

The 1972 No-Fault Act: Revisiting the Literature

By Janice Selberg

In their excellent article published in the University of Detroit Mercy Law Review in 2010,¹ James Mellon and David Kowalski trace the concept of no-fault from its Industrial Revolutionary roots to Michigan's period as an early legislative leader in automobile insurance reform, which led to the state passing its no-fault legislation in 1972. The article cites several contemporary research reports, books, and law review articles to illustrate the trend toward a no-fault system and discusses the competing theories of liability.

Amid news accounts that Michigan legislators will continue to attempt no-fault insurance reform in this legislative session,² the Library of Michigan's State Law Library has added the available legislative history documents from the original 1972 PA 294 (Senate Bill 782) to its Governing Michigan portal.³ The portal provides free access to electronic versions of selected Michigan government publications collected by the Library of Michigan. This program of preservation and access to state government information operates under MCL 397.19.

A 1972 issue of *State Affairs*, a publication of the former Michigan State Library Services,⁴ contained a bibliography that captured the character of the early 1970s conversation on no-fault auto insurance. Among other publications, it lists articles in *Better Homes and Gardens*⁵ and *Popular Science*⁶ (the latter by U.S. Senator Philip Hart). The *State Affairs* issue also cites commentary by Michigan researchers and officials. Some entries have been reproduced here, edited and corrected from the original issue.

- **Conard, *Automobile Accident Costs and Payments: Studies in the Economics of Injury Reparation* (Ann**

Arbor: University of Michigan Press, 1964)—A basic source of data on the reparation system, this Michigan study was designed to collect information on the economic losses from injury and what is being done to repair those losses. It includes surveys of the auto insurance systems in use in England, Sweden, France, and West Germany.

- **Van Hooser, *Statement on Automobile Insurance, Michigan Department of Commerce, Insurance Bureau, 1971***—Statement by the commissioner of insurance addressed to the Michigan House and Senate regarding the automobile insurance situation in Michigan. It cites studies on the tort liability system (including Conard) and suggests need for reform.
- **State Bar of Michigan, *Report of the Special Committee on No-Fault Insurance Concerning Reforms in the Automobile Accident Reparations Systems, 50 Mich B J 555–567 (1971)***—Describes major areas of concern in the present auto accident reparation system, then reviews pending bills in the Michigan legislature. It includes recommendations for reform proposals endorsed by the Bar. The report was unanimously approved and adopted by the State Bar Board of Commissioners in August 1971.
- **Reamon, *Michigan “No-Fault” Auto Insurance Proposals, 50 Mich B J 296 (1971)***—State Bar commissioner and chair of the Special Committee on Contingent Fees discusses the varying proposals and bills for State Bar members prior to his testimony before a joint meeting of the Senate Commerce and House Insurance committees held in Lansing on June 7, 1971. Contains a comparative analysis of the Reps. Matthew McNeely and James H. Heinze bills (House Bills 4734–37) and the Sens. Coleman and Basil Brown bill (Senate Bill 520).
- **State Bar of Michigan, *State Bar Tells Position on No-Fault Auto Insurance, 50 Mich B J 150 (1972)***—Executive Director Michael Franck's testimony at a hearing before the Senate Commerce Committee in Lansing on February 14, 1972. It discusses the disadvantages of a “pure” no-fault system and warns the legislature that proposed federal no-fault legislation will allow Michigan to be “frozen into an untested unified national system imposed by the Federal Government.”⁷
- **Executive Office Press Release, Governor William Milliken (January 5, 1972)**—Governor William Milliken's statement in which he assigns “high priority in my Legislative program for 1972

With the perspective of more than 40 years, it is interesting to view the contemporary literature and debate surrounding no-fault auto insurance as an example of the political process at work.

to what is commonly known as 'no-fault auto insurance'... Part of the problem lies in the insurance mechanism, which in turn is based on a legal system which did not contemplate the use of the automobile by nearly every citizen."⁸ In light of current debate over no-fault reform, it is interesting that Milliken's proposal included "[b]asic personal protection benefits...in any private passenger auto insurance policy, including the following, paid without regard to fault: 1) Unlimited actual medical and rehabilitation costs... 2) 85% of lost wages up to \$1,000 a month for 36 months."⁹

