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## Has Nebraska Solved the Problem Presented by the Uncompensated Victims of Automobile Accidents?

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**HAS NEBRASKA SOLVED THE PROBLEM PRESENTED  
BY THE UNCOMPENSATED VICTIMS OF  
AUTOMOBILE ACCIDENTS?**

INTRODUCTION

Nine years ago the Nebraska Legislature enacted the Motor Vehicle Safety Responsibility Act in an attempt to solve the pressing social problem presented by uncompensated victims of Nebraska automobile accidents.<sup>1</sup> The Supreme Court of Nebraska in upholding the act stated that its purpose was to protect the motoring public from the operation of motor vehicles by financially irresponsible persons.<sup>2</sup> The act was designed to

<sup>1</sup> Neb. Rev. Stat. §§ 60-501 to 60-569 (Reissue 1952); §§ 60-501, 60-503, 60-505, 60-505.01, 60-507, 60-508, 60-550.01, 60-556 (Cum. Supp. 1953). In 1949 the original act was repealed and immediately re-enacted as a complete act containing substantially the same provisions as the 1945 act. This was done because of doubt concerning the constitutionality of the prior act in view of an alleged defective title. Revisor's note, 3A Neb. Rev. Stat. 1135 (Reissue 1952).

<sup>2</sup> Hadden v. Aitken, 156 Neb. 21, 55 N.W.2d 620 (1952).

accomplish this purpose in two ways: (1) by the direct operation of its post-accident requirements and (2) by the indirect psychological effect of inducing owners and operators of motor vehicles to purchase automobile liability insurance to escape the possibility of suspension of rights or depositing of security with the state. It is the conclusion of this writer that the act falls far short of achieving its intended objective.

The purpose of this article is to discuss and evaluate the effectiveness of the Nebraska act and the supplementary and alternative plans enacted in other jurisdictions, and to advocate the adoption of a sound plan based upon compulsory automobile insurance.

#### I. THE NEBRASKA MOTOR VEHICLE SAFETY RESPONSIBILITY ACT

The Nebraska Motor Vehicle Safety Responsibility Act is similar to safety responsibility acts adopted in forty-one other states and Hawaii.<sup>3</sup>

##### A. *Duty to Report Accidents*

The act provides that operators of vehicles involved in any accident within the state in which any person is injured or killed, or in which property is damaged, or is claimed to have been damaged, in excess of one hundred dollars by any one person, must file with the Department of Roads and Irrigation a report of the accident.<sup>4</sup> Receipt of this report by the department starts a process which may ultimately end in the revocation of the driver's license and the vehicle registration of a financially irresponsible driver who was involved in the accident, regardless of whether or not he is at fault.<sup>5</sup>

<sup>3</sup> Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

<sup>4</sup> Neb. Rev. Stat. § 60-505 (Cum. Supp. 1953). This report must be filed within ten days after the operator or owner first learns of the accident. If the accident occurs within an incorporated city or village such report must be made within twenty-four hours to the local police in the city or village. Neb. Rev. Stat. § 60-505.01 (Cum Supp. 1953).

<sup>5</sup> Neb. Rev. Stat. § 60-507 (Cum. Supp. 1953). If the person involved in the accident is a nonresident he will lose the privilege of operating a motor vehicle in Nebraska; or the privilege of using any motor vehicle owned by him within Nebraska unless he deposits security as re-

### *B. Duty to Deposit Security*

Within sixty days after receipt of the accident report, the department makes an investigation to determine the amount of security sufficient to satisfy any judgment for damages which might result from the accident, without reference to fault, and which might be recovered from the operators or owners involved.<sup>6</sup> The department then notifies each party who was in any manner involved in the accident of the amount of security he must deposit in order to avoid having his driver's license and vehicle registration suspended.<sup>7</sup>

### *C. Exception to the Duty to Deposit Security*

The act provides that the depositing of security is not necessary for a driver or owner who is involved in any manner in an accident (1) if he has either an automobile liability insurance policy or a bond in effect at the time of the accident,<sup>8</sup> in the amounts of \$5,000 for one injury or death, and \$10,000 for injuries or deaths arising from any one accident, and \$1,000 for property damage;<sup>9</sup> or (2) if he qualifies as a "self-insurer";<sup>10</sup> or (3) if such operator is released from liability by a court of justice within sixty days subsequent to the accident.<sup>11</sup>

quired by the department, or has in effect at the time of the accident liability insurance or bond which provides for the same minimum coverage as is required of residents. Neb. Rev. Stat. §§ 60-507 (2) to (3), 60-531 (Reissue 1952).

