

THE FEASIBILITY AND IMPACT OF AN INSURE-THE-DRIVER PROGRAM FOR PHILADELPHIA

Staff Analysis by the Joint State Government Commission
Pursuant to Act 6 of 1990, Section 29



General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
February 1991

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TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report assessing the feasibility and impact of enacting an insure-the-driver automobile insurance system for Philadelphia. This study was mandated by section 29 of 1990 Act No. 6.

The Commission recognizes with gratitude the assistance of the Insurance Department, the Department of Transportation, the Pennsylvania Assigned Risk Plan and the many individuals and organizations who helped the staff gather the information and formulate the analysis contained in this report.

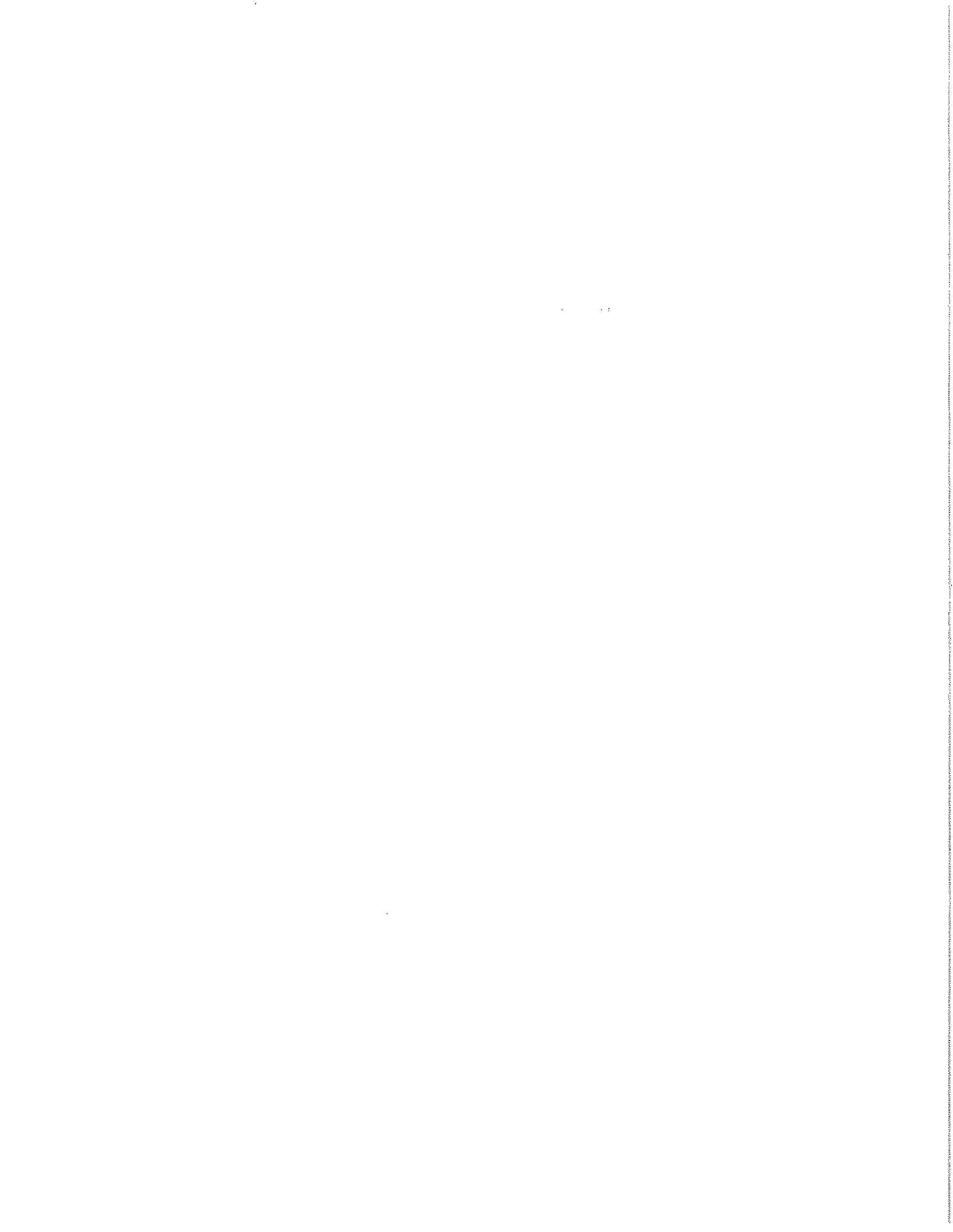
Respectfully submitted,

Roger A. Madigan
Chairman



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I. INTRODUCTION

Section 29 of Act No. 6 enacted February 7, 1990 (P.L.11) provides:

The Joint State Government Commission shall, in relation to motorists in cities of the first class [i.e., Philadelphia], make a study to assess the feasibility and impact of mandating that, upon application for or renewal of an operator's license, a driver remit moneys for the purchase of a basic automobile insurance policy. This policy would provide minimum levels of mandated coverages for bodily injury and property damage liability and for medical benefits. The assessment shall also include an analysis of the administrative cost and premium cost to the individual.

Senator Frank A. Salvatore has said, "In Philadelphia our biggest problem is the uninsured motorist."¹ The high proportion of uninsured drivers in Philadelphia is both a cause and a result of the high cost of auto insurance in that city. The General Assembly has expressed an interest in ascertaining whether financial responsibility compliance in Philadelphia could be improved by

¹Remarks on Report of Committee of Conference, HB 121 (Pr.'s No. 3051), Senate Journal, February 7, 1990, p. 1705.

restructuring the auto insurance system from an insure-the-vehicle to an insure-the-driver system.

What follows is an analysis of the insure-the-driver system which reviews the consequences to the automobile insurance system of the relatively high proportion of uninsured drivers in Philadelphia, examines current provisions directed at improving public compliance with the financial responsibility requirements and discusses the general concept of an insure-the-driver system. Alternative plan designs to implement such a system are considered with an analysis of administrative costs to the State and premium costs to the individual. The report concludes with a review of constitutional and other legal issues as well as feasibility and impact of enacting that system for Philadelphia.

II. THE UNINSURED DRIVER

Drivers who fail to purchase automobile insurance adversely affect the automobile insurance system in two different ways. Uninsured drivers fail to contribute premiums to the fund from which claims and administrative costs are paid and profits are earned. Also, insured drivers pay additional premiums to obtain coverage for accidents with uninsured drivers. Hit-and-run drivers, whether insured or not, and drivers of stolen vehicles similarly increase the cost to insured drivers for coverage, because then no coverage is available to respond to third-party claims.

