

## NO-FAULT INSURANCE IN OTHER STATES

Saskatchewan has had no-fault insurance since 1946 and Puerto Rico has had no-fault insurance since 1968. The first state to adopt the modified no-fault insurance system was Massachusetts in the early 1970s. In the 1970s no-fault laws were enacted in 16 states. Since that time, five of those states repealed no-fault laws--Colorado, Connecticut, Georgia, Nevada, and Pennsylvania. Although Pennsylvania repealed its law in 1984, it adopted a new law in 1990.

Presently, 12 states have some form of no-fault insurance. No state has enacted a no-fault law since 1976.

Theoretically there are three ways to classify no-fault insurance:

- Absolute no-fault.
- Modified no-fault.
- Choice no-fault.

Absolute no-fault is when a driver relinquishes the right to sue for pain and suffering in exchange for coverage for all economic loss. No state has this form of no-fault. The state with the closest form to absolute no-fault is Michigan. Michigan has unlimited coverage and it is very difficult to sue for noneconomic loss.

Modified no-fault is coverage in which first-party benefits are provided regardless of fault and the right to sue for pain and suffering is permitted only after meeting a statutorily defined threshold. Some states use a dollar threshold and some states use a verbal threshold. Every state with a no-fault law is a modified no-fault state. These states are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah.

Of the states that are modified no-fault states, three are choice no-fault states. Under this system, a driver may choose to be included in the modified no-fault system or the tort system. States with this form of no-fault coverage are New Jersey, Pennsylvania, and Kentucky.

"Add-on" insurance is expanded first-party coverage that has first-party, no-fault benefits for medical expenses and lost wages but does not restrict lawsuits for pain and suffering. Although this type of insurance is closely related to no-fault, it is not no-fault. The reason the coverage is called "add-on" is because it is added on to the existing tort liability system. The nine add-on states are Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas, Virginia, and Washington.

The remaining 29 states are tort liability states. An individual injured in a motor vehicle accident must collect payment from the at-fault driver, if any, and

must be able to prove negligence. However, some vehicle owners purchase medical payments coverage to provide personal injury protection (PIP).

The following table, based on information provided by the National Conference of State Legislatures, lists states with no-fault insurance and add-on laws. Although in this state the terms "no-fault" and "personal injury protection" are used interchangeably, the table differentiates between the two terms. No-fault is PIP with the tradeoff of the loss of the right to sue. Use of the term PIP alone means a person has insurance to cover that person's expenses for bodily injury. In addition, the "first-party benefit" column in the table indicates the minimum medical or the overall first-party benefit that the insurer must provide. Coverages within an overall cap or in addition to the medical benefit include wage loss, replacement services, survivor benefits, and funeral expenses.

State	Type	First-Party Benefit
Arkansas	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$5,000; other coverages
Delaware	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Overall - \$15,000 per person/\$30,000 per accident within two years
Florida	No-fault verbal threshold	Overall - \$10,000 with sublimits
Hawaii	No-fault monetary threshold - PIP benefits are provided and lawsuits are essentially limited only by a dollar amount threshold	Overall - \$15,000 with sublimits
Kansas	No-fault monetary threshold - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold	Medical - \$4,500; other coverages
Kentucky	No-fault monetary threshold optional - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold; persons suffering loss are entitled to basic reparations benefits unless they have explicitly rejected limits upon their tort rights	Overall - \$10,000
Maryland	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Overall - \$2,500 with sublimits
Massachusetts	No-fault monetary threshold - PIP benefits are provided and lawsuits are essentially limited	Overall - \$8,000 with sublimits

State	Type	First-Party Benefit
Michigan	only by a dollar amount threshold No-fault verbal threshold - PIP benefits are provided and lawsuits are limited by a "verbal" or "serious injury" threshold	Medical - Unlimited; other coverages
Minnesota	No-fault monetary threshold - PIP benefits are provided and lawsuits are essentially limited only by a dollar amount threshold	Overall - \$40,000 with sublimits
Nevada	Although considered a tort liability state, this state may be considered an "add-on" state. PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits; these are first-party medical payment coverages, which are less comprehensive than what is traditionally characterized as PIP coverage, which are payable without regard to fault.	Medical - \$1,000
New Hampshire	Although considered a tort liability state, this state may be considered an "add-on" state. PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits; these are first-party medical payment coverages, which are less comprehensive than what is traditionally characterized as PIP coverage, which are payable without regard to fault.	Medical - \$1,000 within one year
New Jersey	No-fault verbal threshold optional - PIP benefits are provided and lawsuits are limited by a "verbal" or "serious injury" threshold. PIP benefits are payable to all insureds; the insured's choice is whether or not to be bound by a lawsuit threshold; failure to choose results in a verbal threshold.	Medical - \$250,000; other coverages
New York	No-fault verbal threshold - PIP benefits are provided and lawsuits are limited by a "verbal" or "serious injury" threshold	Overall - \$50,000 with sublimits
North Dakota	No-fault monetary threshold - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold	Overall - \$30,000 with sublimits
Oregon	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$10,000; other coverages
Pennsylvania	No-fault verbal threshold optional - Insurers can offer coverage through health maintenance organizations or preferred provider organizations; PIP benefits are provided and lawsuits are	Medical - \$5,000; additional medical and other cover- ages available