<sup>6</sup> Neb. Rev. Stat. § 60-507 (Cum. Supp. 1953).

<sup>7</sup> *Ibid.* The amount of security determined by the department will in no event be in excess of \$11,000. Neb. Rev. Stat. §§ 60-501 (10), 60-513 (Reissue 1952). The security is placed in the custody of the State Treasurer. It is applied only to payment of any judgments rendered against the person on whose behalf the deposit is made and for any and all damages arising out of the accident in question in any action at law brought before one year has expired since either the date of the accident or the date of the deposit. Neb. Rev. Stat. § 60-514 (Reissue 1952).

<sup>8</sup> Neb. Rev. Stat. § 60-508 (Reissue 1952).

<sup>9</sup> Neb. Rev. Stat. § 60-534(1) to (3) (Reissue 1952).

<sup>10</sup> Neb. Rev. Stat. §§ 60-508 (4), 60-562, 60-564 (Reissue 1952).

<sup>11</sup> Neb. Rev. Stat. § 60-508(5) (Reissue 1952). In addition to these exemptions the act further provides that an operator or owner of a vehicle involved in an accident will not be required to post security or have his driver's license or vehicle registration suspended if (1) the operator or owner was the only party suffering damage from the accident; or (2) the operator or owner's automobile was legally parked at the time the accident occurred; or (3) the vehicle was being operated without the owner's consent; or (4) prior to the date of suspension there is filed with

*D. Duration of Suspension of License and Registration  
or Operating Privileges*

When a license, registration, or a nonresident's operating privilege has been suspended for failure to deposit security or show financial responsibility as required by the act, such shall remain suspended until (1) the person deposits security as required by the department; or (2) one year has elapsed following the date of the accident and evidence satisfactory to the department shows that no action for damages arising out of the accident has been instituted; or (3) there has been filed with the department either a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged written agreement providing for payment of an agreed amount in installments on all claims for injuries or damages resulting from the accident.<sup>12</sup>

*E. Proof of Financial Responsibility for the Future*

The Nebraska act directs the Department of Roads and Irrigation to suspend the license and motor vehicle registration of any operator who fails to satisfy a judgment in a motor vehicle accident case within sixty days.<sup>13</sup> The suspension provisions invoked for failure to satisfy a judgment are effective until (1) the judgment is fully satisfied or discharged, and (2) the person gives proof of financial responsibility.<sup>14</sup>

The judgment debtor may furnish proof of his financial responsibility by filing one of the following documents with the

the department evidence satisfactory to it that the person has been released from liability, adjudicated not liable, executed a warrant for confession of judgment agreed to by the damaged party, or executed a duly acknowledged written agreement providing for payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident. Neb. Rev. Stat. § 60-510 (Reissue 1952).

<sup>12</sup> Neb. Rev. Stat. § 60-511 (Reissue 1952).

<sup>13</sup> Neb. Rev. Stat. §§ 60-516, 60-517 (Reissue 1952). Any judgment which results from a motor vehicle accident is deemed satisfied under the act when \$5,000 has been credited thereon for bodily injury to, or death of, one person; when \$10,000 has been credited thereon for bodily injury to, or death of, two or more persons; or when \$1,000 has been credited thereon for any property damage. Neb. Rev. Stat. § 60-520 (Reissue 1952). The discharge in bankruptcy of the judgment debtor subsequent to the judgment will not relieve him from the suspension provisions in the act. Neb. Rev. Stat. § 60-519 (Reissue 1952).