The following factors affect the number of uninsured drivers:

- (1) The type of law in effect: compulsory liability insurance or financial responsibility. Under compulsory auto insurance laws every owner of a registered vehicle is required to carry automobile liability insurance or to post a bond. Pennsylvania's law falls within this class. See 75 Pa.C.S. Ch. 17, Subch. H. As of 1986, thirty-six states had compulsory insurance laws while the

remaining states had financial liability laws.² Compulsory insurance does not always result in a significant reduction in the number of uninsured drivers. Of eleven states that adopted compulsory laws in the period 1975-1985, six states reported no noticeable change in their uninsured population, and only three states reported a decrease of more than 20 percent. Although compulsory insurance laws require the purchase of insurance, some drivers nevertheless remain uninsured. However, the majority of drivers voluntarily purchase bodily injury coverage above the mandated minimum limits.³

- (2) The effectiveness of enforcement of the law. Among the types of enforcement activities are self-certification, proof of financial responsibility at initial registrations and renewals, similar proof at vehicle inspection, police enforcement and cancellation reports from insurance companies. The quality of enforcement may be as important as the type of enforcement. Cancellation

²Financial liability statutes require a driver who has caused an accident involving bodily injury or damage to another person's property in excess of a stated amount or who has been convicted of a major traffic violation to provide proof of future financial responsibility by purchasing the required minimum amount of liability insurance or depositing collateral with the state. Pennsylvania had this type of law until 1974.

³All-Industry Research Advisory Council, Uninsured Motorists, 1989, p. 29.

reports, for example, are only effective in the states which follow through to make certain that drivers' licenses and license plates are recovered if the driver fails to purchase replacement coverage.⁴

(3) The cost of automobile insurance. No strong correlation is found between states with high insurance costs and states with a high proportion of claims against uninsured motorists. Some states (e.g., New York, Connecticut, New Hampshire and Massachusetts) which have relatively high auto insurance costs but have higher than average per capita incomes, do not have a high proportion of uninsured motorists. High cost generally deters only drivers without significant assets.⁵

(4) The socioeconomic characteristics of the owners of vehicles. A survey of approximately 1,500 respondents shows that people with more education, who own their own home, have a higher personal income⁶ or are older are more likely than others to purchase automobile liability insurance to protect their assets from a lawsuit.⁷

⁴Ibid., p. 36.

⁵Ibid., p. 34.

⁶Welfare recipients in Hawaii receive free auto insurance under a state program which recognizes the difficulty that low income people have in purchasing insurance. However, insurance officials there estimate that approximately one out of six automobiles is uninsured despite the program. New York Times, September 3, 1990, sec. A, p. 10.

⁷Uninsured Motorists, p. 29.

For example, the percentages of licensed vehicles and uninsured vehicles vary considerably by the respondents' ages, as table 1 shows.

Table 1
 PERCENTAGES OF OWNERS OF LICENSED AND
 UNINSURED VEHICLES BY RESPONDENT'S AGE
 1988

Respondent's age	Percentage of owners of licensed vehicles	Percentage of owners of uninsured vehicles
18-20	7%	14%
21-24	7	12
25-29	14	26
30-34	13	18
35-44	19	17
45-54	14	4
55-64	12	6
65 years +	13	3
No answer	3	0

SOURCE: All-Industry Research Advisory Council, Uninsured Motorists, 1989, table 17, p. 30.

Respondents under the age of 30 own 28 percent of the licensed vehicles, but 52 percent of the uninsured vehicles; respondents over the age of 45 own 39 percent of the licensed vehicles, but only 13 percent of the uninsured vehicles.

In 1988, there were over 140 million automobiles registered in the United States.⁸ It is estimated that today as many as 17 million

⁸U. S. Bureau of the Census, Statistical Abstract of the United States, 1990 (110th edition) Washington, D.C., 1990, p. 603.

people drive without insurance; these drivers cause one out of every eight serious automobile accidents, a 40 percent increase during the last decade.⁹

The extent of the uninsured driver problem in Philadelphia is confirmed by data from the Department of Transportation (hereinafter referred to as PennDOT) and the Insurance Department as shown in table 2.

Table 2
DRIVERS LICENSES ISSUED,
PASSENGER VEHICLES REGISTERED AND INSURED
PENNSYLVANIA AND PHILADELPHIA
1990

	Pennsylvania	Philadelphia	Percentage of Philadelphia to State
Driver's Licenses	7,799,455	678,006	9%
Vehicles Registered	6,345,308	475,723	7
Vehicles Insured:*			
Voluntary	6,185,203	299,028	5
Assigned Risk	164,001	20,049	12
Total	6,349,204	319,077	5

*Since most insurance policies are issued for a six-month period, the number of insured vehicles is inflated by double-counting between insurers of passenger vehicles when vehicle owners changed insurers; the number is also subject to erroneous information from some companies.

SOURCE: Driver's Licenses: Bureau of Driver Licensing, Department of Transportation; Passenger Vehicles Registered: Bureau of Motor Vehicles, Department of Transportation; Vehicles Insured: Bureau of Property and Casualty Insurance, Insurance Department.

⁹New York Times, September 2, 1990, sec. A, p. 1.

As these data indicate, Philadelphia has a low percentage of insured vehicles compared to its relative percentage of either vehicles registered or drivers licensed in the State.

The Insurance Department estimates that, as of 1987, 31.5 percent of all vehicles in Philadelphia were uninsured compared to 10.7 percent of all vehicles in the State.¹⁰

An informative measure of the extent of the uninsured driver problem is the ratio of uninsured motorist (UM) claim frequency to bodily injury (BI) claim frequency. Using claim data for 1986, the UM to BI claim frequency ratio was .129 for the United States; in other words, for every 100 bodily injury claims there were approximately 13 uninsured motorists claims.¹¹ In Pennsylvania as a whole, this ratio was only .097. The ratio for the city of Pittsburgh (.134) was slightly higher than the national average. In Philadelphia, however, the ratio was .361, which means that roughly 36 percent of the passenger vehicles involved in bodily injury accidents were uninsured.¹²

A 1988 national study made by the Insurance Services Office, Inc. finds that the claim frequency against uninsured motorist coverage in Philadelphia was 11.22 times the claim frequency

¹⁰Letter to Joint State Government Commission from Patrick Musick, Director of Bureau of Property and Casualty Insurance, Insurance Department, October 26, 1990.

¹¹Uninsured Motorists, 1989, p. 1.

¹²Ibid., p. 28.

relativity¹³ in Pennsylvania as a whole for a recent five-year period. Table 3 shows that Philadelphia had by far the greatest deviation from its state in this category among the 17 cities supplying data for this portion of the survey.

Table 3

UNINSURED MOTORIST RELATIVITIES FOR SELECTED CITIES
FIVE-YEAR PERIOD IN MID-1980s

City	Claim frequency relativity	Rank
Philadelphia	11.22	1
Newark	6.16	2
Detroit	4.06	3
Cleveland	3.81	4
Baltimore	3.73	5
Miami	3.72	6
Los Angeles	3.65	7
New York City	3.62	8
Chicago	3.34	9
Milwaukee	3.18	10
Columbus	1.17	11
Seattle	1.06	12
San Francisco	0.92	13
Nashville	0.88	14
San Jose	0.59	15
San Diego	0.56	16
Jacksonville	0.47	17

SOURCE: Insurance Services Office, Inc., Factors Affecting Urban Auto Insurance Costs, 1988, table 12, p. 15.

