenses.

The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance when the refusal was not made in good faith.

XEP/BFS

Appendix 9

JOINT SUBCOMMITTEE STUDYING MOTOR VEHICLE INSURANCE AND UNISEX RATINGS (SJR 61)

Thursday, December 20, 1990
10:30 a.m.

Senate Room A, General Assembly Building
Richmond, Virginia

By J. Christopher LaGow
For Nationwide Mutual Insurance Companies

GOOD MORNING MR. CHAIRMAN, MEMBERS OF THE JOINT SUBCOMMITTEE. FOR THE RECORD, MY NAME IS J. CHRISTOPHER LAGOW AND I AM HERE TODAY REPRESENTING THE NATIONWIDE MUTUAL INSURANCE COMPANIES. MY REMARKS TODAY WILL BE GENERIC IN NATURE AND CONFINED TO THE SUBJECT OF GROUP AUTOMOBILE INSURANCE.

THE PROTECTION OF POLICYHOLDER ASSETS IS THE BASIC PREMISE UPON WHICH ALL INSURANCE IS PURCHASED. THE TYPE AND AMOUNT OF PROTECTION SOUGHT CAN TAKE ON MANY FORMS. THE VARIABLES OF THE POLICYHOLDER'S ASSETS, AS WELL AS THE VAST DIFFERENCES IN DRIVING RECORDS AMONG THE MEMBERS OF A GROUP, WILL PROBABLY PROVE TO BE A FATAL FLAW TO ANY PROPOSAL THAT CONTEMPLATES EQUAL RATES FOR ALL MEMBERS OF THE GROUP.

UNDER A GROUP AUTO PLAN, INDIVIDUAL UNDERWRITING AND RATING WOULD BE REPLACED BY AN ABSENCE OF UNDERWRITING AND A COMPOSITE RATE FOR ALL APPLICANTS WITHIN A GROUP PLAN. THIS COMPOSITE RATE WOULD HAVE TO INCLUDE A DEBIT TO COMPENSATE FOR THE LOSS OF UNDERWRITING AUTHORITY. NEVERTHELESS, IT MIGHT PROVE ATTRACTIVE TO PEOPLE WITH POOR DRIVING RECORDS AND A POOR CLAIMS HISTORY. THOSE WITH SUPERIOR DRIVING RECORDS CAN SUCCESSFULLY SHOP FOR DISCOUNTED RATES IN THE OPEN MARKET. THIS WILL LIKELY RESULT IN AN ADVERSE SELECTION OF MEMBERS WITHIN A GROUP PLAN, AND DOOMS IT TO FAILURE.

EVERYONE'S INITIAL REACTION TO THE SUBJECT OF GROUP PERSONAL LINES AUTO INSURANCE IS THAT IT WILL RESULT IN CONSIDERABLE SAVINGS TO THE CONSUMERS. OSTENSIBLY, AT LEAST, THE SAVINGS THAT CONSUMERS WOULD ENJOY WOULD BE IN THE ACQUISITION COST OF THE INSURANCE. ACQUISITION COST WOULD GENERALLY INCLUDE THE COST OF AGENT'S COMMISSIONS, UNDERWRITING COSTS, POLICY ISSUANCE, BILLING, MAILING AND OTHER MISCELLANEOUS OVERHEAD EXPENSES. HOWEVER, THESE COSTS ACCOUNT FOR A VERY SMALL FRACTION OF THE LOSS RATIO FOR THE AUTOMOBILE INSURANCE INDUSTRY, WHICH IS CURRENTLY AVERAGING APPROXIMATELY 109% NATIONALLY. 85% OF THAT FIGURE IS ALLOCATED TO CLAIMS AND CLAIMS EXPENSES, INCLUDING ATTORNEY FEES, WHEREAS THE ACQUISITION COST AND OVERHEAD FIGURES ACCOUNT FOR THE DIFFERENCE. I THINK THAT THOSE FIGURES MIGHT SUGGEST THAT IF YOU WANT TO ATTACK THE AFFORDABILITY QUESTION, YOU MUST DO SOMETHING ABOUT REDUCING THE NUMBER OF CLAIMS AND THE COST OF HANDLING CLAIMS, AND NOT SO MUCH WITH THE COST OF SELLING THE POLICY.

