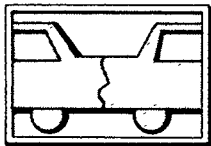
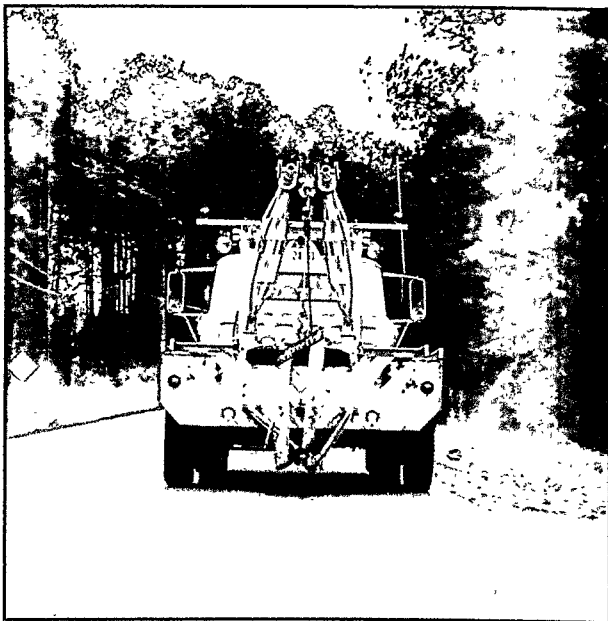


# Mandatory

## Liability

## Insurance



John Hall, the Georgia State professor, whose views have generally been in agreement with the traditional industry perspective put before the General Assembly, describes the North Carolina law this way: "The compulsory liability insurance system creates great pressure to make automobile insurance available. Perhaps most importantly from the viewpoint of insurers, it creates pressure to make automobile insurance affordable, regardless of the driver's hazard characteristics and ability to pay."

When drivers are accused of traffic violations, the importance of the availability of affordable insurance becomes clear. Lawyers, in advising their clients how to plead to a traffic violation, are often more concerned with the effect on their clients' insurance bills than with the fine, says Ben F. Loeb of the Institute of Government in Chapel Hill.<sup>12</sup>

The Division of Motor Vehicles certifies eligible drivers and, with the courts, oversees revocations and suspensions of drivers' licenses. This system is supposed to determine who can

drive. As a practical matter, however, liability insurance rates may price some drivers out of the market—low-income persons more quickly than others. Insurance executives concede that very high liability rates cause two types of cheating: having a car registered in someone else's name and not reporting violations.

Mandatory liability insurance is designed to protect the assets of the insured, says Hall. It is unfair to the poor not because rates might be high, contends Hall, but because the poor have no assets to protect. "The economically disadvantaged tend to be judgment proof," Hall says. "The compulsory liability insurance system forces people to pay a high insurance premium relative to their income for the benefits of others..."<sup>13</sup>

Most people have assets. They would be vulnerable in a civil suit and hence could not afford the risk of driving without liability insurance. They would continue to buy such coverage, reasons the industry, without the complications caused by a mandatory system. Meanwhile, uninsured and underinsured motorist coverage would protect drivers from those

who do not carry liability insurance or who carry lower limits. Much of the industry favors repealing the mandatory liability law.

In contrast to Hall's view, the North Carolina Supreme Court has held that "the primary purpose of the law requiring compulsory insurance is to furnish at least partial compensation to innocent victims who have suffered injury and damage as a result of the negligent operation of a motor vehicle upon the public highway."<sup>14</sup> In other words, if the state certifies a person eligible to drive, the state has an accompanying responsibility to ensure that every driver can meet to some degree any financial hardships caused by that driving. Mandatory liability coverage, reasoned the court, accomplishes that goal.

"Hall's point is valid, as is the court's," says Joseph E. Johnson, an insurance specialist in the Department of Business Administration at the University of North Carolina at Greensboro. "The key is that compulsory auto liability insurance laws distort the economic function of insurance."

The mandatory system adds political pressure to require insurers to accept all applications and to keep drivers from being priced out of the market. North Carolina has a fairly restrictive driver classification system, with relatively few categories compared to the thousands used in some other states. As a result, insurance companies must accept many policies at rates their actuaries (i.e., oddsmakers) don't like. From the company's point of view, the risk exceeds the compensation. And, if the company judges the odds to be too far out of line, for whatever reason, it cedes the policy to the Reinsurance Facility.

Commissioner Long, who expresses sympathies for both sides of the argument, has not taken a position on compulsory liability insurance. "We'll have to take a serious look at the question of dropping the mandatory liability insurance requirement," he says. "If you don't have assets to protect, if you don't want to buy non-mandatory liability, maybe that's the best way to go. It does relieve a great deal of pressure on the current system, primarily on the Reinsurance Facility."

Long sees the issue in a broad context: "Whether you can make a more inherently fair system by mandating or not mandating liability, I just don't know. We need to keep in mind the protection of the motorists on the highway from the other driver. That's the basic philosophy of insurance in the first place—to spread the risk."

Pressures in the ratemaking system can be addressed in many ways other than by repealing mandatory liability coverage. One way could

be by allowing *group* liability insurance. True group coverage is illegal in North Carolina for reasons no one seems to remember.<sup>15</sup> Many drivers would benefit if it were available.

Group health policies are an obvious precedent for setting insurance rates which are commensurate with the risks of an entire group, without regard to individual risks. Premiums for all members of the group are usually the same, without regard to age or health. Obviously, the young and healthy subsidize the aged and infirm. If this is unfair, it does not seem to have caused any controversy.

Group insurance is far more efficient than individual insurance; sales and administrative expenses are honed to a minimum. The legislature, for example, could approve a group policy option for all state employees willing to buy auto liability coverage through a group policy. This would eliminate hours of administrative costs—and business for agents—in establishing and renewing policies.

Similarly, in the private sector, IBM, for example, might provide auto liability coverage for its employees, similar to the company's health, life, and other coverage. Auto insurance could even become one of the offerings in the new "cafeteria-style" benefit system becoming popular in the private sector.

"Group automobile insurance has been approved in a number of states that have no specific enabling laws for group automobile insurance," says B. F. "Benjy" Seagle III, administrator for industry affairs of Aetna's Commercial Insurance Division in Charlotte. "These include Arizona, Michigan, Minnesota, Oregon, Washington, and Wisconsin. Other states that allow some form of group automobile coverage include Connecticut, Illinois, Colorado, and New Jersey."

Seagle points out that beside state regulations, three areas of federal regulation affect writing of group automobile plans: 1) Employee Retirement Income Security Act (ERISA), 2) Taft-Hartley Act, and 3) the Internal Revenue Code. "Approval of group automobile insurance in the states may offer a potential affordability answer for many insureds," says Seagle.

Even with group policies, many people would still need individual policies. Individual health policies cost far more than group coverage; so would individual auto insurance coverage be more expensive than group policies. The affordability of mandatory liability insurance through individual policies—plus the uncertainties involved in the early years of a new group system—would demand that the state remain involved in regulating liability rates.