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FISCAL IMPACT REPORT

SPONSOR: Larranaga DATE TYPED: 02/14/01 HB 309
 SHORT TITLE: Personal Choice Auto Insurance Act SB _____
 ANALYST: Rael

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
		See Narrative	Recurring	GF

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)
 Workers' Compensation Administration (WCA)
 LFC Files

SUMMARY

Synopsis of Bill

The Personal Choice Auto Insurance Act would have insured motorists choose between a traditional tort-based insurance and damage recovery scheme, and a personal choice auto insurance and compensation package. The bill would limit the rights of an injured person to recover if the person was an uninsured motorist or if the person was driving under the influence.

Sections 1 and 2. Title and Purpose. The purpose of the bill is very much like other “no pay, no play” bills.

Section 3. Definitions. This section includes many typical definitions. “Loss of income from work” is limited to 80% of the average weekly average. “Medical expenses” do not include room expenses unless they are medically necessary or experimental or research products or procedures. “Motor vehicle” does not include motorcycles. “Personal Compensation Benefits” are limited to an aggregate limit of \$15.0, two hundred dollars per week for loss of income, and a death benefit of \$15.0.

Section 4. Motor Vehicle Insurance Requirements. Refers to minimum limits and provides for additional coverage.

Section 5. Right of Rejection—Uniformity. Provides for the rejection of limitations of tort rights. The form must be filed with the superintendent of insurance.

Section 6. Consumer Information Program. The superintendent of insurance shall inform consumers about the comparative costs of the personal compensation policy and a traditional policy. The cost of the reports shall be assessed to insurers based on a pro rata share of earned premium each year. **Section 7.** Application of Personal Compensation Benefits and Coverages to Other Jurisdictions. Each policy shall provide coverage in accordance with the law required by the jurisdiction.

Section 8. Persons Not Entitled to Personal Compensation Benefits. An insurance company is not obligated to compensate the following injured people: a person injured while committing a felony, a person without auto insurance, a person who was injured by intentional misconduct or the person has chosen to reject the Act's limitations on tort rights and liabilities.

Section 9. Payment of Personal Compensation Benefits. Benefits are payable to the injured person, parent or guardian in the case of a minor, a dependent or personal representative of the estate of a deceased, or a health care provider.

Section 10. Priority of Benefits. If coverage may be obtained under more than one policy, the entire recovery is limited by the policy with the highest limit.

Section 11. Coordination of Benefits. The insurer has the primary obligation to indemnify the insured who sustains accidental bodily injury.

Section 12. Limitation on Payment. Coverage is limited to injuries discovered and treated within one year of the accident. Any expenses incurred after one year from the date of accident are not covered.

Section 13. Limitations on Tort Rights. Only a "tort chooser" may have a claim only for uncompensated economic loss. The "tort chooser" appears to have a "deductible" of \$15.0 of economic loss and \$10.0 of property damage.

Section 14. Claims for Uncompensated Economic Loss. Provides for settlement letter before litigation. Attorney's fees are awarded but cannot exceed 1/3 of the recovery. After a recovery in the amount of \$100.0, attorney's fees are limited to 15%.

Section 15. The insurance company keeps any right of subrogation.

Section 16. Payment of Insurance Benefits. Offset is not allowed until a monetary recovery is made.

Section 17. Personal Compensation Benefits. Payments for future expenses in not allowed.

Section 18. Assignment or Garnishment. Personal compensation benefits are exempt.

Section 19. Limitation of Actions. There is a two year statute of limitations against an insurance company for benefits not paid from the date of last payment and four years from the date of the accident.

Section 20. Mental and Physical Examinations. If the injured person refuses examination, any payments that the exam was intended to verify shall be suspended.

Section 21. Employer and Provider Requirements. Provides for the right of the insurance company to receive records from employers and health care providers regarding the damages claimed.

Section 22. Assigned claims plan. Insurance companies must provide coverage as required under the act.

Section 23. Incentives for Insureds. Premiums may be reduced for automatic seatbelts, airbags, and agreement to use a managed care organization.

Section 24. Rules. The superintendent of insurance has the authority to implement rules consistent with the Act.

Section 25. Arbitration is allowed. Choosing an arbitrator and costs are explained.

Section 26. Out-of-state vehicles. For each policy issued for an out-of-state car, the insurer agrees to pay in an amount at least that required under this Act.

Sections 27 to 42. Amend current NMSA to reflect the provisions of the Act.

FISCAL IMPLICATIONS

The TRD reports that relatively few fines are collected for driving without insurance. The usual punishment for this misdemeanor is to force the guilty person to purchase insurance and prove coverage to court personnel.

If insurance companies limit their coverage for accidents, the state may end up picking up the remaining cost through indigent fund programs at public hospitals. The policy question becomes whether it is more desirable for insurance companies and their customer to pay these costs, or whether the state, and all taxpayers, should pay.

ADMINISTRATIVE IMPLICATIONS

The bill would probably have a significant impact on the superintendent of insurance.

The Workers' Compensation Administration reports that under the bill, insurance carriers would have greater incentive to fight over the allocation of benefits when it involved workers' compensation benefits. Allocation hearings would be more adversarial and costly, to the detriment of the worker.

TECHNICAL ISSUES

Section 9 regarding payment to a dependent or the personal representative of an estate could be a source of litigation since it provides for no priority.

OTHER SUBSTANTIVE ISSUES

This bill would allow insurance companies to avoid compensating victims for damages that, for example, both the state and doctors must provide under the New Mexico Tort Claims Act and the New Mexico Medical Malpractice Act.

POSSIBLE QUESTIONS

1. The language is somewhat difficult to decipher. Is a limit on traditional rights the new default position for auto insurance coverage? Must a person that wishes to preserve her normal rights file with the superintendent of insurance? If so, will the increased burden to preserve those rights lead to an increased number of not-at-fault injured individuals who cannot be completely compensated for their injuries?
2. Does Section 8.A.(7) intend to exclude coverage for a person who has chosen to retain their traditional rights?
3. Does the person who chose to retain his or her rights have a "deductible" of \$15.0 of economic loss and \$10.0 of property damage?