State	Type	First-Party Benefit
South Carolina	limited by a "verbal" or "serious injury" threshold Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits; persons suffering loss are entitled to basic reparations benefits unless they have explicitly rejected limits upon their tort rights; medical benefits are payable to all insureds; the insured's choice is whether or not to be bound by a verbal threshold; failure to choose results in no threshold	No provision
South Dakota	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$2,000 within two years; other coverages
Texas	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Overall - \$2,500 within three years
Utah	No-fault monetary threshold - PIP benefits are provided and lawsuits are limited essentially only by a dollar amount threshold	Medical - \$3,000 per person; other coverages
Virginia	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$2,000 within three years; other coverages
Washington	Add-on - PIP or similar first-party benefits are provided or "added on" with no significant limitation upon lawsuits	Medical - \$10,000 within one year; other coverages

## COLORADO

The most recent state to convert to a tort system, after being in a no-fault system, is Colorado. Colorado's no-fault insurance statutes sunsetted on July 1, 2003. During the 2003 session, the General Assembly of Colorado considered a number of bills to reform the no-fault insurance system. However, legislation was not adopted to reform the no-fault system. The General Assembly considered bills with many cost-saving provisions, including a bill that would have reduced average premiums for no-fault insurance by as much as 30 percent. The most viable options appeared to have died after intense lobbying efforts by trial lawyers and health care providers. This resulted in the application of the sunset clause and a return to the tort system.

The impetus for change was that Colorado's average insurance premiums were the ninth highest in the country. This resulted in the Governor challenging the legislature to either fix the "broken" no-fault insurance system or join the other states that have a tort system. The Governor indicated he would not sign any legislation extending no-fault unless there were significant savings attached to the legislation. He also expressed comfort with going to a tort system.

Commentators stated the main reason for the need for change to the no-fault system was it provided expensive and broad medical coverage. Policyholders were required to buy \$130,000 in no-fault coverage. This was the third largest medical benefits package in the country. It was argued that this much coverage was not required because the average claim was about \$7,800 and 96 percent of the claims were under \$25,000. In addition, the law did not have delineated cost-containment standards but limited the medical expenses to those that were reasonable. This allowed for a broad range of treatments to be included under the no-fault insurance.

In a memorandum dated August 18, 2003, drafted by the Colorado Legislative Council staff, the question "Will There be Lower Auto Insurance Rates for Consumers Under a Tort System?" is examined. The memorandum states:

Yes. In December 2002, there was an actuarial study completed under the direction of the Colorado Auto Insurance Working Group. The study included findings on the cost implications of a complete repeal of Colorado's no-fault insurance statutes and the consequent conversion to a tort system of insurance. A major premise of the study was that personal injury protection coverage (PIP) would no longer be required.

The study concluded that there will be a net reduction in overall insurance premiums of approximately 36 percent on average for policyholders selecting state-mandated liability only coverage and 17 percent on average for full coverage policyholders.

A few cautionary notes need to be included regarding the aforementioned estimates of savings. Spokespersons for both Farmers Insurance and State Farm indicated that there will be an increase in the rates charged for bodily injury and property damage (i.e. the liability coverage component) due in part to the increased exposure of insurance companies to lawsuits under a tort system of insurance. A small increase in premiums for optional uninsured/underinsured motorist coverage is also expected. Those increases will be more than offset by the elimination of PIP coverage which, on average, amounts to approximately 25 percent of the total premium under no-fault insurance. In some instances, PIP insurance can account for up to 50 percent of the no-fault premium.

