

104TH CONGRESS  
2D SESSION

# S. 1860

To provide for legal reform and consumer compensation relating to motor vehicle tort systems, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 11, 1996

Mr. McCONNELL (for himself, Mr. DOLE, Mr. MOYNIHAN, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To provide for legal reform and consumer compensation relating to motor vehicle tort systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Auto Choice Reform  
5 Act of 1996”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the costs of operating a motor vehicle are  
9 excessive due to the legal and administrative costs

1 associated with the processing of claims under the  
2 tort system;

3 (2) the costly fault and liability insurance sys-  
4 tem often fails to provide compensation commensu-  
5 rate with loss, takes too long to pay benefits and  
6 wastes too many dollars on legal fees;

7 (3) the distorted incentives of the tort system  
8 for motor vehicles produce—

9 (A) significant fraud in the claiming proc-  
10 ess, thereby dangerously exacerbating the na-  
11 tional distrust felt by many Americans toward  
12 the legal process in general and the rule of law  
13 itself;

14 (B) significant wasteful, fraudulent, and  
15 costly overuse and abuse of scarce health care  
16 resources and services, thereby increasing the  
17 problems of affordability and accessibility in the  
18 health care system;

19 (C) significant and unbearable cost bur-  
20 dens on low-income Americans, which impose  
21 on them the Hobson's choice of driving on an  
22 unlawful, uninsured basis or compelling them to  
23 forego essential needs;

24 (D) significant reductions in access to, and  
25 purchases of, motor vehicles, thereby damaging

1 the economic well-being of many low-income  
2 Americans, while also unnecessarily harming a  
3 critical component of the American economy;

4 (E) significant deterioration of the eco-  
5 nomic well-being of most major American cities  
6 through the imposition of a massive, differen-  
7 tially greater “tort tax” on urban residents,  
8 thereby contributing to the abandonment of  
9 cities by many American taxpayers able to  
10 achieve substantial after-tax savings on auto-  
11 mobile insurance premiums by the sole act of  
12 moving to adjacent suburban communities; and

13 (F) significant inability to achieve market-  
14 based discounts in insurance rates for owners of  
15 safer cars, thereby powerfully contributing to  
16 the lesser safety of American drivers and pas-  
17 sengers;

18 (4) a system that allows consumers the oppor-  
19 tunity to self-insure and separates economic and  
20 non-economic damages for the purpose of purchasing  
21 insurance would provide enormous cost savings to  
22 drivers;

23 (5) consumer choice in selection of motor vehi-  
24 cle insurance would be greatly enhanced if each

1 consumer could decide upon the form of insurance  
2 that best suits the individual needs of the consumer;

3 (6) insurance to indemnify individuals for per-  
4 sonal injury arising from motor vehicle collisions is  
5 frequently unavailable at reasonable cost because of  
6 the potential for third-party claims;

7 (7) a system enabling individuals to select the  
8 form of motor vehicle insurance coverage that best  
9 suits individual needs would enhance individual free-  
10 dom and reduce the costs of motor vehicle insurance  
11 for consumers; and

12 (8) a system which targets and emphasizes the  
13 scourge of those who drive under the influence of  
14 drugs or alcohol will further deter such dangerous  
15 and unlawful conduct.

16 **SEC. 3. PURPOSE.**

17 The purpose of this Act is to authorize consumers  
18 of motor vehicle insurance to choose between their present  
19 tort remedies under State law and a system which com-  
20 bines first-party insurance and the right to sue negligent  
21 drivers for all further uncompensated economic losses.

22 **SEC. 4. DEFINITIONS.**

23 For the purposes of this Act, the term—

24 (1) “accident” means unforeseen or unplanned  
25 event causing loss or injury;

1           (2) “economic loss” means any objectively veri-  
2           fiable pecuniary loss resulting from the harm suf-  
3           fered, including past and future medical expenses,  
4           loss of past and future earnings, burial costs, costs  
5           of repair, or replacement costs of replacement serv-  
6           ices in the home, including child care, transpor-  
7           tation, food preparation, and household care, costs  
8           of making reasonable accommodations to a personal  
9           residence, loss of employment, and loss of business  
10          or employment opportunities, to the extent recovery  
11          for such losses is allowed under applicable State law;