<sup>14</sup> Neb. Rev. Stat. § 60-518 (Reissue 1952).

department: (1) a certificate of insurance as provided in the act,<sup>15</sup> (2) a supersedeas bond,<sup>16</sup> or (3) a certificate of deposit of money or securities as required by the department.<sup>17</sup>

## II. THE ACT IN OPERATION

The main defect of the act is that its sanctions are not applicable until an accident resulting in death, or injury, or property damage exceeding \$100 has been reported.<sup>18</sup> If a party to an accident cannot meet the security requirements or produce evidence of financial responsibility, the damaged victim with a valid claim will not be aided by the act. In such case the damage sustained by the victim serves merely as a clutch to throw the act into motion. Denying an irresponsible motorist the privilege of using the highways does not compensate the damaged victim. Furthermore, the motoring public is not protected against a financially irresponsible motorist when no action is instituted within one year, since the motorist will be permitted to use the highways without proof of his ability to respond to possible damages.<sup>19</sup> To keep a financially irresponsible motorist off the highways, the act requires the party damaged to bring an action against a prospectively judgment-proof defendant. Little needs to be said of such a requirement, for only the foolhardy bring such suits.

In addition, the indirect psychological effect of the act has fallen far short in its attempt to induce the voluntary purchase of liability insurance. In 1950 it was estimated that between twenty-nine and fifty percent of the total vehicles operated on Nebraska highways were not insured.<sup>20</sup> And in 1954 it was unofficially estimated that from twenty to thirty percent of the vehicles remained uninsured.<sup>21</sup> This means that approximately 170,000 registered motor vehicles were operating on Nebraska highways in 1954 without liability insurance coverage.<sup>22</sup> While

<sup>15</sup> Neb. Rev. Stat. §§ 60-528(1), 60-529 (Reissue 1952).

<sup>16</sup> Neb. Rev. Stat. §§ 60-528(2), 60-547 (Reissue 1952).

<sup>17</sup> Neb. Rev. Stat. §§ 60-528(3), 60-549 (Reissue 1952).

<sup>18</sup> Neb. Rev. Stat. §§ 60-505, 60-507 (Cum. Supp. 1953).

<sup>19</sup> Neb. Rev. Stat. § 60-511(3) (Reissue 1952).

<sup>20</sup> Marrayott, *Automobile Accidents and Financial Responsibility*, 287 *The Annals* 83, 84 (1953).

<sup>21</sup> Estimate by the official charged with enforcement of the Nebraska Motor Vehicle Safety Responsibility Act.

<sup>22</sup> Computed from data furnished by the Motor Vehicle Division, Department of Roads and Irrigation. This figure was arrived at by using a mean of twenty-five percent uninsured motorists as a base. There were 705,858 vehicles registered in 1954. Annual Report, Motor Vehicle Division (1954).

this figure does not necessarily mean that all owners of these uninsured vehicles were financially irresponsible, past experience has shown that the greater majority of such owners tend to be financially incapable of paying judgments rendered against them.<sup>23</sup>

It is of interest to note that in 1953 almost *eight percent* of the persons involved in accidents falling under the jurisdiction of the act were found to be financially irresponsible.<sup>24</sup> In this same period one person involved in every seven and one-half reported accidents was found to be financially irresponsible.<sup>25</sup> And in the first eleven months of 1954, *ten percent* of those persons involved in motor vehicle accidents reported under the act were found to be financially irresponsible,<sup>26</sup> and again one person involved in every seven and one-half reported accidents was found to be financially irresponsible.<sup>27</sup> These figures do not justify the conclusion that the act is accomplishing its purpose. Proponents of the act will argue that it is serving its purpose by suspending these financially irresponsible persons, but there is a major defect in this type of reasoning. Suspension is not the purpose of the act, but merely its tool of enforcement.

<sup>23</sup> If the defendant does not carry liability insurance, the plaintiff who has established his damages and the defendant's liability has only one chance in four of collecting his judgment. See Report by the Committee to Study Compensation for Automobile Accidents, Columbia University Council for Research in Social Sciences 86 (1932) (commonly called the Columbia Report).

<sup>24</sup> Computed from data furnished by the Office of Enforcement of the Motor Vehicle Safety Responsibility Act, Department of Roads and Irrigation, State of Nebraska. In 1953, 41,641 persons were involved in reported accidents falling under the act, and 3,232 of these were suspended for failure to furnish proof of financial responsibility.

