CATASTROPHIC HEALTH INSURANCE

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Part I: The Topic

For three consecutive legislative sessions, commencing with the 1989 term of the General Assembly of the State of Maryland, the Department of Health and Mental Hygiene (hereinafter, "the department"), an executive branch of the government, introduced a bill to require every motorcyclist in the state to procure and maintain insurance to cover the rider for catastrophic injuries sustained during the operation of a motorcycle. For failure to obtain the required coverage, fines in excess of $2,000 would be imposed. Additionally, the motorcycle's owner would be prohibited from selling, trading, or otherwise disposing of the motorcycle until said fines were paid.

Part II: Our Position

Few issues can produce a unity of purpose across the spectrum of motorcyclists, but this is one. If riders could not agree to rise in unison to oppose the proposed legislation, they simply did not care about riding. Although the bill was cast in economic terms, motorcyclists viewed the bill as an attempt to outlaw motorcycles in the state.

Opposition was based on five primary factors:

1. The bill was blatantly discriminatory Motorcyclists were singled out. No comparable legislation was aimed at automobile owners or others — boaters, pilots, equestrians, smokers, etc. — who engaged in comparably "risky" behavior.

2. Legislative intervention was unwarranted. Although the department claimed that millions were lost to the public fiscally through Medicaid and direct payments because of catastrophic injuries to motorcyclists, an analysis of the figures used by the department to support its position revealed that there were fewer than twenty riders who had become wards of the state. Thus to control the hospital and rehabilitation expenses of a mere score of motorcyclists, the department sought to sanction over 50,000 motorcyclists who posed no recognizable threat to the treasury.

3. The required insurance was not generally available. Although the department claimed to the contrary, it was clear that the type of coverage required by the bill was not commonly available in the state. The bill itself contained a nullification section which would have rendered the penalties inapplicable, "If it is determined by the insurance commissioner that no adequate policy is available . . ." Indeed, during the hearing at the introduction of the first bill in 1990, only one carrier, Blue Cross/Blue Shield, was willing to underwrite the coverage, and then only if it were granted an exclusive right to do so by the state. [1]

4. The required insurance was prohibitively expensive. While estimates varied wildly, it was generally agreed that the purchase of a policy such as that described by the bill would cost not less than $250 per annum. [2] The department was seeking to stem the flow of uncompensated health care expenditures, variously estimated at two to four million dollars. However, using the department's own figures, a carrier underwriting the risk would stand to receive some thirteen million in premiums, while being exposed to a maximum of four million dollars in payouts. One legislator described this situation as "an insurance carrier's dream."

5. Insurance was the wrong solution to the problem. The legislature was urged to focus on rider training as opposed to expensive insurance coverage. Furthermore, during all applicable times herein, no fewer than four helmet bills were pending in the General Assembly. While we strove to separate the issues of insurance and mandatory helmet usage, the legislators were aware of the anomaly of requiring expensive insurance coverage, yet not requiring relatively inexpensive safety apparel.

A number of miscellaneous objections were raised. The bill was a potential disaster for deal-

ers in the state, most of whom had been facing declining sales for a number of years. No state had ever enacted a comparable piece of legislation. High rates of non-compliance might be expected. [3]

Part III: The Opposition's Position

The department's objective was to reduce the state's payments to health care providers as a result of uninsured motorcyclists being involved in accidents which produced injuries, many of a catastrophic nature. Though the department's figures varied, it was claimed that as much as six million dollars could be saved annually by "[placing] some of the financial burden back on those who are assuming the risk." Additionally, even if an injured rider initially had private or contractual resources to cover payment for health care, it was noted that there were frequent instances of "spending down" so as to render the patient eligible for state medical assistance.

The position is a pristine example of the "social burden" theory, selectively applied to one group of citizens. Rather than take on better organized and more financially secure groups, the department targeted motor- cyclists. In thus trying to staunch the flow of a few million in unreimbursed health care expenses, the department ignored some $250 million in losses from other sectors (e.g., automobile accidents, which accounted for some 98% of the state's economic loss in the vehicular sector).