¹³Relativity is defined as the ratio of a given statistic between two areas. In this report relativity is calculated between a city and its state as a whole. Thus, for example, if the insurance loss cost were \$1,000 per insured in Philadelphia and \$250 per insured in Pennsylvania, the relativity of loss costs per insured between Philadelphia and Pennsylvania would be 4.00. Uninsured claim frequency is the number of claims on uninsured motorist coverage per 1,000 insured automobiles. Insurance Services Office, Inc., Factors Affecting Urban Auto Insurance Costs, December 1988, pp. 15, 43.

The data in table 4 show that Philadelphia had the highest relativity for liability insurance loss costs (3.99) and the fourth highest relativity for comprehensive insurance loss costs (2.59) of any of the selected cities in the survey, compared to its entire state.

Table 4

LOSS COST RELATIVITIES TO STATE
FIVE-YEAR PERIOD IN MID-1980s

City	Liability Relativity	Rank	Comprehensive Relativity	Rank
Philadelphia	3.99	1	2.59	4
Baltimore	2.20	2	1.27	10
Newark	2.18	3	3.06	2
Los Angeles	2.18	3	1.96	9
Miami	1.76	5	2.24	6
New York City	1.65	6	3.23	1
Cleveland	1.62	7	2.19	7
Milwaukee	1.62	7	1.10	12
Chicago	1.61	9	2.06	8
Boston	1.57	10	2.88	3
Detroit	1.49	11	2.48	5
Seattle	1.16	12	1.02	13
Columbus	1.10	13	0.84	15
Nashville	1.08	14	0.83	16
San Francisco	1.03	15	1.17	11
Jacksonville	0.80	16	0.77	18
San Diego	0.79	17	0.88	14
San Jose	0.77	18	0.83	16

SOURCE: Insurance Services Office, Inc. Factors Affecting Urban Auto Insurance Costs, 1988, table 14, p. 20.

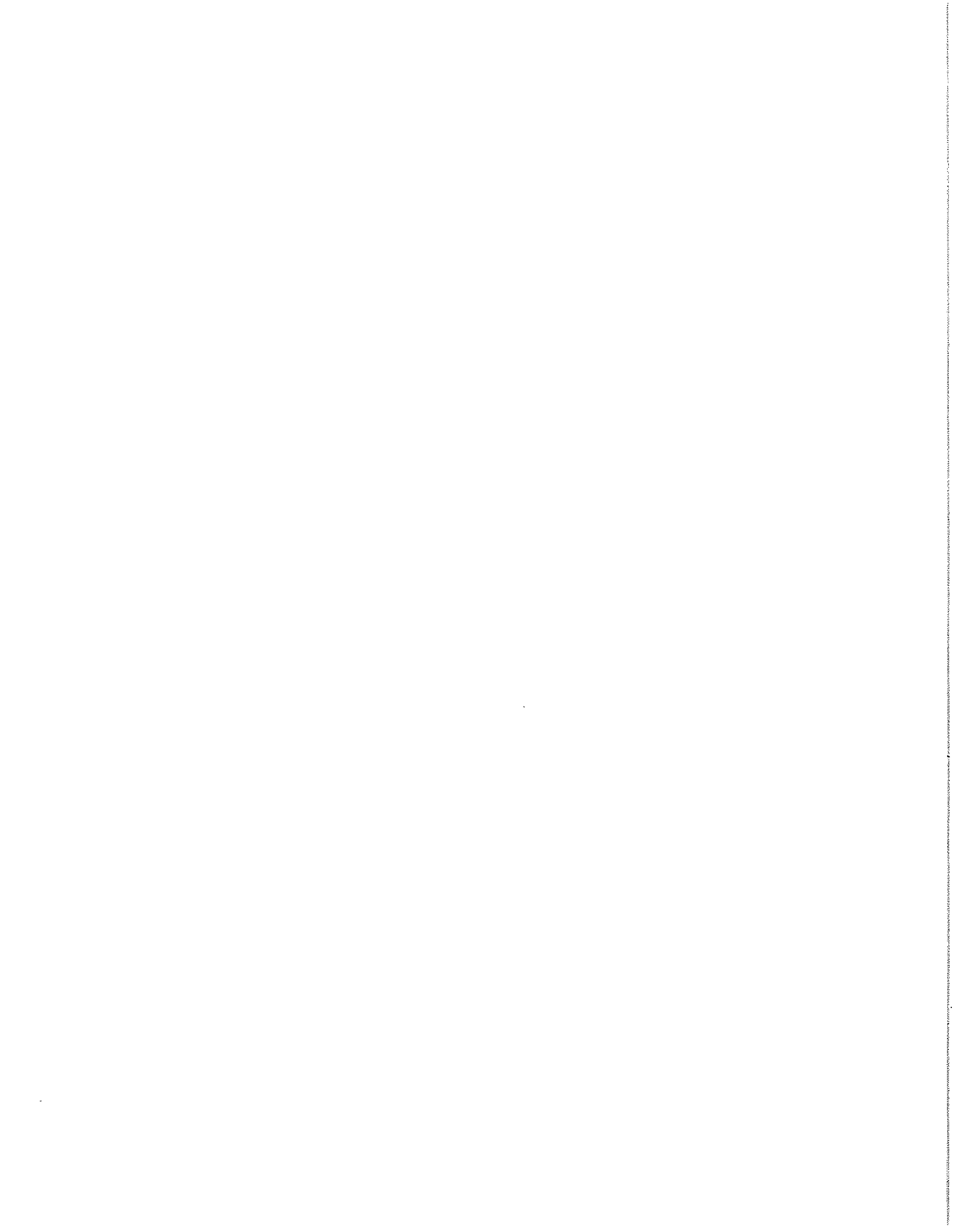
The Insurance Services Office study concludes that for personal injury coverages (bodily injury liability, personal injury protection, and uninsured and underinsured motorists), claim

frequency rather than claim severity is the major cause of the differences in loss costs between Philadelphia and the State of Pennsylvania.¹⁴ For property coverages (property damage liability and comprehensive) both claim frequency and claim severity contribute to the higher loss costs in Philadelphia.¹⁵

The large number of uninsured motorists in Philadelphia contributes to the high cost of insurance there. Accidents caused by these drivers outside of Philadelphia also result in higher insurance costs in the rest of the State.

¹⁴Claim frequency is the number of claims per 1,000 insured autos. Claim severity is the dollars of insured loss per insured claim. Loss cost is the dollars of insured loss per insured auto. Ibid., p. 43.

¹⁵Philadelphia has the highest claim severity for property damage liability (1.14) and the fourth highest for comprehensive (1.71). Ibid., p. 38.