<sup>25</sup> Computed from data furnished by the Accident Records Bureau and the Office of the Superintendent in charge of enforcement of the Motor Vehicle Safety Responsibility Act, Department of Roads and Irrigation, State of Nebraska. In 1953, 24,095 accidents were reported as compared with the 3,232 persons suspended for failure to furnish proof of financial responsibility.

<sup>26</sup> Computed from data furnished by the Office of Enforcement of the Motor Vehicle Safety Responsibility Act, Department of Roads and Irrigation, State of Nebraska. In the first eleven months of 1954, 25,866 persons were involved in reported accidents, and 2,659 of these were suspended for failure to furnish proof of financial responsibility.

<sup>27</sup> Computed from data furnished by the Accident Records Bureau and the Office of the Superintendent in charge of enforcement of the Motor Vehicle Safety Responsibility Act, Department of Roads and Irrigation, State of Nebraska. In the first eleven months of 1954, 20,049 accidents were reported and 2,659 persons were suspended from operating motor vehicles for failure to furnish proof of financial responsibility.

The purpose of the act is to protect those individuals who may be wrongfully injured in automobile accidents by inducing voluntary, but uniform, purchase of automobile liability insurance. Surely it must be admitted that the act has substantially failed when in one year 2,659 individuals out of a total number of 25,865 persons involved in accidents were found to be so financially irresponsible as to fail to meet the minimum liability standards imposed by the act.<sup>28</sup>

Nebraska's act is (as are all similar acts) merely a perfunctory attempt to compel motorists to carry liability insurance. In this day of high judgments, liability insurance is the only logical answer to the problem of uncompensated victims of automobile accidents. Few operators could raise the necessary security required for the average accident, and still fewer could obtain the amount upon ten days notice as required by the act.

A few jurisdictions, recognizing the shortcomings of their financial responsibility laws, have taken steps either to strengthen them with supplementary laws or to abandon them completely in favor of compulsory legislation. The remainder of this article will be devoted to a discussion of these various plans.

### III. SUPPLEMENTARY PLANS

#### A. *Unsatisfied Judgment Funds*

One method designed to compensate victims of automobile accidents is the establishment of a fund operated by the state to reimburse any victim who has an unsatisfied judgment against a wrongdoer. This legislation operates in conjunction with the financial responsibility laws as a "fund of last resort" to which access is available after all other means of collecting the judgment have failed. This plan has been adopted in North Dakota and New Jersey and in all the Canadian provinces except Quebec and Saskatchewan.

North Dakota enacted its plan in 1947,<sup>29</sup> following the example of the Province of Manitoba located directly across the border. Under this plan each person applying for a motor vehicle license pays an additional sum of one dollar which goes into an unsatisfied judgment fund, held and controlled by the state. The fund is used to reimburse any resident of the state

<sup>28</sup> Based on 1954 figures as reported to the Department of Roads and Irrigation, State of Nebraska.

<sup>29</sup> N.D. Laws 1947, c. 274; N.D. Rev. Code §§ 39-1701 to 39-1710, (Supp. 1953).



who recovers a judgment for bodily injury or death exceeding \$300 in any action arising out of a motor vehicle accident where the party at fault is judgment-proof.<sup>30</sup> Any judgment creditor unable to collect such a judgment by using reasonable steps may apply for payment, within set monetary limits, from the judgment fund.<sup>31</sup> The court, if satisfied that the debtor is judgment-proof, issues an order requiring payment to be made.<sup>32</sup> The judgment debtor is deprived of all driver's licenses and motor vehicle registrations until such sum is repaid with interest to the fund.<sup>33</sup>

The New Jersey plan is similar, but more complicated,<sup>34</sup> as it provides an assignment of the defense to actions against the fund to insurance companies doing business in the state.<sup>35</sup> The New Jersey plan differs, however, in two important respects from the North Dakota plan. It extends coverage to property damage up to \$1,000, and it provides for a payment of \$3.00 from uninsured motorists and \$1.00 from insured motorists. This tends to place the burden of the fund closer to the fault.