12          (3) “financial responsibility law” means a stat-  
13          ute (including one requiring compulsory coverage)  
14          penalizing motorists for failing to carry defined lim-  
15          its of tort liability insurance covering motor vehicle  
16          accidents;

17          (4) “insurer” includes a person who is self-in-  
18          sured within the meaning of applicable State law;

19          (5) “intentional misconduct” means conduct  
20          whereby harm is intentionally caused or attempted  
21          to be caused by one who acts or fails to act for the  
22          purpose of causing harm or with knowledge that  
23          harm is substantially certain to follow when such  
24          conduct caused or substantially contributed to the

1 harm claimed for, except a person does not inten-  
2 tionally cause or attempt to cause harm—

3 (A) merely because his or her act or failure  
4 to act is done with the realization that it cre-  
5 ates a grave risk of causing harm; or

6 (B) if the act or omission causing bodily  
7 harm is for the purpose of averting bodily harm  
8 to oneself or another person;

9 (6) “motor vehicle” means a vehicle of any kind  
10 required to be registered under the provisions of the  
11 applicable State law relating to motor vehicles;

12 (7) “net economic loss”—

13 (A) means economic loss, including when  
14 payable based on fault, a reasonable attorney’s  
15 fee calculated on the basis of the value of the  
16 attorney’s efforts as reflected in payment to the  
17 attorney’s client; and

18 (B) excludes amounts paid or payable  
19 under—

20 (i) Federal, State, or private disability  
21 or sickness programs;

22 (ii) Federal, State, or private health  
23 insurance programs;

24 (iii) employer wage continuation pro-  
25 grams;

1 (iv) workers' compensation or similar  
2 occupational compensation acts; and

3 (v) any other source of payment in-  
4 tended to compensate such individual for  
5 injuries resulting from a motor vehicle ac-  
6 cident, including amounts paid under per-  
7 sonal protection insurance or tort mainte-  
8 nance coverage;

9 (8) "no-fault motor vehicle law" means a stat-  
10 ute under which those injured in motor vehicle acci-  
11 dents are paid without regard to fault for their pecu-  
12 niary losses as a result of personal injury, in return  
13 for which claims based on fault including for non-  
14 pecuniary losses, are to a defined extent limited;

15 (9) "noneconomic loss" means subjective, non-  
16 monetary losses including pain, suffering, inconven-  
17 ience, mental suffering, emotion distress, loss of so-  
18 ciety and companionship, loss of consortium, hedonic  
19 damages, injury to reputation, and humiliation;

20 (10) "person" means any individual, corpora-  
21 tion, company, association, firm, partnership, soci-  
22 ety, joint stock company, or any other entity (includ-  
23 ing any governmental entity);

24 (11) "personal protection" means an insurance  
25 contract payable without regard to fault for net eco-

1        nomic loss due to personal injury resulting from a  
2        motor vehicle accident, along with waiver of tort  
3        claims pursuant to this Act;

4            (12) “replacement service loss” means expenses  
5        reasonably incurred in obtaining ordinary and nec-  
6        essary services from others, not members of the in-  
7        jured person’s household, in lieu of the services the  
8        injured person would have performed for the benefit  
9        of the household;

10           (13) “resident relative or dependent” means a  
11        person related to the owner of a motor vehicle by  
12        blood, marriage, adoption, or otherwise (including a  
13        dependent receiving financial services or support  
14        from such owner), and residing in the same house-  
15        hold at the time of accidental personal injury, and  
16        a person resides in the same household if he or she  
17        usually makes his or her home in the same family  
18        unit, even though temporarily living elsewhere;

19           (14) “serious bodily injury” means bodily injury  
20        which results in death, dismemberment, significant  
21        and permanent loss of an important bodily function,  
22        or significant and permanent scarring or disfigure-  
23        ment;

24           (15) “State” means any State of the United  
25        States, the District of Columbia, the Commonwealth

1 of Puerto Rico, Guam, the Virgin Islands, American  
2 Samoa, the Northern Mariana Islands, the Trust  
3 Territories of the Pacific Islands, and any other ter-  
4 ritory or possession of the United States;

5 (16) “tort liability” means the legal obligation  
6 for payment of damages caused by one adjudged to  
7 have committed a tort;

8 (17) “tort liability insurance” means insurance  
9 by the terms of which an insurer agrees to pay, on  
10 behalf of an insured, damages the latter is obligated  
11 to pay a third person because of his or her liability  
12 to that third person;