III. CURRENT PENNSYLVANIA LAW

The Vehicle Code was amended by Act No. 6, which added provisions designed to lower the cost of automobile insurance and to strengthen enforcement of the law. As now amended, the Vehicle Code mandates that every vehicle of the type required to be registered in Pennsylvania must be covered by a policy satisfying the following financial responsibility requirements:¹⁶

- Liability coverage up to \$15,000 for injury to any one person in any one accident.
- Liability coverage up to \$30,000 for injury to any two or more persons in any one accident.
- Liability coverage up to \$5,000 for property damage in any one accident. 75 Pa.C.S. §§ 1702, 1786.

Insurers must include first-party medical coverage in the amount of \$5,000 with financial responsibility coverage. 75 Pa.C.S. § 1711.

Recent legislation and executive actions have addressed the problem of noncompliance with these requirements. Act No. 6 contains

¹⁶Persons subject to the financial responsibility requirements may self-insure under 75 Pa.C.S. § 1787. This report does not address this group.

numerous provisions to induce compliance by lowering premiums. Most significantly, the act requires insurance premium reductions of 10 percent for full-tort policyholders and 22 percent for those electing the limited-tort option. 75 Pa.C.S. § 1799.7. Statutory options are instituted for limited-tort recovery, waiver of uninsured and underinsured motorist coverage, and waiver of stacking with respect to that coverage. 75 Pa.C.S. §§ 1705, 1731, 1738. The act includes special provisions for reviewing insurers' motor vehicle rate requests. 75 Pa.C.S. Ch. 20.

Act No. 6 created a "clean risk" category within the assigned risk plan for previously uninsured drivers with relatively good driving records, insured drivers already in the plan and other applicants; those within this category are eligible to receive the insurer's voluntary rate. 75 Pa.C.S. §§ 1702, 1742. Rates have dropped an average of 40 percent for drivers who have avoided accidents and traffic violations for three years.¹⁷ The significant increase in applications under assigned risk from 1989 to 1990 are as follows:¹⁸

	<u>1989</u>	<u>1990</u>
August 14-31	9,207	20,727
September	12,495	33,188
October	14,498	36,799
November	12,531	30,773
December	9,865	23,662

¹⁷Philadelphia Inquirer, October 30, 1990, sec. B, p. 4.

¹⁸Telephone conversation between Joint State Government Commission and Heli LeBlanc, chair of the governing committee of Pennsylvania Assigned Risk Plan, January 29, 1991.

Superficially, these data could lead one to infer that the reduction in rates for those who qualify as "clean risks" is inducing previously uninsured drivers to obtain insurance under the assigned risk plan. However, such a conclusion could be premature, as other experience of the Pennsylvania plan indicates. In the past about 80 percent of assigned risk drivers have cancelled within their first year under the plan.¹⁹ The initial installment of 30 percent of the annual premium provides coverage for about three and one-half months. Many assigned risk drivers fail to pay later installments and either obtain voluntary coverage or return to the ranks of the uninsured. It may turn out that the clean risk insureds will follow a similar pattern.

Motor vehicle insurance fraud has been attacked by adding a comprehensively defined criminal offense (18 Pa.C.S. § 4117), requiring insurers to institute anti-fraud plans and adding a Motor Vehicle Insurance Fraud Index Bureau to the Insurance Department. 75 Pa.C.S. Ch. 18.

A multi-pronged initiative has commenced in order to enhance the enforcement of financial responsibility requirements. Owners are now required to show proof of financial responsibility upon their annual vehicle inspections and to certify coverage and to provide verification data prior to vehicle registrations. 75 Pa.C.S. §§ 1305, 1306, 1318, 4727(d). The Motor License Fund appropriation to

¹⁹Telephone conversation between Joint State Government Commission and Heli LeBlanc, July 26, 1990.

PennDOT for motor vehicle insurance compliance has been increased from \$409,000 (fiscal year 1989-90) to \$4,468,000 (fiscal year 1990-91). Cf., Act of July 1, 1989 (P.L. 801, No.3-A) § 1001 with the act of July 1, 1990 (P.L.____, No.7-A), § 901. Consequently, PennDOT has increased its goal for verifying mandatory insurance coverage by means of the information supplied on registration renewals, from 10 percent of Philadelphia registrants and 5 percent of registrants elsewhere, to 50 percent of Philadelphia registrants and 25 percent of registrants elsewhere.²⁰ Any person who registers his vehicle is deemed to have consented to produce proof of financial responsibility to PennDOT or to a police officer. 75 Pa.C.S. § 1786(c). Act No. 6 has also increased the personnel available for enforcing the financial responsibility requirements by permitting PennDOT to authorize sheriffs, constables and their respective deputies to recover license plates, registration cards and drivers' licenses that are suspended or terminated. 75 Pa.C.S. §§ 1376(b), 1540(c).

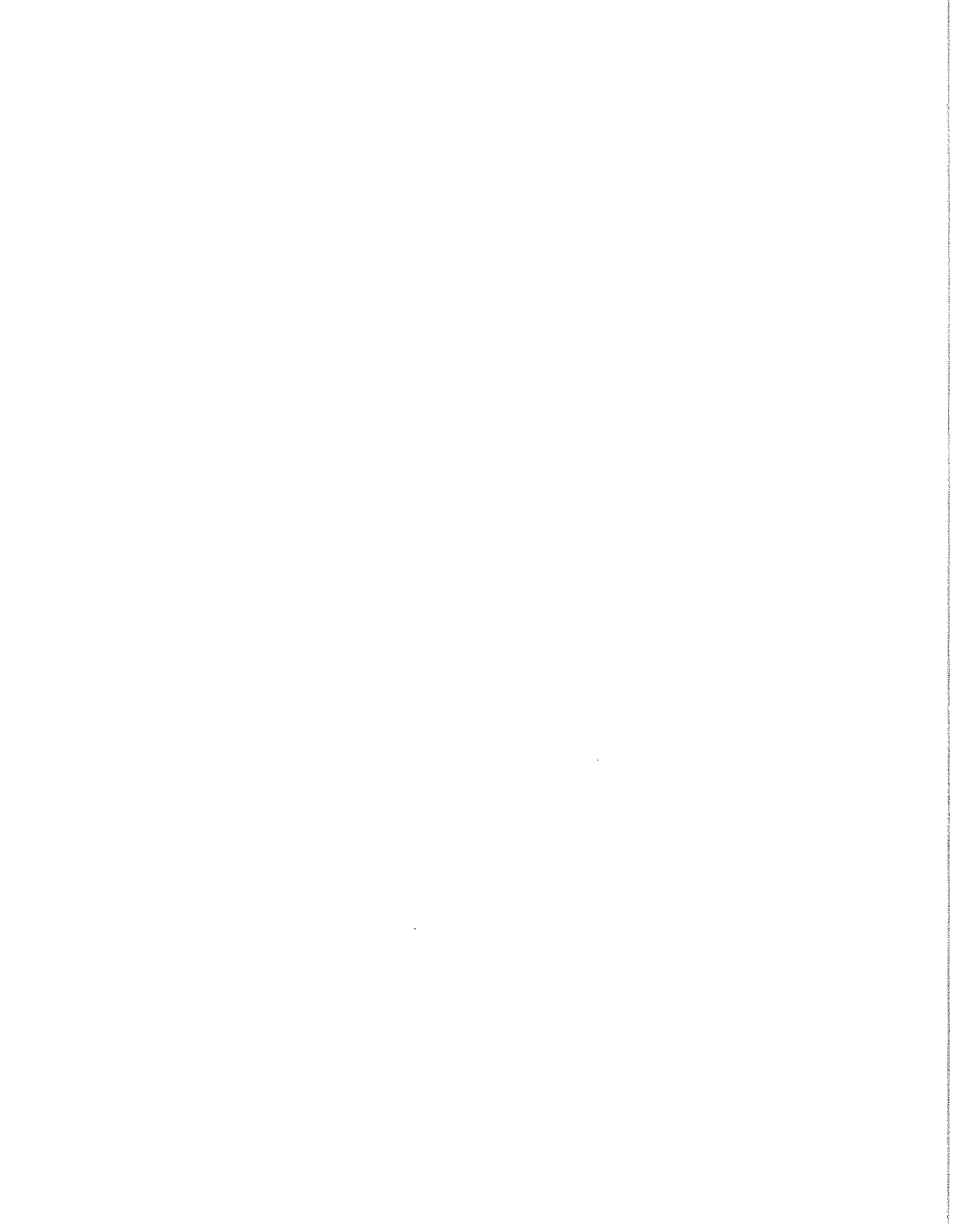
Penalties for noncompliance have been increased. Failure to demonstrate financial responsibility, now a summary offense, carries a fine of \$300 and results in suspension of the motor vehicle registration and the operator's license for three months. 75 Pa.C.S. § 1786(f). Mandatory coverage must be procured for the restoration of the registration and operator's license, and an additional \$50

