

BRIEF ANALYSIS

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Putting Drivers in the Driver's Seat

Auto Choice, a proposed structural reform of the country's fraud-ridden \$150 billion per year auto tort system, is quietly gaining broad bipartisan endorsement. Its supporters already include Democratic Sens. Daniel Patrick Moynihan of New York and Joseph Lieberman of Connecticut, Republican Sens. Mitch McConnell of Kentucky and Kay Bailey Hutchison of Texas and House Majority Leader Dick Armey (R-Texas).

The primary opposition comes from the American Trial Lawyers Association, which describes Auto Choice as "perhaps one of the more insidious tort reform proposals ever introduced at the Federal level...an assault on our livelihood."

How Auto Choice Works. The reform would unbundle the economic and noneconomic components of state auto tort law. Motorists would be able to buy insurance covering medical costs, lost wages, rehabilitation expenses and other out-of-pocket accident costs just as they now buy other types of insurance. At the same time they would have the option of not buying noneconomic coverage, which is largely for "pain and suffering" damage claims. This would leave two options for insurance:

- "Personal protection coverage" would allow motorists to recover economic damages up to their policy limits from their own insurers without regard to fault — but there would be no right to sue (or threat of being sued) for pain and suffering.
- "Tort maintenance coverage" would be similar to current policies, allowing recovery of damages for

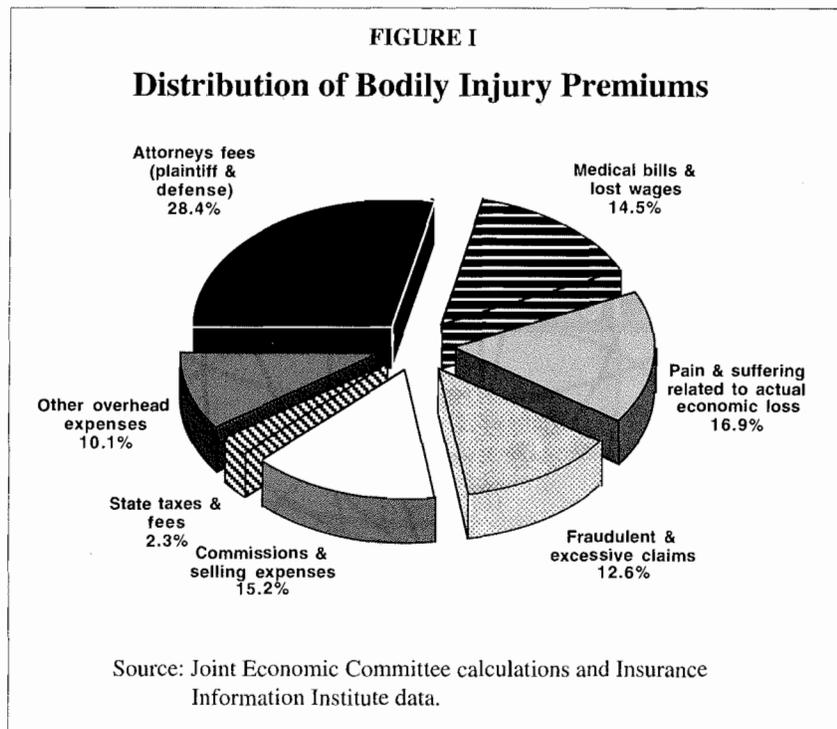
pain and suffering caused by the negligence of someone with personal protection coverage — but as with today's "uninsured motorist policies," policyholders would primarily recover from their own insurance companies.

If two vehicles with tort maintenance coverage were involved in an accident, the procedure for recovering noneconomic damages would be the same as at present.

Critically, motorists whose economic damages exceeded their policy coverages would be free under both

options to sue negligent drivers for all of their uncompensated economic losses. In such cases, state laws on negligent conduct would continue to fully govern.

Why Reform Is Needed. Those who choose personal protection coverage will escape a system that — amazingly — gives almost twice as much money to lawyers as it pays for the economic losses of all injured parties. As Figure I shows, 28.4 percent of insurance premiums for bodily injury go to lawyers' fees and only 14.5 percent to



actual medical bills and lost wages. If most drivers choose personal protection coverage, the greatly reduced demand for auto tort defense lawyers is expected to reduce the income of the plaintiffs' bar by \$10 billion to \$15 billion per year. Of greatest significance, persons opting out of coverage for pain and suffering will, on average, reduce their personal injury premiums by an astonishing 45 percent, according to a study by the RAND Corporation. This makes available to consumers more than \$35 billion in annual premium savings — an average of \$184 per vehicle.

Damages for pain and suffering normally are calculated as cash awards equal to three times health care expenditures, and fraud is rampant, with 12.6 percent of

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bodily injury premiums going to fraudulent and excessive claims — almost equaling the 14.5 percent going to medical bills and lost wages. This costs the average American family more than \$200 per year. For example:

- The median number of medical visits for neck and back sprains is less than three, but a Los Angeles County study revealed that auto tort complainants averaged 26 medical visits for such claims, at an average cost of \$4,000.
- In Hawaii, auto tort claimants must incur \$6,000 in health care costs before they can sue for pain and suffering, so those who see chiropractors in connection with auto tort claims engage in an astonishing 58 visits per claim.
- While the number of auto-related personal injury claims has sharply risen, particularly in cities, auto accident severity and frequency has sharply declined; in the District of Columbia, for example, accident-related lawsuits increased by 137 percent from 1985 to 1995 even though auto accidents declined by 22 percent.

Oppressing the Working Poor and Urban Residents.

In light of the above, it is no surprise that auto insurance rates have gone up more than one and one-half times as rapidly as the cost

of living. And while middle-class Americans have been increasingly hard-pressed by the system's rising costs, its burdens have fallen hardest on urban residents and the working poor. For such motorists, the system offers the "choice" between driving on an unlawful (and increasingly penalized) uninsured basis or paying a large part of their income for minimum coverage policies.

- Most urban residents can save hundreds of dollars per year on car insurance premiums by moving to adjacent suburbs.
- Households in the bottom fifth of income nationally average paying 16.3 percent of that income for car insurance. [See Figure II.]

- A Maricopa County, Ariz., study revealed that the bottom half of working poor families — those earning less than \$6,700 per year — paid an unconscionable 31 percent of their disposable incomes for auto insurance, and almost half of families earning less than \$27,700 per year had to defer major purchases of food or medicine to make auto insurance payments.

And for what? A grossly inefficient system that costs a lot and offers little to victims with serious injuries.

One shocking, telling fact about the current system: another RAND study found that auto accident claimants with damages of \$500 to \$1,000 receive payments averaging \$1,250 to \$2,500,

but claimants whose economic damages exceed \$100,000 receive only 9 cents per dollar of damage. As consumer advocate Andrew Tobias has noted, the current system can best be understood by imagining a homeowners policy that paid for two and one-half new lamps each time one was broken, but paid only 9 percent of the value of homes that had burned down.

Conclusion. Auto Choice allows those wishing to retain the benefits of the current system to do so — at current rates and with a better chance of recovering

damages for pain and suffering than is now possible in a world with high and rising numbers of uninsured motorists. It also allows motorists to decide whether the \$35 billion now spent each year for fraud-ridden pain and suffering recoveries could better be spent elsewhere. Reform of today's lawyer-driven auto tort system may threaten lawyers' incomes, but for the nation's drivers, the freedom to price out and choose their own insurance regimes — to finally be in the driver's seat — is an exciting prospect.

This Brief Analysis was prepared by Michael Horowitz, director of the Project for Civil Justice Reform at the Hudson Institute.