PROPONENTS OF GROUP AUTO PLANS WHO CITE SAVINGS TO MEMBERS OF THE GROUP FREQUENTLY FAIL TO MENTION THAT THESE PLANS ARE OFTEN SUBSIDIZED BY THE EMPLOYER AND THAT SUBSIDY IS A NEGOTIABLE ITEM OUTSIDE THE TRUE REALM OF THE UNDERWRITING/PRICING ENVIRONMENT. CONSEQUENTLY, A FAIR COMPARISON BETWEEN THE PRICE PAID FOR AN INDIVIDUAL POLICY AND THE PRICE PAID FOR A GROUP POLICY IS DIFFICULT TO MAKE. EMPLOYER SUBSIDIES AND EMPLOYER INVOLVEMENT ARE BOTH CRITICAL IN THE PRICING AND SUCCESS OF ANY GROUP PLAN. WHETHER A GROUP PLAN IS SUCCESSFUL OR NOT CAN DEPEND UPON MANY DIFFERENT FACTORS TOTALLY UNRELATED TO THE INSURANCE PRODUCT. FOR

EXAMPLE, SOME UNIONS MAY BE RELUCTANT TO MAKE GROUP AUTO PLANS A FURTHER ELEMENT OF CONSIDERATION IN THEIR LABOR NEGOTIATIONS. THEIR PRIORITIES MIGHT BE IN OTHER AREAS, PARTICULARLY IN THE MAINTENANCE OF THEIR GROUP HEALTH INSURANCE PLAN.

EVERYONE KNOWS THAT WE ARE IN A PERIOD OF ECONOMIC RECESSION. UNEMPLOYMENT IS RISING. AS MEMBERS OF A GROUP AUTO PLAN LOST THEIR JOBS, WHAT WOULD HAPPEN TO THE UNINSURED MOTORIST POPULATION IN THIS STATE WHEN THAT SPECIFIC BENEFIT IS LOST?

IT IS OBVIOUS THAT THERE IS SEVERE PRESSURE UPON GROUP HEALTH PLANS IN THIS STATE. IN COMBINATION WITH THE ECONOMIC RECESSION, I THINK THAT YOU HAVE TO QUESTION WHETHER THE COMMONWEALTH WOULD BE BEST SERVED BY A POLICY CREATING UNINTENDED COMPETITION FOR SCARCE EMPLOYER BENEFIT DOLLARS WHICH WOULD BE ALLOCATED BETWEEN THE EMPLOYEES' GROUP HEALTH PLAN AND THE EMPLOYEES' GROUP AUTO PLAN.

ONE BIG DIFFERENCE THAT EXISTS BETWEEN GROUP LIFE AND HEALTH INSURANCE AND AUTOMOBILE INSURANCE IS THE FACT THAT TRADITIONALLY, THE FORMER HAVE VERY FEW CLASSIFICATIONS, WHILE THE LATTER CONTAINS THOUSANDS OF DIFFERENT PERMUTATIONS IN THE RATING PROCESS. ARRIVING AT A CREDIBLE COMPOSITE RATE FOR THE GROUP IS THEREFORE A VERY DIFFICULT PROCESS. THE BIG DIFFERENCE IS THAT THE RISK BEING MEASURED IN A GROUP LIFE OR HEALTH SITUATION IS GENERALLY HOMOGENEOUS IN NATURE, WHEREAS THAT IS NOT THE CASE IN CASUALTY INSURANCE.

IF YOU WANTED TO MAKE AN ACCURATE ANALOGY BETWEEN GROUP HEALTH AND GROUP AUTO PLANS, CONVERSION BENEFITS WOULD HAVE TO BE PROVIDED IN THE LATTER. HOWEVER, THIS WOULD SEEM TO MAKE FOR UNEQUAL TREATMENT OF INSUREDS AMONG THE SAME CLASS SINCE GUARANTEED ACCEPTANCE WOULD BE ALLOWED FOR ONE SET OF INDIVIDUALS MERELY BECAUSE THEY WERE LEAVING A GROUP PLAN, WHILE SIMILAR TREATMENT WOULD NOT AND COULD NOT BE AFFORDED TO OTHER INDIVIDUALS OF LIKE CHARACTERISTICS WHO WERE OUTSIDE OF A GROUP PLAN. IN PART, THE ANALOGY ATTEMPTED BETWEEN GROUP HEALTH AND GROUP AUTO BREAKS DOWN SINCE THERE IS MORE OF A PUBLIC PERCEPTION THAT HEALTH INSURANCE IS A RIGHT AND A NEED WHILE AUTO INSURANCE DOES NOT HAVE THE SAME STATUS OR PERCEPTION.