²⁰Letter to the Joint State Government Commission from Howard Yerusalim, Secretary of Transportation, September 14, 1990.

fee must be paid for the restoration of each. 75 Pa.C.S. § 1960. The fine for failure to surrender revoked or suspended cards and plates has been increased from \$100 to \$300 plus costs, including a reasonable seizure fee. 75 Pa.C.S. § 1376(d).

Under provisions enacted prior to Act No. 6, driving without a license is a summary offense and generally carries a \$200 fine. 75 Pa.C.S. § 1543(a). Upon a subsequent offense, the operating privilege is suspended for six months. 75 Pa.C.S. § 1532(b)(2). If a person is found driving with a suspended license, the suspension is extended for an additional one-year period. If the driver's license had been previously revoked, the revocation is extended for two additional years. 75 Pa.C.S. § 1543. Conviction of three violations of 75 Pa.C.S. § 1543 within a five-year period, by itself or combined with conviction of certain other offenses within that period, results in license revocation for five years as a habitual offender. 75 Pa.C.S. § 1542.

Since Act No. 6 measures have been in place for only a limited time, their success in reducing the number of uninsured Philadelphia and other Pennsylvania vehicles cannot yet be precisely determined.



IV. INSURING THE DRIVER

The plan suggested in section 29 of Act No. 6 entails a fundamental shift in the structure of mandatory automobile insurance in Philadelphia from insuring the vehicle to insuring the driver. Under the latter system, insurance policies would be drafted to cover the driver rather than the vehicle. Each driver would be required to have mandatory coverage as a condition to obtaining a driver's license, rather than as a condition to registering the vehicle. At present, no state uses an insure-the-driver system. That system was utilized when the automobile first became a major form of transportation. The change to vehicle insurance is attributed to the development of the law of agency,²¹ with its expanded acceptance of the legal doctrine of vicarious liability, the legal concept by which an automobile owner is held liable for accidents caused by another driver of his vehicle if the driver is acting within the scope of the driver's employment or is otherwise the owner's agent, even though the owner is not personally at fault or even present at the accident.

²¹Insurance Services Office, Inc., "Insure-The-Driver" Auto Insurance, 1986, p. 1.

In the past, legislation has been introduced in the General Assembly to require all drivers in the State to purchase liability insurance for bodily injury and property damage as well as medical and uninsured motorist coverage from a State Motorist Insurance Board. Issuance or renewal of a driver's license would have been contingent upon the purchase of the insurance.²²

Proponents of an insure-the-driver approach point out that drivers, not vehicles, cause accidents. If proof of insurance is mandatory in order to obtain a driver's license, it is anticipated that more drivers will become insured and insurers will consequently reduce rates. Bernard Cullen, an advocate of the insure-the-driver system, explains the policy rationale behind it:

It is not the automobile by itself which does damage but the driver through negligence, recklessness or carelessness. Therefore, it would make more sense for liability insurance to be a function of the right to operate a motor vehicle, not a function of ownership.

License and liability coverage would be indexed with a person's driving record in Harrisburg, as driving violations are now. It would be impossible to obtain a license without proof of insurance

Consider the advantages: One of the biggest problems with the cost of automobile insurance coverage is that so many drivers are uninsured.

²²1979 Senate Bill 937 (Pr's. No. 1071), sponsored by Hankins and Smith; 1981 Senate Bill 1118 (Pr's. No. 1325), sponsored by Hankins; 1985 Senate Bill 1164 (Pr's. No. 1468), sponsored by Hankins, Helfrick, Salvatore, Andrezeski and Jones; 1987 Senate Bill 1186 (Pr's. No. 1630), sponsored by Hankins. None of these bills were reported from the committee to which they were referred.

While insurance coverage is required to purchase a vehicle, the policy can lapse when premiums go unpaid and the vehicle ceases to be insured. Someone else operating the car may not know if coverage is still in effect and cannot always be held responsible for not knowing. It is estimated that perhaps half the cars in Philadelphia are uninsured--and rates are prohibitive. Then when the driver of an uninsured vehicle causes an accident, the insurance companies for the vehicles which are insured end up bearing the costs, resulting in higher rates.

Also, households are rated as units and sometimes there are substantial costs simply because one member of the household is considered a high risk.

The system proposed is not a cure-all for unscrupulous lawyers, doctors, collision repair shops or litigious individuals; rather it is designed to get the uninsured, unlicensed motorists from behind the wheel. The fewer such people driving around, the safer our highways will be--and more likely that our insurance premiums will reflect this.²³

"Insure-the-Driver" Auto Insurance, a 1986 study by the Insurance Services Office, analyzes the implications of insuring the driver. The report sets forth the following advantages:

- A fair premium is charged, since only the insured's own driving history affects the premium that is charged.
- The insure-the-driver policy is simple and concise, as only the named insured is covered.
- Responsibility is placed on every driver, and not just auto owners, as each person's driving record will determine the premium he is charged.

²³Bernard Cullen, "Our Car Insurance System Is All Backward," Bucks County Courier-Times, July 6, 1990, sec. A, p. 6.

