

The Right Direction for Auto Insurance Reform

*A Draft Policy of the
Freedom Party of Ontario*

Introduction

The most pressing issue facing many Ontario drivers at present is that although auto insurance is becoming unaffordable, it is still illegal to drive without insurance. In some cases, individuals face the possibility of losing access to their only feasible form of transportation. That, in turn, is threatening their ability to get to their places of employment, the places where they purchase their supplies, and the places in which their families and friends reside.

Were every Ontarian somehow to have a cheaper alternative form of transportation, losing one's ability to drive legally would not be nearly so harmful as it is for many Ontarians. However, in Ontario, many people do not work where they live. Over the last few decades, as job opportunities have become more concentrated in urban centres, Ontarians residing in suburban and rural areas have found themselves commuting long distances to work. Given the sheer size of inhabited Ontario, economically responsible mass transit is a non-starter for many Ontarians. For a significant number of Ontarians, the automobile is the only feasible means of travel.

An Ontario government ought to be extremely careful when it proposes laws that affect insurance prices or benefits, or that would potentially render a law-abiding, safe driver unable to drive. Those who cannot afford the real and quickly rising costs of insurance and who do not have access to affordable alternative forms of transport need some assurance that they will be able to move about via automobile in the province of Ontario.

A Four-Part Plan to Repair Auto Insurance in Ontario

The Freedom Party of Ontario takes the position that the auto insurance problems currently facing Ontario drivers will be addressed most effectively by:

1. Repealing the 13 year experiment with "no-fault" auto-insurance and returning Ontario to a tort-based, wrongdoer-pays system;
2. Ending the 24 year experiment with compulsory auto insurance;
3. Giving drivers and insurance companies greater ability to limit their costs and tailor insurance to the needs and wants of the driver; and
4. Ending the government's politicized, bureaucratized and expensive price manipulation and pre-approval system, and the government's current practice of requiring low-risk drivers to subsidize the premiums of high-risk drivers.

These four parts are explained in greater detail below.

1. Repeal “No Fault” and Return to Tort-based Insurance

No-fault insurance was originally conceived of in the USA in the 1930s. It was modelled upon Workers Compensation schemes. No fault insurance is an attempt to reduce insurance pay-outs by preventing injured people, in most cases, from suing the drivers who caused their injuries. In short, “no-fault insurance” is actually “no-lawsuit insurance”. No fault schemes were first adopted by approximately half of the states in the USA, though no state has moved to the no-fault scheme since 1976.

By the time no-fault was introduced to Ontario, the pros and cons of it were becoming well known. In 1989, before Ontario adopted no-fault, a report of the Ontario Automobile Insurance Board (OAIB) stated:

*“It is extremely important that the government be aware that any cost savings forecast by this report arise almost entirely from a **reduction in benefits** payable to injured claimants, rather than to any increase in efficiency”*

and

*“Any percentage savings due to the introduction of no-fault are **one time savings only**. In short, the potential no-fault associated price reductions **will not be permanent**.” (emphasis added).*

In other words, in 1989, the Liberal government of Ontario already knew that no-fault would only give temporary relief to drivers, and that the relief would be achieved by cutting benefits to injured persons. They forced Ontario drivers onto the no fault system despite what they knew. At the time, the Freedom Party of Ontario appeared at government hearings to object to the no-fault scheme (see www.freedomparty.on.ca/freedomflyer/ff16_25.htm). The Freedom Party of Ontario has maintained its opposition to the no-fault scheme, but successive NDP and Progressive Conservative governments have kept the scheme in place. Most recently, with Ontario drivers facing skyrocketing premiums, the Progressive Conservative government has proposed to limit cost increases by cutting benefits *even further*. We are now in a situation where Ontario drivers pay much more money for much less insurance.

No-fault has had at least three very negative effects on drivers and insurers in Ontario. First, under the no-fault system, injured persons receive less compensation than they would have were they allowed simply to sue the wrongdoer. For example, in 1991, the *Insurance Bureau of Canada* reported that during the first year following the implementation of the no-fault scheme in Ontario, the insurance industry had an

increase in profits of \$750,000,000.00, *with no appreciable decrease in premiums*: insurance companies did not pass the savings on to drivers. Between 1990 and 1994, benefits under no-fault were reduced by 47.7% on average. The recent changes introduced by Ernie Eves' Progressive Conservatives will decrease, even more, the benefits received by injured people, and are actually designed to increase profits for insurance companies, though Ernie Eves suggests that those savings will be passed on to the consumer (the 1991 *Insurance Bureau of Canada* report suggests that will not be the case).