HEALTH INSURANCE HISTORICALLY AVOIDED RATING FOR INDIVIDUAL CONDITIONS AND CHARACTERISTICS WHEREAS PRIVATE PASSENGER AUTO INSURANCE HAS SOUGHT TO RECOGNIZE VARIATIONS IN INDIVIDUAL BEHAVIOR AND HISTORY. THE CREATION OF A GROUP HEALTH INSURANCE, THEREFORE, DID NOT SUBMERGE OR ADULTERATE VALID, RECOGNIZED DIFFERENCES, WHEREAS CREATION OF A GROUP AUTO MARKET COULD INDEED RESULT IN THIS PERVERSION. SUBMERGING INDIVIDUAL DRIVING CHARACTERISTICS BECOMES A SERIOUS PUBLIC POLICY QUESTION WHEN FACTORS SUCH AS DRUNK DRIVING, IMPAIRED DRIVING OR RECKLESS DRIVING ARE SUBMERGED INTO THE GROUP EXPERIENCE. SHOULD GROUPS EXCLUDE INDIVIDUALS WITH THESE BACKGROUNDS? SHOULD THEY SURCHARGE THOSE INDIVIDUALS? IF SO, HAVEN'T YOU BROKEN DOWN THE PURPOSE AND CONCEPT OF A GROUP COVERAGE? WHERE DO YOU DRAW THE LINE FOR THESE DISTINCTIONS IN PERSONAL DRIVING CHARACTERISTICS? THERE IS NO REASON TO THINK THAT

EMPLOYERS WHO SURCHARGE GROUP MEMBERS UNDER THEIR HEALTH PLANS FOR SMOKING, BEING OVERWEIGHT AND OTHER BEHAVIORAL DISTINCTIONS, WILL NOT DO THE SAME FOR VARIATIONS IN RISK FACTORS UNDER A GROUP AUTO PLAN.

ANOTHER QUESTION THAT IS RAISED BY THE CONCEPT OF GROUP AUTOMOBILE COVERAGE IS AT WHAT LEVEL OF COVERAGE WOULD THE GROUP BUSINESS BE OFFERED? INSURANCE OFFERED THROUGH AN AGENCY FORCE LIKE NATIONWIDE'S ALLOWS FOR A FULL REVIEW OF THE ADEQUACY OF THE NEEDS OF THE INDIVIDUAL TO ASSESS THEIR NEEDS VIS-A-VIS THEIR EXPOSURE AND THEIR RESOURCES. HOW WOULD A REVIEW LIKE THAT TAKE PLACE UNDER A MASS MARKETING SETTING? TO PERFORM THIS SERVICE PROPERLY WOULD ADD ANOTHER COST FACTOR WHICH WOULD PROBABLY DOWNGRADE THE SAVING POTENTIAL OF THE GROUP CONCEPT.

CURRENT GRIEVANCE PROCEDURES ARE FAIRLY STANDARDIZED BETWEEN THE REGULATORY BODIES OF THIS STATE, AGENTS, CARRIERS AND THE INSURED. WHAT SHOULD THE REGULATORY INTERVENTION BE WHEN YOU INJECT AN EMPLOYER AND A POSSIBLE UNION REPRESENTATIVE? WOULD INSUREDS BE HARMED BY THEIR RELUCTANCE TO GO AGAINST WHAT THEY PERCEIVE TO BE EITHER THEIR EMPLOYER AND THEIR UNION ON AN INSURANCE GRIEVANCE? WOULD INFORMATION WHICH IS CURRENTLY NOT IN THE POSSESSION OF THE EMPLOYER OR THE UNION SUCH AS A PAST HISTORY OF SUBSTANCE ABUSE, BE MADE AVAILABLE TO THE EMPLOYER AND/OR THE UNION?

THESE THOUGHTS ARE OFFERED AS REASONS TO PAUSE BEFORE JUMPING

INTO ANY TYPE OF MASS MARKETING PLAN. CERTAINLY, MASS MARKETING PLANS DO HAVE A PLACE ALTHOUGH THEIR HISTORY IS MUCH STRONGER WHEN YOU ARE DEALING WITH MORE SOPHISTICATED MARKETPLACES SUCH AS IN GROUP BUSINESS COVERAGES. MASS MARKETING SHOULD ONLY BE VIEWED AS ONE POTENTIAL NICHE BUT A NICHE WITH MANY COMPLICATIONS AND MANY POTENTIAL ANTI-CONSUMER ASPECTS.