Premium savings for a policyholder could be very small if the policyholder chooses to buy high levels of optional medical payments and uninsured/underinsured motorist coverage. The medical payments benefit packages that will be offered by Farmers Insurance range from \$2,500 to \$25,000 while the State Farm medical

payments package has a range of \$1,000 to \$25,000. Very similar thresholds of coverage will be offered by other auto insurers to Colorado policyholders. In deciding whether to purchase medical payments coverage, the individual policyholder must evaluate the adequacy of his or her health insurance policies, which would be primary coverage if the insured is at fault in an accident and he or she has either a small amount of medical payments coverage or has waived such coverage. The selection of a high threshold of medical payments coverage could include benefits such as chiropractic services and massage therapy. It is unlikely that the policyholder's health insurance coverage includes those services.

In *A History and Overview of Colorado Law for Automobile Insurance Coverage*, by Paul D. Godec, September 2003, Mr. Godec lists a number of other consequences of the change in Colorado. These consequences include:

1. Health insurance benefits will increase because health insurance will cover more of the medical expenses following accidents.
2. Medical facilities will more likely aggressively pursue liens and reimbursements for services through tort litigation. In addition, emergency facilities experiencing financial difficulties will face more difficulties because of the lower certainty of reimbursement.
3. Individuals who suffer injury as a result of an at-fault driver will have to pay for medical expenses with the hopes of recovering in later litigation. This may result in an injured party not obtaining certain medical services until the resolution of the litigation.
4. At-fault drivers will be left to pay for their own medical expenses and the change will make it more likely the injured driver will become a defendant in a tort action.

Although there are many factors that affect the premium charged for automobile insurance, one important factor is the inclusion of no-fault or personal injury protection benefits. The following list was made from information contained in *State Policy Reports*, Volume 21, Issue 17 (2003), in an article entitled "Full Speed Ahead." The list ranks state average premiums for collision coverage in 2001. Collision coverage includes no-fault and personal injury protection coverages. Michigan is ranked No. 1 and has unlimited personal injury protection limits. New Jersey is ranked No. 2 and has additional injury protection coverage of \$250,000. The next four states do not require additional personal injury protection coverage. North Dakota is ranked 48th. (North Dakota is ranked 50th for average liability coverage premiums and 46th for overall average automobile premiums.)

2001 State Average Premiums for Collision Coverage		
Rank	State	Amount
1	Michigan	\$416
2	New Jersey	\$389
3	Alaska	\$338
4	Georgia	\$335
5	Rhode Island	\$328
6	Louisiana	\$309
7	New York	\$301
8	Connecticut	\$297
9	Massachusetts	\$293
10	Nevada	\$291
11	Alabama	\$288
12	Mississippi	\$283
13	California	\$282
14	Illinois	\$277
15	Arizona	\$273
15	Tennessee	\$273
15	Texas	\$273
18	Maryland	\$271
	<b>U.S. Average</b>	<b>\$271</b>
19	Colorado	\$270
20	Missouri	\$265
21	West Virginia	\$263
22	Arkansas	\$259
23	New Hampshire	\$256
23	Oklahoma	\$256
25	Pennsylvania	\$255
26	New Mexico	\$254
26	Delaware	\$254
26	Vermont	\$254
29	Utah	\$251
30	Indiana	\$246
30	Kentucky	\$246
32	Florida	\$245
33	North Carolina	\$242
33	Washington	\$242
35	South Carolina	\$234
35	Kansas	\$234
37	Ohio	\$232
38	Hawaii	\$229
39	Virginia	\$222
39	Wyoming	\$222
41	Oregon	\$219
42	Maine	\$216
43	Minnesota	\$212
44	Montana	\$210
45	Idaho	\$202
46	Wisconsin	\$201
47	Nebraska	\$200
48	North Dakota	\$196
49	Iowa	\$192
50	South Dakota	\$191

## CONCLUSION

There are many factors that affect insurance rates and there are many consequences as a result of a change in mandated coverages. The end result is that some person pays or is liable to pay for the bodily injury that results from an automobile accident. Depending on the fact scenario, the insurance and the drivers involved in the accident, that person may be:

1. An automobile liability insurance company.
2. An automobile uninsured insurance company.
3. An automobile underinsured insurance company.
4. A health care insurance company.
5. The at-fault driver.
6. The driver not at fault.
7. A health care provider.
8. A medical assistance program.

Any change in mandated coverages should be reviewed to determine the changes in which a person pays or is liable to pay. In addition, any changes in mandated coverages should be reviewed to see if any efficiencies in payment are gained and if there are any changes in the certainty of payment.