13 (18) “tort maintenance coverage” means cov-  
14 erage under which a tort liability insured, when in-  
15 volved in an accident with a personal protection in-  
16 sured, retains his or her right to claim for personal  
17 injury under State law without modification by any  
18 provision of this Act, except that responsibility for  
19 payment for any such claim is assumed by his or her  
20 own insurer to the extent of such coverage under  
21 section 5(b)(1); and

22 (19) “uninsured motorist” means the owner of  
23 a motor vehicle, including his or her resident rel-  
24 atives, uninsured for either personal protection or  
25 tort liability insurance at the limits prescribed by the

1 applicable State's financial responsibility law or  
 2 higher under section 5(a)(2)(A).

3 **SEC. 5. MOTOR VEHICLE PERSONAL PROTECTION INSUR-**  
 4 **ANCE.**

5 (a) INSURANCE POLICY PROVISIONS.—(1) An insur-  
 6 ance policy that includes provisions that entitle the in-  
 7 sured to receive, without regard to fault or lack of fault,  
 8 the insured's net economic losses caused by an injury  
 9 along with an express, specific waiver of tort rights as pro-  
 10 vided in the insurance policy shall be valid notwithstand-  
 11 ing any contrary provisions of State law.

12 (2) In order for a personal protection insurance policy  
 13 to be covered by this Act, a motor vehicle insurance policy  
 14 issued by an insurer shall, at a minimum—

15 (A) provide personal protection coverage of the  
 16 greater of—

17 (i) up to the minimum limits of liability in-  
 18 surance for personal injury under the State's fi-  
 19 nancial responsibility law; or

20 (ii) in a State covered by a no-fault motor  
 21 vehicle insurance law, up to the minimum level  
 22 of insurance required for no-fault benefits; and

23 (B) contain provisions under the State's finan-  
 24 cial responsibility law, including those related to li-  
 25 ability for property damage, except to the extent

1 State law would bar contractual provisions giving ef-  
2 fect to personal protection authorizations set forth in  
3 this Act, or to the extent that State law would be  
4 contrary to other provisions of this Act.

5 (3) A personal protection insurer is authorized to  
6 contract to pay personal protection benefits periodically as  
7 losses accrue. Unless the treatment or expenses related  
8 thereto are in reasonable dispute, an insurer who does not  
9 pay a claim for net economic loss covered by a personal  
10 protection insurance under this Act within 30 days after  
11 payment is due, shall pay the loss compounded at a rate  
12 of 50 percent per annum, as liquidated damages and in  
13 lieu of any penalty or exemplary damages.

14 (b) OPERATION OF THE RIGHT TO CHOOSE.—(1)  
15 Under this Act, in lieu of buying traditional tort liability  
16 insurance for personal injury to protect third parties, mo-  
17 torists have the right to choose personal protection which  
18 will be available to themselves and their family members  
19 in the event of a motor vehicle accident, including the  
20 amount of financial protection they deem appropriate and  
21 affordable for themselves and such others. As an alter-  
22 native, motorists have the right to elect traditional tort  
23 liability coverage for personal injury at the minimum lim-  
24 its (or higher) under the State's financial responsibility  
25 law.

1           (2)(A) A motorist who chooses traditional tort liabil-  
2 ity has automatically included in such coverage tort main-  
3 tenance coverage at least at the equivalent of the mini-  
4 mum levels of insurance under the higher of—

5                   (i) the State’s financial responsibility law for  
6           personal injury; or

7                   (ii) the State’s no-fault motor vehicle law, if ap-  
8           plicable.

9           (B) A motorist described under subparagraph (A)  
10 who is involved in an accident with another motorist re-  
11 mains subject to tort law for personal injury except that,  
12 based on fault, such motorist—

13                   (i) may be claimed against by those covered by  
14           personal protection insurance or tort maintenance  
15           coverage only for net economic loss; and

16                   (ii) may not claim against those covered by per-  
17           sonal protection insurance or tort maintenance cov-  
18           erage except for net economic loss.

19           (C)(i) With respect to a claim under subparagraph  
20 (B)(ii), a deduction is made against the recovery equal to  
21 the limits of tort maintenance coverage applicable to the  
22 economic loss of the claimant.