I URGE THE COMMITTEE TO CAREFULLY THINK THROUGH THE IMPLICATIONS OF A GROUP AUTO INSURANCE STATUTE IN VIRGINIA AND NOT RUSH TO JUDGMENT. THANK YOU FOR THE OPPORTUNITY OF APPEARING BEFORE YOU TODAY. I WILL BE GLAD TO TRY TO ANSWER ANY QUESTIONS THAT I CAN.

LD6214345 **REPRINT**

SENATE BILL NO. 762

Offered January 22, 1991

A BILL to amend and reenact § 8.01-66.1 of the Code of Virginia, relating to the bad-faith failure of a motor vehicle insurer to pay a claim; penalty.

Patrons—Saslaw, Macfarlane, Chichester, Scott, Gartlan, Michie, Stallings and Holland, E.M.; Delegates: Cohen, Moss, Bennett, Keating, Cunningham, J.W. and Croshaw

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Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-66.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-66.1. Remedy for arbitrary refusal of motor vehicle insurance claim.—A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 of the Code of Virginia denies, refuses or fails to pay to its insured a claim of $ 1,000 or less in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in an amount double the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, together with reasonable attorney's fees and expenses.

The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance, when the amount of the claim therefor is $ 1,000 or less and the refusal was not made in good faith.

B. Notwithstanding the provisions of subsection A ~~herein~~ , whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to a third party claimant, on behalf of an insured to whom such company has issued a policy of motor vehicle liability insurance, a claim of $ 1,000 or less made by such third party claimant and if the judge of a court of proper jurisdiction finds that the insured is liable for the claim, the third party claimant shall have a cause of action against the insurance company. If the judge finds that such denial, refusal or failure to pay was not made in good faith, the company, in addition to the liability assumed by the company under the provisions of the insured's policy of motor vehicle liability insurance, shall be liable to the third party claimant in an amount double the amount of the judgment awarded the third party claimant, together with reasonable attorney's fees and expenses.

C. Notwithstanding the provisions of subsections A and B above, whenever any person who has paid a fee to the Department of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.2-706 or any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability insurance pursuant to the provisions of Title 46.2 or any person who is required and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 6.2 denies, refuses or fails to pay to a claimant a claim of $ 1,000 or less made by such claimant as a result of a motor vehicle accident; and if the trial judge of a court of proper jurisdiction finds that such denial, refusal or failure to pay was not made in good faith, such person shall be liable to the claimant in an amount double the amount otherwise due and payable together with reasonable attorney's fees and expenses.

For the purposes of this subsection C "person" shall mean and include any natural person, firm, partnership, association or corporation.

D. 1. Whenever a court of proper jurisdiction finds that an insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a claim of more than $1,000 in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to

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SENATE BILL NO. 787

Offered January 22, 1991

A BILL to amend the Code of Virginia by adding a section numbered 38.2-613.1, relating to the disclosure of an agent's moratorium.

Patrons—Saslaw, Stallings and DuVal

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-613.1 as follows:

§ 38.2-613.1. Disclosure of agent's moratorium required.—If a duly appointed agent of an insurer places a policy of motor vehicle insurance as defined in § 38.2-2212 with another insurer or submits an application to the Virginia Automobile Insurance Plan solely because of a moratorium on such agent's soliciting, negotiating, procuring, or effecting new motor vehicle insurance that would otherwise be acceptable to such insurer and that results in the applicant being charged a higher rate, the agent shall disclose the existence of the moratorium in the notice required by § 38.2-610.

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the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, plus interest on the amount due at double the rate provided in § 6.1-330.53 from the date that the claim was submitted to the insurer or its authorized agent, together with reasonable attorney's fees and expenses.

