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Is 1975 the year of federal no-fault?

The ABA is committed to opposing national no-fault legislation. But many are working for its passage. To win the battle, the Association needs help from state and local bars.

By James D. Ghiardi

Federal no-fault automobile insurance legislation will be a reality before the year is out, unless the ABA and the rest of the organized bar do their utmost to oppose it, directly in Washington and indirectly in the state legislatures.

Opposition to federal no-fault legislation has taken the form of a united front—including the organized bar, the White House, national and local insurance and legal organizations, government agencies and officials, legal scholars and just plain interested persons.

Up to now, these efforts, dis-

organized as they are, generally have been successful. The message has been clearly and consistently delivered for the past several years.

There are four basic arguments against national no-fault. First, regulation of insurance traditionally has been left to the individual states.

If the states were ignoring their responsibilities and the country was experiencing a dearth of legislation designed to reform the automobile accident reparations system, a better case for federal intervention might well be made. However, the states have demon-

strated their capability and their inclination to implement such reform in a meaningful way. In only a few short years 23 states have enacted automobile insurance reform legislation that covers more than 50 per cent of the American population. Nearly all the remaining states are actively studying and seriously considering improvements.

Second, the objective of no-fault automobile insurance is best accomplished by the states.

The goal of such insurance is to establish an economical automobile accident reparations system whereby as many victims as possible can be compensated promptly for economic losses due to personal injury, without regard to fault. In order to design a system that is adequate to meet this objective, certain economic, geographic, attitudinal and demographic factors must be considered carefully. All concede that these factors differ, often

federal no-fault bills that are receiving the most attention has several drawbacks.

Witness after witness during hearings held before committees of both houses of Congress correctly have pointed out the many infirmities and inequities existing in proposed no-fault bills. The question of the propriety of federal no-fault automobile insurance aside, it is significant that so many knowledgeable people have concluded that the federal proposals receiving the most attention are likely to create inequities, increase costs and operate to the detriment of the motoring public.

Despite the constant repetition of these arguments by those opposing federal no-fault, federal activity has persisted.

The passage of S.354 by the Senate on May 1 of last year marked the first time either house of Congress had passed a federal no-fault bill. This is an accurate indicator that the efforts to procure federal no-fault are gathering more and more steam.

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The 94th Congress has lost no time in again taking up no-fault. Sen. Warren G. Magnuson (D. Wash.) and four co-sponsors have introduced S.354, the proposed National Standards No-Fault Motor Vehicle Insurance Act. Magnuson is expediting the proposed act. No decision on hearings had been made as the

Bar Leader went to press. It is virtually identical to the S.354 of the 93rd Congress, which passed that session's Senate in May. And in the House, Rep. Bob Eckhardt (D. Tex.) has re-introduced H.R.1272, the proposed National No-Fault Motor Vehicle Insurance Act. Other no-fault proposed acts introduced were H.R.285 and H.R.1900.

The 94th Congress is made up of an unusually large number of new senators and representatives—many of whom will not have had an opportunity to study and understand the no-fault issue, but may be attracted to it by its alleged simplistic charm. So it can be realistically expected that there will be an even greater effort to legislate a federal no-fault automobile insurance legislation bill this year than at any previous time.

The ABA is committed to opposing federal no-fault, and it will do all it can to prevent its enactment. But to be successful it will need the assistance of all bar leaders in the following respects:

- Become acquainted with your Congressional representatives and inform them fully about no-fault.

- Work actively for reform in your state. This is essential; Congress must be convinced that the states are acting in a meaningful way. Seek compromise to achieve reform. Everyone must keep the greater goal of state regulation in focus, without insisting on one's own "brand" of reform.

The year 1975 is critical. Unless 10-15 states enact legislation of some type, we will have federal legislation.

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drastically, from state to state. It quite understandably follows that a state-by-state approach is the most well-reasoned and prudent method of effecting reform.

Third, the experiences of those states having enacted different types of no-fault plans are just now developing.

From what can be gleaned from the early returns, it appears that different plans implemented in different states are working. Unforeseen problems have arisen on occasion but are being ironed out, and many plans are being tightened up by litigation.

To close down this laboratory just when experiments are beginning to provide answers to many questions about no-fault is clearly premature—particularly when the only other alternative is a federal system, which this experimentation may soon demonstrate is not necessary, or which may even hinder appropriate reform.

Finally, the substance of the