Because an unsatisfied judgment is a prerequisite to recourse to the fund, the addition of such a plan to a financial responsibility law forces the bringing of actions against financially irresponsible operators. This greatly strengthens the ordinary financial responsibility plan for it results in keeping judg-

<sup>30</sup> N.D. Rev. Code § 39-1703 (Supp. 1953). No default judgment may be recovered unless the state highway commissioner and the attorney general have been given at least thirty days notice prior to the entry of the default judgment to appear and defend to show cause, if any, why the order for payment should not be made. N.D. Rev. Code § 39-1704 (Supp. 1953). The Attorney General may also appear in hit and run default cases for the protection of the fund. N.D. Rev. Code § 39-17031 (Supp. 1953).

<sup>31</sup> N.D. Rev. Code § 39-1707 (Supp. 1953). The act does not cover property damage.

<sup>32</sup> N.D. Rev. Code § 39-1705 (Supp. 1953).

<sup>33</sup> N.D. Rev. Code § 39-1710 (Supp. 1953).

<sup>34</sup> Unsatisfied Claim and Judgment Fund Law, N.J. Stat. Ann. § 39:6-61 to 39:6-91 (Cum. Supp. 1954). Effective date is April 1, 1955. Motor Vehicle Liability Security Fund Act, N.J. Stat. Ann. §§ 39:6-92 to 39:6-104 (Cum. Supp. 1954).

<sup>35</sup> N.J. Stat. Ann. § 39:6-66 (Cum. Supp. 1954). The insurance companies can insist upon the cooperation of the defendant in any suit which they have been assigned to defend. N.J. Stat. Ann. § 39:6-68 (Cum. Supp. 1954). The insurance companies have authority to settle cases up to \$1,000 without court approval, but these cases must have the approval of the Treasurer or one member of the Judgment Fund Board. N.J. Stat. Ann. § 39:6-72(b) (Cum. Supp. 1954).

ment-proof operators off the highways until they have repaid their debt to the fund. While this supplementary plan offers this valuable additional incentive to purchase liability insurance, one objection, which has restricted its use in other jurisdictions, is that it compels financially responsible motorists to share the expense caused by irresponsible motorists who refuse to carry liability insurance. This objection might be removed by shifting the entire burden of sustaining the fund to the motorists who are not insured. Assessing the uninsured motorist an annual fee to keep the fund at a proper level would accomplish this, but when such conditions are attached, it soon becomes evident that the plan is merely an attempt to obtain compulsory insurance via the back door. Also there is the danger that the percentage of uninsured motorists might not be large enough to keep the fund at a safe monetary level.

### *B. Impounding Acts*

Four Canadian provinces have adopted a method of impounding the automobiles involved in accidents regardless of the fault of the motorist.<sup>36</sup> These provisions are combined with the safety responsibility laws in force in the provinces. Impounding acts generally provide that the law enforcement officer first present at the scene of an accident shall impound each vehicle involved in the accident until such drivers or owners produce evidence of financial responsibility. These laws operate against the non-resident motorist in the same manner as resident motorists.

The use of such additional measures should provide an additional inducement to a motorist to secure insurance because of the loss of the use of his automobile, and the additional cost of storage charged against the owner.

Although the addition of impounding and judgment funds give more teeth to the financial responsibility law, its major defects still remain. Regardless of the preventive measures adopted, a plan based upon the voluntary purchase of liability insurance cannot succeed, for there will always remain that hard core

<sup>36</sup> The Highway Traffic Act, Man. Stat. 1st Sess. 1945, c. 23, §§ 128H et seq., as amended, Man. Stat. 1st Sess. 1952, c. 31; Motor Vehicle Act B. C. Rev. Stat. c. 227, §§ 110 et seq. (1948), as amended, B.C. Stat. 1949, c. 40. In Alberta where impounding is at the discretion of the motor vehicle administrator the practice is to impound vehicles of non-residents or residents likely to flee. Prince Edward Island enforces impounding upon the application of the injured party. Moser, *The Road For The Uninsured Motorist*, (1951) *Ins. L.J.* 489, 357 n.30.

of individuals in a society who disregard their responsibilities to their fellow citizens and fail to purchase liability insurance protection.