2. The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance when the refusal was not made in good faith.

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LD6212345

1 **SENATE BILL NO. 870**
2 Offered January 22, 1991
3 *A BILL to amend the Code of Virginia by adding in Chapter 4 of Title 38.2 a section*
4 *numbered 38.2-414, establishing a statewide program to help eliminate auto theft.*
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6 Patrons—Saslaw, Macfarlane, Chichester, Fears, Gartlan, Goode, Stallings and Holland, E.M.;
7 Delegates: Cohen, Moss, Bennett, Morgan, Harris, E.R., Woodrum, Cunningham, J.W.,
8 Keating and Croshaw
9
10 Referred to the Committee on Commerce and Labor
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12 Be it enacted by the General Assembly of Virginia:
13 1. That the Code of Virginia is amended by adding in Chapter 4 of Title 38.2 a section
14 numbered 38.2-414 as follows:
15 *§ 38.2-414. Assessments to fund program to reduce losses from motor vehicle*
16 *thefts.—A. To provide funds to establish and operate a statewide program to receive and*
17 *reward information leading to the arrest and conviction of persons who commit motor*
18 *vehicle theft-related crimes in Virginia, each insurer licensed to write insurance coverage*
19 *as defined in § 38.2-124 shall, prior to March 1 of each year, pay an assessment equal to*
20 *one-quarter of one percent of the total direct gross premium income for automobile*
21 *physical damage insurance other than collision written in the Commonwealth during the*
22 *preceding calendar year.*
23 *B. Assessments received pursuant to subsection A of this section, and all other moneys*
24 *received by the Commission for the same purpose, shall be segregated and placed in a*
25 *fund to be known as the Help Eliminate Automobile Theft Fund, hereinafter referred to as*
26 *the HEAT Fund.*
27 *C. Any insurer that fails to pay the assessment on or before the date prescribed in*
28 *subsection A shall be subject to a penalty imposed by the Commission. The penalty shall*
29 *be ten percent of the assessment and interest shall be charged at a rate pursuant to §*
30 *58.1-1812 for the period between the date due and the date of full payment. If a payment*
31 *is made in an amount later found to be in error, the Commission shall, (i) if an additional*
32 *amount is due, notify the insurer of the additional amount, which the insurer shall pay*
33 *within fourteen days of the date of the notice or, (ii) if an overpayment is made, order a*
34 *refund of the amount of the overpayment, which shall be paid out of the HEAT Fund.*
35 *D. The HEAT Fund shall be controlled and administered by the Superintendent of the*
36 *Department of State Police. The Superintendent shall appoint an advisory committee of*
37 *seven members to assist in developing and annually reviewing the plan of operation for*
38 *the HEAT Fund program.*
39 *E. Money in the HEAT Fund shall be expended as follows:*
40 *1. To pay the costs of establishing and operating a program to receive and reward*
41 *information leading to the arrest and conviction of persons who commit motor vehicle*
42 *theft-related crimes in Virginia.*
43 *2. Any uncommitted funds remaining in the HEAT Fund on the last day of February of*
44 *each year may be transferred to the Department of State Police, Department of Motor*
45 *Vehicles, or Department of Criminal Justice Services for the following purposes: (i)*
46 *providing financial support to state or local law-enforcement agencies for motor vehicle*
47 *theft enforcement efforts, (ii) providing financial support to local prosecutors or judicial*
48 *agencies for programs designed to reduce the incidence of motor vehicle theft, and (iii)*
49 *conducting educational programs to inform vehicle owners of methods of preventing motor*
50 *vehicle theft.*
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HOUSE BILL NO. 1723

Offered January 22, 1991

A BILL to amend and reenact § 38.2-2213 of the Code of Virginia, relating to discrimination in the issuance of motor vehicle insurance.

Patrons—Keating, Harris, E.R., Cohen, Moss and Morgan

Referred to the Committee on Corporations, Insurance and Banking

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Be it enacted by the General Assembly of Virginia:

1. That § 38.2-2213 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-2213. Discrimination in issuance of motor vehicle insurance.—No insurer or agent shall refuse to issue a motor vehicle insurance policy as defined in § 38.2-2212 solely because of any one or more of the following factors: the age, sex, residence, race, color, creed, national origin, ancestry, marital status, ~~or~~ lawful occupation, ~~including~~ *or* the military service, ~~of the person seeking the coverage~~ *or two or fewer motor vehicle accidents within a three-year period caused neither wholly nor partially by the applicant, a resident of the same household or other customary operator* . Nothing in this section prohibits any insurer from limiting the issuance of motor vehicle insurance policies to those who are residents of this Commonwealth nor does this section prohibit any insurer from limiting the issuance of motor vehicle insurance policies only to persons engaging in or who have engaged in a particular profession or occupation, or who are members of a particular religious sect. Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

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