Joining the department were agencies, state and private, from every nook and cranny of the health industry. Their support of the proposal was based solely on economic considerations; they had uncompensated losses of their own. It should be noted that considerations of the health and non-economic welfare of motorcyclists played absolutely no part in the debate. During the three years when the insurance bills were pending, Maryland had no mandatory helmet law. [4]

Part IV: Alternative Resolutions

Because motorcyclists did not believe that the insurance proposal ever had any serious chance of passage, no real effort was made to propose alternative solutions. [5]

However, some options were mentioned in passing during meetings with officials, letters to representatives, and in testimony at hearings. When the insurance bill was first introduced early in 1990, three mandatory helmet bills were also being considered by the General Assembly. A meeting was held with the department's secretary with the hope of averting a battle over the insurance proposal. Purely as an intellectual exercise, the secretary was asked if the department would cancel the insurance bill in exchange for the agreement of motorcyclists to stop fighting the helmet bills. The secretary would not agree; he wanted both bills passed. [6]

Each Maryland hospital in-patient pays a surcharge of 7% on every hospital bill to help defray uncompensated expenses from patients without health insurance. [7] We challenged the department to raise the surcharge rate an insignificant amount — perhaps 1%. That would have a minuscule effect on most bills but would clearly have covered a worst-case drain of seven million dollars.

We suggested raising the cost of vehicle registration by $1.00. Since there were far more than six million vehicles registered in the state, the state would recover immediately much more in fees than it was paying out in unreimbursed outlays.

Noting the discriminatory focus of the bill, and suggesting that more than one-half of injuries to motorcyclists are the fault of other vehicle operators, [8] we recommended that catastrophic health insurance coverage be required for all vehicle operators and owners in the state. Naturally, such a suggestion was unthinkable politically, but the point was clear and convincing. We wanted to make the legislature deal with the issue that the uncovered group — automobile operators — cause the bulk of the motorcycle-automobile accidents, but that the motorcyclist would be required to pay for all of the consequences.

Part V: Allies

In battling "social burden" legislation, motorcyclists theoretically are aligned with other "risk" groups: skiers, boaters, equestrians, snowmobilers, and the like. As a practical matter, however, the concept of this type of legisla-

tion is so novel that it is often perceived as merely a vague cloud on the horizon. Our fight with the department was fought alone.

We hoped ultimately only to be able to count on the common sense of legislative officials. Unfortunately, some members of the assembly felt that the insurance cost was not beyond reach, or that risky behavior somehow deserved to be punished.

Part VI: Facts and Figures

Our task in dealing with this issue was made somewhat easier because the department's own figures plainly indicated the minuscule nature of the problem. As noted, the governor was seeking to cut expenditures of a few million dollars, while at the same time ignoring other losses of much greater magnitude.

Where the state had little or no data to support its contentions, we relied heavily on many of the findings in the Hurt Report. We prepared a number of graphs and ensured that each member of the committee was provided copies thereof.[9]

Recently, however, research has been conducted that both addresses the inadequacies in previous "social burden" studies and provides an accurate picture of the cost of motorcycle accidents in relation to other forms of motor vehicle related injuries.

In June, 1992 the University of North Carolina's (UNC) Highway Safety Research Center released a study entitled, "An Examination of Motorcyclist Injuries and Costs Using North Carolina Motor Vehicle Crash and Trauma Registry Data." This study is the most comprehensive to date and the results undermine many of the arguments advanced by proponents of mandatory catastrophic health insurance legislation. Consider the following:

- Injured motorcyclists generally experienced lower injury severity scores than other road trauma patients.
- Average hospital stays for injured motorcyclists were slightly longer (1 day) than other injured vehicle operators. However, motorcyclist's ICU stays were slightly shorter, their mortality rates were better and they were no more likely to require continued medical services at a rehabilitation facility following hospitalization than other road trauma patients.
- Motorcyclists were just as likely to be privately or commercially insured as other injured road users and their average hospital charges were lower than those associated with other road trauma victims!

The UNC report is required reading for anyone interested in countering the claims made by "social burden" proponents. Copies can be obtained by contacting the UNC's Highway Safety Research Center in Chapel Hill, North Carolina.