23                   (ii) One-half of any amount paid under tort mainte-  
24 nance coverage referred to under clause (i) shall be  
25 deemed payable for economic loss.

1           (3) A motorist who chooses personal protection cov-  
2 erage and who is involved in an accident with another such  
3 motorist is compensated under his or her own policy for  
4 net economic loss only without regard to fault. But if the  
5 motorist sustains net economic loss in excess of his or her  
6 policy's benefit levels, that person retains the right to  
7 claim and sue for net economic loss based on fault.

8           (4) If a motorist who has chosen personal protection  
9 coverage is involved in an accident with an uninsured mo-  
10 torist, the personal protection insured is compensated for  
11 net economic loss without regard to fault according to the  
12 terms of his or her personal protection policy, and has the  
13 right to claim against the uninsured motorist for net eco-  
14 nomic loss based on fault. The uninsured motorist forfeits  
15 the right to claim for noneconomic loss against the motor-  
16 ist who has chosen the personal protection policy.

17           (5)(A) A motorist who chooses either personal protec-  
18 tion insurance or tort liability insurance also binds by such  
19 choice his or her resident relatives, provided that—

20                   (i) an adult resident relative shall not be bound  
21 without his or her consent, which, in the absence of  
22 express consent, shall be implied when the relative is  
23 present in a motor vehicle operated by the motorist;  
24 and

1           (ii) insurers are authorized to specify reason-  
2           able terms and conditions governing the commence-  
3           ment, duration, and application of the chosen cov-  
4           erage depending on the number of motor vehicles  
5           and owners thereof in a household.

6           (B) In order to minimize conflict between the two op-  
7           tions under subparagraph (A), insurers are authorized to  
8           maintain underwriting rules that encourage uniformity  
9           within a household.

10          (6) A personal protection insured retains the right  
11          to claim, and remains subject to a claim, for driving under  
12          the influence of alcohol or illegal drugs, both as defined  
13          by State law, or for intentional misconduct.

14          (7) A personal protection insured claims personal  
15          protection benefits in the following priority:

16               (A) The personal protection of an employer if  
17               the person injured is an employee of the employer  
18               and the accident occurs while the employee is acting  
19               within the scope of the employee's employment.

20               (B) The personal protection under which the in-  
21               jured person is or was an insured.

22               (C) The personal protection covering a motor  
23               vehicle involved in the accident, if the person injured  
24               was an occupant or was struck by such motor vehi-  
25               cle at the time of the accident.

1 (8) A personal protection insurer is authorized to  
2 write personal protection coverage—

3 (A) without any deductible or subject to a rea-  
4 sonable deductible not to exceed \$1,000; and

5 (B) with an exclusion of coverage for persons  
6 driving under the influence of alcohol or illegal  
7 drugs.

8 (9) A personal protection insurer is subrogated, to  
9 the extent of its obligations, to all of the rights of its per-  
10 sonal protection insured with respect to an accident caused  
11 in whole or in part, as determined by applicable State law,  
12 by the negligence of an uninsured motorist or driving  
13 under the influence of alcohol or illegal drugs, or caused  
14 in whole or in part by intentional misconduct or any per-  
15 son who is not affected by the limitations on tort rights  
16 and liabilities under this Act.

17 (10) Any person lawfully uninsured under the terms  
18 of State law for either personal protection or tort liability  
19 insurance retains his or her tort rights in a form unaf-  
20 fected by this Act.

21 (c) RENEWAL OR CANCELLATION.—An insurer shall  
22 not cancel, fail to renew, or increase the premium of its  
23 insured solely on account of the insured or any other in-  
24 jured person making a claim for personal protection bene-  
25 fits or, where there is no basis for ascribing fault to the

1 insured or one for whom the insured is vicariously liable,  
2 for tort maintenance coverage.

3 (d) IMMUNITY.—No insurer or any agent or employee  
4 of such insurer, no insurance producer representing a  
5 motor vehicle insurer or any automobile residual market  
6 plan, and no attorney licensed to practice law within this  
7 State shall be liable in an action for damages on account  
8 of an election of the tort liability option, an election of  
9 the personal protection option, or a failure to make a re-  
10 quired election, unless such person has willfully misrepre-  
11 sented the available choices or has fraudulently induced  
12 the election of one system over the other.