The second negative effect of the no-fault scheme is that, under the no-fault scheme, compensation for pain and suffering was, for the most part, eliminated. Unlike in the tort-based system that we had prior to 1980, nobody except the most severely injured receive pain and suffering compensation under the no-fault system.

Third, prior to the introduction of the no-fault system, only the person who was at-fault would make a claim, so *only* the at-fault driver's insurance premiums were increased as a result of the accident. However, under Ontario's no-fault scheme, even if you are involved in an accident that is 100 percent the other driver's fault, both drivers are required to make a claim. The result: under the no-fault scheme, the insurance premiums of *both* drivers are typically increased, instead of just the insurance premiums of the driver who is at-fault.

The no-fault system is unjust and is not serving Ontario well. Nor has it served well the other jurisdictions in which it has been tried. Manitobans suffered a 6.1% *increase* in their insurance premiums in 1996 after switching to no fault: previously, they had been told that an overall *decrease* of \$50 million was anticipated. Having imposed no fault in 1995, Saskatchewan drivers were finally permitted to opt-out of no fault starting January 1, 2003.

The experience of drivers in no-fault states of the USA has been similar. At the peak of the no fault trend in the USA, approximately 24 states had moved to a no fault system. Only 12 states remain on the no-fault system today (Colorado repealed no-fault on July 1, 2003). In 1997, the National Association of Insurance Commissioners (NAIC) found that:

- no-fault states had the highest average automobile liability insurance premiums;
- for each year between 1989 and 1995, a majority of the 10 states with the highest average auto insurance premium were no-fault states;

- between 1989 and 1995, premiums in mandatory no-fault states rose nearly 25% greater than in non-no-fault states;
- average 1996 profits on auto liability insurance were 7.3% in no-fault states and 5.4% in tort law states (NAIC data).

The no-fault system failed to create fair prices for auto insurance in the US states: as in Ontario, premiums increased even though benefits were reduced.

Ontario must learn not only from the failed no-fault experiments in Manitoba, Saskatchewan and the USA, but also from the current and obvious failure of the Ontario experiment with no-fault insurance.

The Freedom Party of Ontario takes the view that every person who is injured should have the right to access the justice system so as to receive compensation, pursuant to the common law, for those losses that can be proven to have been caused by a driver. Furthermore, we take the view that only a person who has caused an accident should suffer an increase in his or her auto insurance premiums. Whether, and under what circumstances, pain and suffering benefits will be covered is a decision that is properly made between insurers and their clients when clients decide whether or not to buy an insurer's policy.

Accordingly, a Freedom Party government will repeal the no-fault system and return Ontario to a tort-based (only the at-fault-driver pays) system.

2. End the 23 Year Compulsory Insurance Experiment

Prior to 1980, Ontario drivers typically *chose* to protect themselves by buying liability insurance: if they were sued after injuring a person or property with their car, the liability insurer would pay what a court said was owing to the injured person. However, in 1979, the Progressive Conservative government of Bill Davis decided it would be *compulsory* for drivers to buy liability insurance: without liability insurance, you would no longer be permitted to drive. In part, this was an effort to ensure that fewer people would drive without the financial means to compensate someone they had injured with their automobile. However, there were other reasons for the compulsion: by forcing everyone to buy insurance, insurance companies would potentially make more money and, thought some, that money would trickle down to drivers in the form of lower premiums.

The reality today demonstrates that the experiment with compulsion has failed. First, studies by the in the United States suggest that making insurance compulsory does not get uninsured drivers off of the road. In fact, in states such as New Hampshire, where liability insurance is not compulsory, there were found to be fewer uninsured motorists than in most other states where liability insurance is mandatory. Second, even if making insurance compulsory caused some more people to buy it, there is no evidence that compulsion can slow or eliminate the current rise in the cost of insurance.