Part VII: Objectives, Strategies, and Arguments

Catastrophic health insurance proposals for motorcyclists alone never had any true support in Maryland's General Assembly. Ordinarily bills are introduced by delegates or senators, who then appear and testify before the committee to which the legislation has been assigned. For three years the department could find not a single member of the assembly who was willing to offer the bill as his or her own. Consequently the bills were repeatedly introduced as "departmental" bills.

When the department brought the bill to the Maryland Senate in 1991, having sustained a defeat the previous year in the Maryland House on a vote of 22-1, we recognized that we were dealing with vindictive, not practical, members of the governor's staff. It further seemed clear to us that the executive branch was using the insurance bill as a lever to obtain favorable consideration of the helmet bill that it badly wanted.

Had the bill returned for a fourth year, we were prepared to approach the appropriations committee, point out the disastrous reception that each of the three previous bills had received in the assembly, and decry the waste of time and money spent by the department on an invidious bill that had no support whatsoever. Because of the enormous power wielded by Maryland's governor, we felt our chances of success with this tactic to be non-existent.

We further considered taking on selected legislators who had voted for the department's proposal, seeking to upset their re-election bids. No

positive steps have been taken in this direction to date, primarily because of staggered elections in the state and because we are leery of making a dedicated enemy out of a legislator who may have erred out of innocence or ignorance. To that end, we are reminded of the fate that befell California motorcyclists when they initially failed to unseat Delegate Floyd.

Ultimately, legislators will either support or ignore the caution expressed by John Stuart Mill in his essay, *On Liberty* (1859):

"That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant . . . Over himself, over his own body and mind, the individual is sovereign."

Footnotes

1 We were also fortunate in obtaining a letter from a department official to the administrator of the Motor Vehicle Administration, admitting that liability carriers "...were not very interested in offering the coverage." The letter further acknowledged that compelling auto insurance carriers to provide the coverage "could drive the few there are out of the state." The letter concluded by noting that some health insurers "have shown some interest in developing a *new* product." These extraordinary admissions, when brought to the attention of the legislature, were very damaging to the department's credibility.

2 Motorcyclists maintained that the cost would be far higher in the absence of underlying standard health insurance. Since motorcyclists are disproportionately represented in the economic classes of laborer, student, and unemployed (*see,* Table 7.21.1, Motorcycle Accident Cause Factors and Identification of Countermeasures, H.H. Hurt, *et al,* Traffic Safety Center, University of Southern California [January, 1981], grant HS-805-862 from the U.S. Department of Transportation), they would be least likely to carry basic health insurance and consequently would stand to lose the most *vis-a-vis* their disposable incomes.

3 The Hurt Report (Table 7.5.1) indicates that some 43% of the injured riders did not possess a valid motorcycle operator's license or endorsement. Given the relative ease of obtaining a permit, it could be argued that the requirement of expensive insurance coverage would produce even a higher rate of non-compliance. **Note:** We attempted to deemphasize this factor, inasmuch as it portrays motorcyclists as an irresponsible subset of the vehicular population. Nevertheless, it was felt that by mentioning the argument we might be perceived as being more candid and credible than the department's officials.

4 If further proof were needed that the bill was generated by economic, as opposed to health, concerns, the secretary admitted that societal costs related to cigarette smoking dwarfed the loss to the state from motorcycle-related injuries. However, the secretary said, revenues received from taxes on cigarettes far exceeded expenditures by the state for patients with lung diseases.

5 The combined votes *against* the bill over three legislative sessions was on the order of approximately 55 - 5.

6 In so declaring, the secretary was almost certainly being less than honest. When the mandatory helmet law was finally passed in 1991 after a ten-year struggle, the department ceased introducing the catastrophic insurance bills.

7 The department claimed that 28% of motorcyclists had no health insurance of any kind, double the rate of automobile operators. That figures does not correspond with a study of more recent vintage by the State of North Carolina.

8 Hurt *(supra)*, Table 5.4.1.

9 Five pie charts and one bar chart were prepared. They indicated the motorcycles as a percentage of the private vehicles (1.82%), percentage of motorcyclists involved in accidents (3.91%), motorcyclists involved in accidents by age (30 and under = 72%), motorcyclists involved in accidents by occupation (Hurt), major causes of accidents (Hurt), and breakdown of accident victims as a percentage of the motorcycle population (99.92% of motorcyclists were not a threat to the state's treasury).