### C. *Full Aid Plan*

Another plan that has been suggested to supplement the safety responsibility laws would correct the problem created by the uncompensated victims of automobile accidents by the joint cooperation of the insurance industry and legislative action. This would involve the enactment of legislation which would relieve an owner or operator from his common-law liability for ordinary (in contrast to criminal) negligence if he had in force a policy designated as "full aid" accident insurance in the statutory minimum amounts for the protection of people injured by the operation of his vehicle.

The "full aid" policy of insurance would be developed by the insurance industry and would provide indemnity based upon fixed schedules listing the various benefits, as contrasted to the present workmen's compensation which is generally based upon the actual earning power of the injured person. The bases used to determine the various scheduled amounts would be the minimum needs of the low-income groups. The unit of indemnity would adopt that used in present accident insurance policies whereby the claimant would be paid a weekly indemnity of \$50. Using the weekly unit as a basis, the death benefit would consist of a certain percentage of the weekly indemnity until the claimant dies or re-marries; with an additional percentage for each child until death or majority; with the grand total not to exceed seventy-five percent of the basic indemnity. A lump-sum settlement of \$10,000, or an amount computed on the basis of existing mortality tables has been recommended. Total permanent disability would entitle the claimant to the basic weekly indemnity for life, or a lump-sum cash settlement. Partial disability, temporary or permanent, would be covered by the weekly indemnity or flat amounts for each injury. It is proposed that these amounts could be determined by an arbitration agreement embodied in the policy. This too could be replaced by a lump-sum cash payment. Hospitalization and surgical care would also be compensable in a fixed percentage of the weekly rate.

The carrying of this insurance would be on a strictly voluntary basis. The plan would allow any motorist to carry ordinary liability insurance or rely upon his own ability to self-insure. It is the belief of the creator of this plan that motorists

would soon purchase such insurance because of the escape legislation whereby the holder of a "full aid" policy is relieved from civil action due to injuries caused by ordinary negligence.

The plan would be supplemented by what has been described as an "uncompensated injury fund" similar to the unsatisfied judgment fund mentioned earlier in this article. This fund would provide recovery for accident victims (except members of the insured's own family) injured by motorists not carrying "full aid" insurance and who are otherwise judgment-proof. The amount of recovery would be the same as the amount collected under the "full aid" policy outlined above. This fund would be administered by the insurance companies licensed to operate in the state. The fund would be supported from fines called "tort fines" levied against either or both the persons causing the injury or the injured persons whose criminal negligence has caused or contributed to the accident. The fines would be measured according to the gravity of the crime and the financial circumstances of the parties at fault. Additional support for the fund would be obtained by a general tax on the public at large, whether they own an automobile or not. The rationale behind this is that all persons benefit from the highways and are liable for their fair share of the cost. Persons receiving payment from the fund would assign all their common-law rights to recovery from the wrongdoer to the fund which would be authorized to seek recovery on its own behalf. Collection would be facilitated by the restriction in the safety responsibility law which bars the further operation of a motor vehicle until an outstanding judgment is paid.

Since the plan would allow an ordinary civil action against a person who was criminally negligent even though he was covered by the "full aid" insurance proposed, and would not allow such civil actions against persons guilty of ordinary negligence, it is proposed that those injured plaintiffs recovering via a civil suit, when criminal negligence is shown, would turn over to the fund a sum amounting from 10 to 50 percent of the judgment collected. This it is claimed would avoid the unjustifiable discrimination between those injured in an ordinary traffic accident, who would be limited to "full aid" recovery, and the victims of accidents where criminal negligence is shown who would keep their right to sue in tort. To prevent discrimination between criminally negligent motorists who are protected by an ordinary liability insurance policy and those not so protected, the proposed fund would be permitted to recover twice, once from the liability insurer and again from the insured wrongdoer.<sup>37</sup>

<sup>37</sup> See Ehrenzweig, "Full Aid" Insurance for the Traffic Victim (1954).