Compulsory insurance has also *politicized* insurance pricing. Since the imposition of compulsion, there have understandably been more calls to make it more affordable: it should not be surprising that when government forces a person to buy something that they do not want to buy, the consumer will demand that government force prices to artificially low levels. The response in Ontario, as in other jurisdictions, has been an elaborate price manipulation and pre-approval system, including forced subsidies (see 2, below). As a result of such politically- motivated and economically unsound price manipulations, both insurers and drivers have suffered.

The Freedom Party of Ontario takes the position that each driver must recognize what has always been true: a minority of drivers are uninsured, and making the purchase of insurance *compulsory* does not change that fact appreciably. People who wish to be certain that they will be compensated for the injuries caused by an uninsured driver will do as they presently do and as they did prior to 1980: they will buy insurance that protects them in the event that they are injured by an uninsured driver. It is worth noting that, in non-compulsory states such as New Hampshire, the cost of insuring against the possibility of being injured by an uninsured driver is lower than in most states where liability insurance is compulsory.

Accordingly a Freedom Party government will eliminate the requirement for a driver to purchase liability insurance. Every licensed person will be free to drive without liability insurance if, for example, the insurance is too expensive for them. And, because a Freedom Party government will restore Ontario's tort-based system, even uninsured drivers will be able to seek compensation for the injuries that other drivers cause them to suffer. Ontarians will not be put in the position where the cost of insurance causes them to drive illegally, to compromise other important savings and expenditures, or to lose their employment due to a lack of transportation.

3. Greater Flexibility for Drivers and Insurers

There are many ways that an insurer and a driver can limit costs and tailor insurance to the needs and wants of the driver. A government-mandated benefits scheme not only ties the hands of drivers and insurers, but opens the door to well co-ordinated and organized insurance fraud, which costs everyone. The Freedom Party of Ontario takes the position that freedom of contract, not fraud-prone government mandates, must prevail in the insurance context. The freedom to determine the nature and scope of benefits, and the terms under which they will be provided, will be restored to drivers and their insurers by a Freedom Party government.

4. End Forced Subsidization and other Government Price Manipulations

In a fair insurance system, the amount of money a driver pays for insurance is lower if there is a lower likelihood that the driver will have an accident or suffer a theft of his or her vehicle. However, Progressive Conservative, Liberal and NDP governments have all forced insurance companies to *overcharge* low-risk drivers for their insurance so that high risk drivers will not have to pay as much for their insurance: each of those governments has required low-risk drivers to *subsidize* high-risk drivers. That is simply unjust and unfair. Freedom Party takes the position that an insurance company should *not* be forced, by law, to overcharge low-risk drivers: *no driver should be forced by law to pay part of another driver's liability insurance premium*. Drivers should be rewarded, not punished, for being less risky.

For any given insurance policy, the amount a driver pays for insurance should depend upon one thing: the amount that the driver and the insurer *agree* will be the cost of the policy. However, all recent Progressive Conservative, Liberal, and NDP governments have insisted upon the politically-tainted *price-manipulation and pre-approval* system that functions to force low-risk drivers to subsidize high risk drivers. That system even allows politicians to attempt to win votes by forcing companies in Ontario to sell insurance at a loss. For example, both the Liberal's Dalton McGuinty and the Progressive Conservatives' Ernie Eves have promised or threatened to impose price caps that threaten to force Ontario insurance providers out of Ontario.

Accordingly, a Freedom Party government will eliminate the politicized government price manipulation system and restore to drivers and insurers the flexibility to arrive at mutually agreeable insurance premium rates. And, in particular, a Freedom Party government will discontinue the practice of forcing low-risk drivers to subsidize high-risk drivers.

Summary

Ontario's compulsory no-fault auto insurance scheme is failing both drivers and insurers. By repealing the highly bureaucratic and politicized compulsory no-fault scheme, and restoring Ontario's tort-based system, a Freedom Party government will ensure that Ontario drivers can continue to drive and to get the insurance they want and can afford. The result will be an economically sound and just system with numerous competitive insurers, and an environment that does not allow political concerns to drive insurers either into insolvency or out of the province.

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Send comments, or requests for copies, to:

Freedom Party of Ontario
P.O. Box 2214
London, Ontario
CANADA N6A 4E3

web: www.freedomparty.on.ca
e-mail: feedback@freedomparty.org

Telephone: 1-800-830-3301