- The hazard present among one-car families is more appropriately measured.
- More underwriting and rating control is possible, as underwriters know exactly who their insureds are.
- Insurers can work more closely with drivers' license bureaus in obtaining driving record information of insureds.²⁴

The report also sets forth the following disadvantages:

- Since every licensed driver is required to have insurance, insurer administrative expenses and paperwork [are] increased.
- Auto owners must still be covered for ownership liability in certain situations.
- All licensed drivers must purchase insurance, which is not fair to the members of society who rarely drive but want to maintain drivers' licenses.
- The insurance costs for a one-car family are much more excessive than appropriate.
- There are no statistics on which to base rates, and wide ranges of classification exposures exist.²⁵

It should be added that uninsured drivers may choose to drive without a license if insurance becomes a condition for issuing the license. Others, facing higher family premiums as a result of the insure-the-driver system, may contrive to obtain licenses outside of Philadelphia.

²⁴"Insure-the-Driver" Auto Insurance, p. 4.

²⁵Ibid., pp. 5, 6.

V. PLAN DESIGNS TO INSURE THE DRIVER

There are several possible ways to implement the insure-the-driver concept in Philadelphia. For example, two proposals reviewed with PennDOT officials are:

- (1) A uniform premium for minimum basic coverage would be added to the driver's license fee for all Philadelphia applicants who are not in the assigned risk plan and a higher uniform premium added for those drivers who are in that plan. These premiums would be collected by PennDOT with license fees and distributed to insurers doing business in Pennsylvania on a market-share basis, or to the assigned risk plan, as the case may be.
- (2) Each Philadelphia driver would contract with an insurer of his choice to obtain at least minimum basic coverage. The carrier would send an invoice for such coverage to PennDOT, which would in turn forward it to the driver with his license application. Each driver could be

identified by the driver number on his license. When received, the insurance premium would be sent by PennDOT to the driver's insurer.

Under both plans, PennDOT would not issue or renew a driver's license if the insurance premium was not remitted with the initial application or renewal; the present procedure of verifying the insurance information supplied by the applicant would, therefore, become unnecessary.

A change to the first plan, with a uniform premium, would benefit and penalize different drivers. For example, in comparing families with an equal number of vehicles and drivers, drivers who live in ISO territory 01 (the more densely populated major portion of Philadelphia) would be likely to experience reductions in rates, while drivers in ISO territory 14 (the semi-suburban portion) would probably experience increases. Senior citizens would probably incur rate increases, while younger drivers may receive rate reductions. Insurers with strict underwriting guidelines or better claims experience, or both, can now offer lower premiums to prospective insureds than other insurers; a uniform premium plan would, by definition, eliminate this advantage. In short, a uniform premium would reduce the influence of underwriting risk factors in setting premium rates.

Since drivers would be assigned to specific insurers under a uniform premium plan, they would save the cost of commissions to

insurance agents. Many families, however, would have to deal with two or more insurance companies. A family of four drivers with two cars that now has one policy covering all cars and drivers could have to deal with as many as five policies with five different insurers. This plan also denies drivers their present freedom of choosing their own insurers. Many of those who wish to purchase supplemental coverage would face the choice between dropping their present insurer for all their auto coverage or dealing with two insurers for their own coverage; consequently, some might fail to purchase this coverage and thereby become underinsured.

The second plan would permit drivers freedom to choose their insurers and would not require them to deal with more than one carrier. Furthermore, this plan would permit insurers to set their own competitive rates, thus permitting premiums to reflect underwriting risks.

Both plans would present problems with the collection and remittance of premiums, since both require the transfer of premiums collected by PennDOT to the insurers. The second plan is likely to entail more administrative difficulty than the first plan, since the second requires transfer of invoices as well as funds.

The following alternative plan would implement the concept of insuring the driver but retain freedom of choice of insurers and avoid having the State act as collector of premiums.

The Commonwealth would require each driver to obtain mandatory minimum insurance coverage, covering the same term as the driver's license. Premiums could be prepaid in full or in installments, as arranged between the driver and his insurer. Coverages other than the minimum would be obtained by the driver or the owner of the vehicle as desired. Insurers would provide each driver with a "proof of mandatory coverage" statement, which would be submitted with the application for a license or renewal. PennDOT would verify the statements on a sample basis, using data provided by insurers. Assigned risk drivers would be handled in the same way as other drivers. Insurers would be required to provide PennDOT with prompt notification of each cancellation of mandatory coverage for any reason. Insurers would retain claim exposure under even a cancelled policy until PennDOT confirmed the receipt of its cancellation notice. PennDOT would require "proof of mandatory coverage" from the driver within a stated time on pain of suspension of the driver's license. Any driver found to have fraudulently obtained a "proof of mandatory coverage" statement and license would be guilty of a criminal offense.

VI. PREMIUM SAVINGS AND ADMINISTRATIVE COSTS

As presently uninsured drivers in Philadelphia purchase insurance, their premiums will contribute to the total revenue from which damage claims and administrative costs are paid and insurance company profits are earned. The damage claims and costs generated by presently uninsured drivers are reflected in the premiums charged to insured drivers for uninsured motorist coverage. If the number of drivers, accidents per driver and claims and costs per accident do not change, then as the number of uninsured drivers decreases, the premium per insured driver will decrease as insurers collect premiums from those previously uninsured.

Uninsured coverage cannot decrease to zero. There will still be uninsured drivers: (1) unlicensed Philadelphia drivers and (2) uninsured drivers from the rest of Pennsylvania and elsewhere. Therefore, the present total amount of uninsured premiums in Philadelphia represents an upper limit to the cost savings which could be expected. In fact, only some portion of this amount would likely be realized.

The Insurance Department estimates that in calendar year 1990, about 319,000 private passenger automobiles were insured in Philadelphia (see table 2), and the average \$15,000/\$30,000 uninsured motorist premium was about \$112 per insured vehicle.²⁶ Therefore, a total of nearly \$36 million in uninsured motorist premiums was collected. Since in the same year there were about 678,000 licensed drivers in Philadelphia (see table 2), the cost for uninsured motorist coverage averaged slightly more than \$50 per licensed driver. This amount is approximately the upper limit to the annual cost savings per licensed driver which could have been realized had all Philadelphia vehicles been insured in 1990.

The total and per-driver cost savings from an insure-the-driver program are only approximate, however, because at least two major factors which could affect these savings cannot be quantified. First, under an insure-the-driver program, underwriting risks would likely change because data on the use of vehicles by individual drivers--an important determinant of accident risk--would be very difficult to verify. Second, as more and more previously uninsured drivers become insured, insurance company administrative costs would likely increase less than proportionately due to

²⁶Letters to the Joint State Government Commission from Insurance Department, Alfred M. Manganiello, legislative liaison, January 14, 1991, and Michael Burkett, property and casualty actuary, January 31, 1991. The uninsured motorist premium estimate assumes that 50 percent of the insured elected limited tort coverage and that 50 percent of the insureds stacked their uninsured motorist limits.

economies of scale. Each of these factors would affect premiums but the extent of the effects are unknown.