- **State Bar of Michigan, *Auto No-Fault Passes First Test*, 52 Mich B J 349–373 (1973)**—Article 3 of the Michigan Constitution provides for the Michigan Supreme Court to issue advisory opinions on the constitutionality of legislation after it has passed but before the effective date.¹⁰ Advisory opinions may be requested by the governor or either house of the legislature. An advisory opinion “does not constitute a decision of the Court and is not precedentially binding in the same sense as a decision of the Court after a hearing on the merits.”¹¹ Despite the obvious discomfort with the notion on the part of the justices, the 82-page advisory opinion requested by the governor and the Senate was issued on June 18, 1973.¹² The three questions before the divided Court were:

- (1) Does the act embrace more than one object in violation of Const 1963, art 4, sec 24? (answer: no)
- (2) Does the act violate 1963 Const art 4, sec 25 prohibiting amendment of laws by reference to their title only? (answer: no)
- (3) Do the phrases “serious impairment of bodily function” and “permanent serious disfigurement” provide standards sufficient for legal interpretation? (answer: yes).

With the perspective of more than 40 years, it is interesting to view the contemporary literature and debate surrounding no-fault auto insurance as an example of

the political process at work. The Archives of Michigan hold the papers of Rep. James H. Heinze (1914–1993), a former corporate counsel for Transamerica Insurance Group elected to the Michigan House in 1966 and a key figure in no-fault legislation.¹³ The McNeely-Heinze legislation was the four-bill “modified fault” package proposed by the casualty insurance industry and represented a line of reasoning that ultimately did not prevail.

The current No-Fault Auto Insurance Act—as is often the case in legislation based on significant changes in technology and human behavior—is subject to reconsideration, and we are likely to see more of the former “losing” arguments succeed, or at least being raised, in the future. This makes a look back worthwhile. ■

Janice Selberg is a law librarian with the State Law Library in Lansing. She is a member and former chair of the SBM Libraries, Legal Research, and Legal Publications Committee. She has been a member of the State Bar since 1985 and holds BA, AMLS, and JD degrees as well as a graduate certificate in archival administration. Her past professional work includes positions in academic, corporate, and foreign law libraries.

ENDNOTES

1. Mellon & Kowalski, *The Foundations and Enactment of Michigan Automobile No-Fault Insurance*, 87 U Det Mercy L R 653 (2010) <<http://www.law.udmercy.edu/udm/images/lawreview/v87/874Mellon.pdf>>. All websites cited in this article were accessed September 22, 2015.
2. Gray, *No Fault Auto Insurance Reform Steaming Through Capitol*, Detroit Free Press (April 22, 2015) <<http://www.freep.com/story/news/politics/2015/04/22/fault-auto-insurance-reform-debate-house/26186095/>>.
3. See *Governing Michigan* <<http://governingmichigan.org>>. To search for the No-Fault Act's bill as introduced, bill as enrolled, and the entries in the House and Senate journals, the protocol is 1972-PA-294.
4. Michigan Department of Education State Affairs: Recent Information, *No-Fault Insurance*, State Library Services, 1972.
5. Daly, *No-Fault Auto Insurance: What You Should Know*, 50 Better Homes and Gardens 84 (November 1971).
6. Hart, *The Case For/Against No-Fault Auto Insurance*, 22 Popular Science 56 (January 1971).
7. State Bar of Michigan, *State Bar Tells Position on No-Fault Auto Insurance*, 50 Mich B J 154 (1972).
8. Executive Office Press Release, Governor William Milliken (January 5, 1972), p 1.
9. *Id.*
10. Const 1963, art 3, § 8.
11. State Bar of Michigan, *Auto No-Fault Passes First Test*, 52 Mich B J 349 (1973).
12. See *In re Requests of Governor and Senate on Constitutionality of 1972 PA 294*, 389 Mich 441; 208 NW2d 469 (1973).
13. Archives of Michigan, *James Heinze Papers, 1969–1972*, Record Group 72–153.

WHEN YOU CAN'T BREATHE, NOTHING ELSE MATTERS®

For information about lung disease such as asthma, tuberculosis, and emphysema, call 1-800-LUNG-USA



Landex Research, Inc.

PROBATE RESEARCH

Missing and Unknown Heirs Located With No Expense to the Estate

Domestic & International Service for:

- Courts
- Trust Officers
- Lawyers
- Executors & Administrators

1345 Wiley Road, Suite 121, Schaumburg, Illinois 60173

Phone: 800-844-6778 FAX: 800-946-6990

www.landexresearch.com