## IV. ALTERNATIVE PLANS

*A. Compulsory Automobile Compensation Insurance*

Because plans based upon voluntary purchase of liability insurance will not provide the needed protection, their replacement with some form of compulsory compensation insurance has been suggested. Such plans would require the abrogation of the common-law liability based upon fault and would replace it with a plan similar in nature to our present workmen's compensation acts; viz, injuries would be paid according to established schedules. These plans have been advocated for some twenty-two years,<sup>38</sup> but only one jurisdiction on the North American continent has ventured into this field of legislation.

Saskatchewan enacted a plan known as "The Saskatchewan Automobile Accident Insurance Act of 1947," whereby every person registering an automobile must obtain a certificate of insurance from the province's governmental insurance office. This certificate of insurance not only provides the purchaser with insurance protection, but also protects all persons who may be injured in any accident in which the insured is a party. In addition to its compensation features the act also allows an injured party to bring a civil action against a party if "negligence or mistake in judgment" is found to be present. This is significant, for a motorist is required to carry not only liability insurance for any possible accident which might arise from his wrongful act, but also compensation insurance protection for those injured in an accident where he is not the party at fault. This means that, regardless of whether he is legally or morally responsible for such injury, the motorist must shoulder part of the burden of compensating those injured in automobile accidents even when the injured party was at fault. Such a plan, if adopted in the United States, would present a constitutional question of whether the motorist is deprived of property without due process of law. Is it within the police powers of the Tenth Amendment to compel a person to pay for damage to others where the actor is not legally or morally responsible for such damage? This problem arose when workmen's compensation laws were first enacted, but it was held that such laws were partly justified because the em-

<sup>38</sup> See James and Dickenson, *Accident Proneness and Accident Law*, 63 Har. L. Rev. 769 (1950); Report of the Committee to Study Compensation for Automobile Accidents to the Columbia University Council for Research in the Social Sciences (1932); Marx, *Compulsory Compensation Insurance*, 25 Col. L. Rev. 164 (1925); Marx, *Let's Compensate. Not Litigate*, 30 N. Dak. L. Rev. 20 (1954).

ployer was relieved from his common-law liability in exchange for his contribution to the compensation fund.<sup>39</sup> Under the Saskatchewan act this exchange of benefits is not present, and the adoption of such an act in the United States would raise grave constitutional questions.

Even if a compensation plan completely abolished civil actions when negligence or mistake in judgment was the cause of an accident, the plan would still require the abandonment of existing comparative negligence and automobile guest statutes along with the common-law doctrine that liability is predicated upon fault. Because of this it is extremely doubtful that the state legislatures would consider favorably such a drastic approach to the problem.

### *B. Compulsory Insurance*

To obtain the desired goal of complete financial responsibility and yet predicate liability upon fault, Nebraska must take the step that Massachusetts deemed necessary twenty-eight years ago when it adopted compulsory automobile liability insurance.<sup>40</sup> The heart of the plan is that a person must prove that he is financially capable of meeting any future liability arising out of an automobile accident before he will be granted a motor vehicle registration. To do this the registering owner must present an automobile liability insurance policy meeting the limits required by the law.<sup>41</sup>

Advocates of compulsory insurance have continually met hostility in state legislatures. This hostility has been created largely by the automobile insurance industry which is emphatically opposed to such plans.<sup>42</sup> The great bulk of this opposition to compulsory insurance plans is based upon alleged defects of the Massachusetts plan.

The arguments against such plans proceed along the following lines:

<sup>39</sup> *Mountain Timber Co. v. State of Washington*, 243 U.S. 219 (1917); *New York Central v. White*, 243 U.S. 188 (1917).

<sup>40</sup> Mass. Ann. Laws c. 90, §§ 34A to 34J, c. 90A, §§ 12 to 17, c. 175, §§ 112, 113, 182 to 183 (1954), as amended, Mass. Ann. Laws c. 90, § 34D, c. 175, §§ 113A to 113H (Cum. Supp. 1954).

<sup>41</sup> Massachusetts has achieved 99 percent coverage of motor vehicles. Report of Wisconsin Legislative Council on Motor Vehicle Accidents, vol. II, pt. 2, p. 26.