The insuring of drivers rather than vehicles in Philadelphia would have a distributional effect. If a household has a large number of drivers per vehicle, then the sum of the premiums for the individual drivers in the household may be greater than the single premium for the vehicle or vehicles under present vehicle coverage; if a household has a small number of drivers per vehicle, the opposite may be true. If drivers rather than vehicles become the insurable unit, the average premium per driver will be lower than the average premium per vehicle because there are more drivers than vehicles in Philadelphia; however, the total premiums paid will increase for some households and decrease for others.

Pertaining to the cost of administering the first or second plan, in which PennDOT would be responsible for the collection and distribution of premiums, a Department official points out that:

It would be a huge undertaking to provide an annual invoice/collection of insurance premiums as part of the driver licensing system. A virtual overhaul of the system as it now exists would be needed.

Items such as forms redesign, equipment (computer terminals, printers, mail inserting machines, mail opening machines, remittance processing hardware and software, microfilming and

retrieval equipment) and space for facilities and people would carry substantial price tags.²⁷

If the General Assembly would adopt a plan such as the alternative plan outlined on page 28, there would be no need for additional personnel or new equipment. The personnel currently verifying vehicle insurance coverage for Philadelphia registrants could be shifted to verification of operator information.

²⁷Letter to the Joint State Government Commission from Philip H. VanBriggle, assistant director, Bureau of Driver Licensing, Department of Transportation, February 28, 1991.

VII. LEGAL ISSUES

The constitutionality of an insure-the-driver system may be challenged because the procedure for obtaining the privilege to drive would be different in Philadelphia from that of the rest of the Commonwealth. This territorial distinction is valid, however, under the Federal and Pennsylvania Constitutions.

Under Federal Equal Protection Clause analysis, a legislative classification is presumed to be valid; the opponent bears a heavy burden of showing otherwise. City of New Orleans v. Dukes, 427 U.S. 297 (1976). Unless the classification is based on a suspect classification (e.g., race or religion) or impinges on a fundamental right, the classification need only bear a rational relationship to a permissible state interest. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973). The framework of analysis under the Due Process Clause is similar. Commonwealth v. Strunk, ___ Pa. Superior Ct. ___, 582 A.2d 1326 (1990). Territorial discrimination is not constitutionally suspect. Salsburg v. Maryland, 346 U.S. 545 (1954); McGowan v. Maryland, 366 U.S. 420 (1961); San Antonio Independent School District v. Rodriguez, *supra*; McNelly Appeal, 122

Pa. Commonwealth Ct. 601 (1989). Nor is the right to drive considered constitutionally fundamental. Bell v. Burson, 402 U.S. 535 (1971); Norris v. Wood, 336 Pa. Superior Ct. 305 (1984); Strunk, supra; Bureau of Traffic Safety v. Slater, 75 Pa. Commonwealth Ct. 310 (1983).

The classification differentiating Philadelphia residents from other Pennsylvanians bears a rational relationship to the purposes of the plan. The proposal is intended to achieve lower insurance rates and to promote compliance with the statutory motor vehicle financial responsibility requirements. As Philadelphia is the city with both the highest insurance rates and the poorest compliance with those requirements, the General Assembly could reasonably consider Philadelphia the area where remedial action is most urgent. State legislatures need not attack all evils at once, but may use territorial or other classifications to concentrate the remedy where the need is greatest.

We find little substance to appellant's claim that distinctions based on county areas are necessarily so unreasonable as to deprive him of the equal protection of the laws guaranteed by the Federal Constitution. The Equal Protection Clause relates to equality between persons as such rather than between areas. . . . Territorial uniformity is not a constitutional requisite. Salsburg v. Maryland, 346 U.S. 545, 550-552 (1954).

Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1955). Cf. South Carolina v. Katzenbach, 383 U.S. 301 (1966) (applying this principle to a Federal law). If the plan were to achieve its objectives, the residents of Philadelphia would derive the greatest

benefit from the lower proportion of uninsured drivers and lower premiums.

Pennsylvania courts have held that Article I, sections 1 and 26, and Article III, section 32, of the Pennsylvania Constitution each provide guarantees similar to those embodied in the Federal Equal Protection Clause. Williamson v. City of Pittsburgh, 109 Pa. Commonwealth Ct. 168 (1987), appeal denied, 518 Pa. 622 (1988); Howe v. Smith, 203 Pa. Superior Ct. 212 (1964) (article I, § 1); U.S. Steel Corp. v. Workmen's Compensation Appeal Board (Mehalovich), 72 Pa. Commonwealth Ct. 481 (1983) (article I, § 26); Kroger Co. v. O'Hara Township, 481 Pa. 101 (1978) (article III, § 32). Article III, section 20, permits the General Assembly to classify municipalities on the basis of population without violating Article III, section 32, which prohibits passage of a "local or special law in any case which has been or can be provided for by general law." Accordingly, classification of municipalities according to population, far from being suspect, is specifically authorized by the Pennsylvania Constitution.

A second legal issue concerns adapting the insure-the-driver concept to the principle of vicarious liability. Under this principle, motor vehicle owners are responsible for the bodily injury or property damage that is caused by another legally using the motor vehicle as an agent under the control of the owner. Vicarious liability is widely considered necessary to provide fair compensation

for accident victims. An insure-the-driver policy can readily cover the owner for any accident involving his vehicle.

Even if all of the drivers in the State were insured, there could be unknown national repercussions in the automobile and truck leasing industry and in firms with company automobiles and trucks. Despite the requirement for drivers to purchase mandatory coverage, companies will still need to carry insurance to cover their vicarious liability.

Mr. Cullen suggests that, in the case of an accident caused by an uninsured driver acting as agent for the owner of the vehicle, damages to the victim would be covered in the following order of priority:

- (1) The driver's policy of the owner would cover the owner's vicarious liability. (This would usually apply because almost all individual owners are also drivers.)
- (2) The victim's Uninsured Motorist coverage would apply next.
- (3) The owner's supplemental collision coverage would apply if no other policy did.²⁸

²⁸Letter to Joint State Government Commission from Bernard Cullen, February 8, 1991.

VIII. OTHER ISSUES RELATING TO FEASIBILITY AND IMPACT

While the legal issues might not prove to be serious impediments, the practical problems in implementing an insure-the-driver plan could prove formidable. A program of this sort would require insurers to develop a special classification and rating system for Philadelphia, different from any used elsewhere in the nation. The use of two rating systems in the State would increase the regulatory burden on the Insurance Department. Furthermore, it may be anticipated that insurers and courts would face complex issues in determining which insurer bears primary responsibility when an accident takes place involving vehicles insured under different systems. Consequently, the insure-the-driver system may be feasible only if adopted for the whole State.