13 (e) RULE OF CONSTRUCTION.—Nothing in this Act  
14 shall be construed—

15 (1) to waive or affect any defense of sovereign  
16 immunity asserted by any State under any law or by  
17 the United States;

18 (2) to preempt State choice-of-law rules with re-  
19 spect to claims brought by a foreign nation or a citi-  
20 zen of a foreign nation;

21 (3) to affect the right of any court to transfer  
22 venue, to apply the law of a foreign nation, or to dis-  
23 miss a claim of a foreign nation or of a citizen of  
24 a foreign nation on the ground of inconvenient  
25 forum;

1           (4) subject to paragraph (1), to create or vest  
2 jurisdiction in the district courts of the United  
3 States over any motor vehicle accident liability or  
4 damages action subject to this Act which is not oth-  
5 erwise properly in the United States District Court;

6           (5) to prevent insurers and insureds from con-  
7 tracting to limit recovery for lost wages and income  
8 under personal protection coverage such that only 60  
9 percent or more of lost wages or income is covered,  
10 or to offset death benefits under personal protection  
11 coverage by amounts paid for lost wages and re-  
12 placement service losses;

13           (6) to prevent an insurer from contracting with  
14 personal protection insureds, as permitted by State  
15 law, to have submitted to arbitration any dispute  
16 with respect to payment of personal protection bene-  
17 fits;

18           (7) to relieve a motorist of the obligations im-  
19 posed by State law to purchase tort liability insur-  
20 ance for personal injury to protect third parties who  
21 are not affected by the immunities of subsection (b);  
22 and

23           (8) to preclude a State from enacting, for all  
24 motor vehicle accident cases including cases covered  
25 by this Act, a minimum dollar value for defined

1 classes of cases involving death or serious bodily in-  
2 jury.

3 **SEC. 6. APPLICABILITY TO STATES; CHOICE OF LAW; JURIS-**  
4 **DICTION; AND CONSTRUCTION.**

5 (a) ELECTION OF NONAPPLICABILITY BY STATES.—

6 This Act shall not apply in a State if such State enacts  
7 a statute that—

8 (1) cites the authority of this subsection; and

9 (2) declares the election of such State that this  
10 Act shall not apply.

11 (b) NONAPPLICABILITY TO STATE BY STATE FIND-  
12 ING.—(1) This Act shall not apply in a State, if—

13 (A) the State official charged with jurisdiction  
14 over insurance rates for motor vehicles makes a find-  
15 ing that the statewide average motor vehicle pre-  
16 miums in effect immediately before the effective date  
17 of this Act for personal injury will not be reduced  
18 by an average of at least 30 percent for persons  
19 choosing personal protection coverage in lieu of tra-  
20 ditional tort liability pursuant to this Act (without  
21 including any cost for uninsured or underinsured or  
22 medical payments coverages);

23 (B) the finding described under subparagraph

24 (A) is supported by evidence adduced in public hear-

1 ing and reviewable under the State’s administrative  
2 procedure law; and

3 (C) the finding described under subparagraph  
4 (A) and any review of such finding described under  
5 subparagraph (B) occurs no later than 60 days after  
6 the date of the enactment of this Act.

7 (2) Premiums for personal injury referred to under  
8 paragraph (1)(A) include premiums for—

9 (A) personal injury liability, uninsured and  
10 underinsured motorists’ liability, and medical pay-  
11 ments coverage; and

12 (B) if applicable—

13 (i) no fault benefits under no fault motor  
14 vehicle law; or

15 (ii) similar benefits under a law not limit-  
16 ing claims based on fault for nonpecuniary  
17 losses.

18 (c) CHOICE OF LAW.—In disputes between citizens  
19 of States that elect nonapplicability under subsection (a)  
20 and citizens of States that do not so elect, ordinary choice  
21 of law principles shall apply.

22 (d) JURISDICTION.—This section shall not confer ju-  
23 risdiction on the district courts of the United States under  
24 section 1331 or 1337 or title 28, United States Code.

1           (e) CONSTRUCTION.—Nothing in this Act shall alter  
2 or diminish the authority or obligation of the Federal  
3 courts to construe the terms of this Act.

4 **SEC. 7. EFFECTIVE DATE.**

5           This Act shall take effect 60 days after the date of  
6 the enactment of this Act.

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