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, 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, 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. 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, 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 and Popular Science (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.
- 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.”
- 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

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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." 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.”

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. Heineze (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. The McNeely-Heineze 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.

ENDNOTES


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.


9. Id.


11. 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. 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.” 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. 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).

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