The Insurance Department also cautions that:

A classification plan for driver licensees would first have to be devised. The ratemaking considerations of a change in exposure base would require a revision of the experience collection process, and possibly an expansion of the policy declaration page. Several years of data, compiled

in a format that examines experience by category of driver, would have to be collected and examined in order to determine proper rates.²⁹

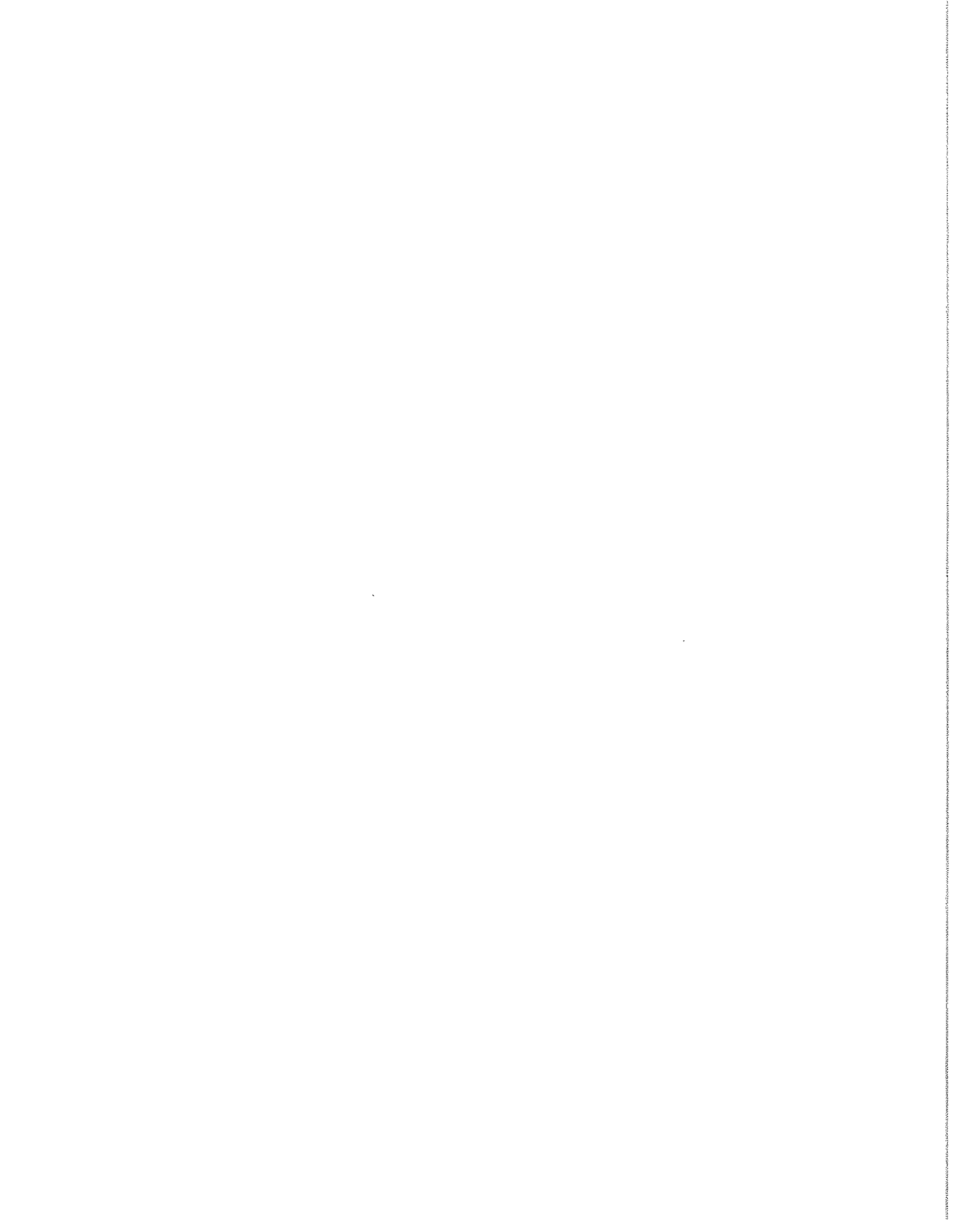
Of all the actuarial rating factors affecting auto insurance rates, miles of usage of the vehicle is the most difficult to verify and the easiest to falsify; the insure-the-vehicle system reduces the effect of this factor. Insurers rely on the working assumption that if a vehicle is insured, it will be driven for a substantial number of miles. In other words, there is a greater disparity in the use of vehicles by individual drivers than in the total usage of a given vehicle by all of its drivers. Consequently, the likelihood is that an insure-the-driver rating system is inherently less reliable than the current system.

The implementation of the plan could create a problem of public acceptance. There are licensed drivers who rarely or never drive, such as people who wish to keep a valid driver's license or who want to be authorized to drive in case of an emergency. A driver who must let his license lapse because he cannot afford insurance might face obstacles in getting his license restored. There could be more unlicensed drivers than at present. Under an insure-the-driver plan, many people may decide to drive without a license rather than to purchase the mandatory insurance.

The difficulty of monitoring partial premium payments of insurance accompanies any mandatory system that permits licensure of

²⁹Letter to Joint State Government Commission from Chester J. Szczepanski, chief actuary, Regulation of Rates and Policy, Insurance Department, December 19, 1990.

drivers unable to pay the full premium initially. Under the assigned risk plan, drivers are permitted to pay 30 percent of the premium when getting or renewing their licenses. However, 80 percent of assigned risk policyholders cancel participation in the plan in less than a year; no data are available to determine how many of these drivers obtain insurance elsewhere or how many drop coverage. This issue will be especially pertinent if Philadelphia drivers continue to have their licenses effective for four years. It is unlikely that many drivers would or could pay four years' premiums in advance.



IX. CONCLUSION

Uninsured drivers pose a problem, particularly in Philadelphia. As the relativity data cited in this report show, the disproportion between uninsured motorist claims in Philadelphia and Pennsylvania markedly exceeds that between other major cities and their states. The insure-the-driver concept is premised on the expectation that, by making it virtually impossible to secure a valid license without obtaining insurance, compliance with the legal coverage requirements will effectively be increased and that this greater compliance will in turn lead to lower premiums for all.

Three methods of administering an insure-the-driver program are examined in this report. The two in which PennDOT would collect premiums would entail substantial expenditures for administration; the alternative would not.

An examination of the legal issues involved in an insure-the-driver program indicates that the proposal is constitutional. Feasibility of implementation might require that the program be adopted statewide rather than in Philadelphia alone.

Since no jurisdiction in the United States uses this program, the consequences of adopting it are highly uncertain. Insurance companies would face enormous problems in properly assessing risks and calculating reasonable premiums. Until the plan has been in effect for a considerable period of time, insurers will have difficulty in calculating rates that are neither excessive or inadequate. It is therefore quite speculative to anticipate actual savings for insureds.

Recent legislation and enforcement measures adopted by the State to address the problem have not been in effect long enough to determine their effectiveness in reducing the proportion of uninsured drivers in Philadelphia and premiums in Pennsylvania. These measures should be given time to assess their impact and may make it unnecessary at this time to adopt a radical remedy with unknown consequences.