<sup>42</sup> 21 Ins. Counsel J. 284 (1954); 15 Ohio St. L.J. 5, 150 (1954).

(1) *Insurance companies are required to underwrite certain risks which they ordinarily would not accept.* A simple answer to this objection is that the great social problem which such a plan would reduce far outweighs the problems of the insurance industry. It is doubtful whether many insurance companies have withdrawn their automobile liability policy sales operations in the state of Massachusetts. The insurance industry has shown by past experience that it is capable of adjusting its business as new problems arise.

(2) *When a plan establishes minimum legal requirements of financial responsibility, a low percentage of excess limit policies result.* While this argument generally has been true in Massachusetts,<sup>43</sup> it should not prevent the establishment of compulsory insurance plans. The present safety responsibility act in Nebraska requires the same limits of financial responsibility, except as to property damage.<sup>44</sup> In the event these limits are deemed too low, they should be adjusted so as to provide the security desired.

(3) *It is argued that the plan does not promote safety on the highways, but rather that it makes drivers more careless.* This contention is unsupported by the experience in Massachusetts.<sup>45</sup> The primary purpose of such plans, as of Nebraska's safety responsibility act,<sup>46</sup> is not to assure the motoring public that they will not be involved in an accident; but to assure them that if such an unfortunate event should occur, they will be compensated for any valid claims that they may have against the parties at fault.

(4) *It is argued that compulsory insurance obstructs the courts, causes excessive litigation and exaggerated claims, produces unreasonable verdicts, and induces unreasonable and inadequate settlements.* This line of argument should be directed towards our present methods of adjudication, not towards the plan itself. Insurance has affected and will continue to affect our court system regardless of whether compulsory insurance is enforced.

<sup>43</sup> Note 39 supra, pt. 1, p. 52.

<sup>44</sup> Neb. Rev. Stat. § 60-501(10) (Reissue 1952).

<sup>45</sup> National Safety Council, Accident Facts, shows that throughout the period since World War II Massachusetts has been among the top three in the list of states having the lowest percentage of traffic deaths per 100,000 miles traveled.

<sup>46</sup> See note 2 supra.

(5) *Compulsory insurance plans do not protect against accidents where nonresidents are involved.* While it is true that the nature of compulsory insurance prohibits extension to non-residents, the plan can still furnish the same requirements that Nebraska's present act provides for non-residents involved in accidents within the state.

(6) A final argument against compulsory insurance is that *such a plan becomes a "political football."* It is contended by the insurance industry that they are under constant pressure to establish lower rates.<sup>47</sup> This argument has been greatly over-emphasized in view of Massachusetts' experience. Massachusetts has continued its compulsory insurance statute for twenty-eight years, and has not found any need to repeal it because of this reason. There is no reason why insurance rates should be open to unjust reductions any more than tax reductions or any other subjects over which the state legislature has control. A well drafted plan, allowing for public hearing where the insurance industry can defend its rates could eliminate such unnecessary political pressure. It is submitted that this is one of the weakest reasons advanced against the adoption of compulsory insurance. The protection this plan offers should not be discarded with the simple statement that our legislatures are incapable of enacting sound legislation.

Generally, those who argue against compulsory insurance point to the alleged defects in the Massachusetts plan. This is not a fair criticism of compulsory insurance. If the Massachusetts compulsory insurance plan has defects, then Nebraska or any other state should make use of this knowledge and draft an act to remedy them.

#### CONCLUSION

Many persons reading this article know of a friend or some person who has been involved in an automobile accident out of which serious hardship has resulted because the party wholly at fault was financially irresponsible. It is little comfort to such an injured person that the wrongdoer will be barred from operating a motor vehicle until he can show his ability to respond to future damage actions or that the financially irresponsible constitute only a small percentage of the total number of motor ve-

<sup>47</sup> Ass'n of Cas. and Surety Companies, *Why Compulsory Automobile Liability Should Not be Enacted in the State of New York—Alternative Measures* (Leaflet 1953).



hicle operators in the state. Correction of this evil calls for greater power than has been provided by Nebraska's Motor Vehicle Safety Responsibility Act. No plan based upon the voluntary purchase of liability insurance can provide the necessary power.

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