

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRANSPORTATION COMMITTEE

Friday, September 10, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David P. O'Connell, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David P. O'Connell, Duane Mutch, Dave Nething; Representatives Craig Headland, Joyce Kingsbury, William E. Kretschmar, Dan J. Ruby, Elwood Thorpe, Robin Weisz

Members absent: Senator Tom Seymour; Representatives Dorvan Solberg, Ray H. Wikenheiser

Others present: See attached appendix

It was moved by Senator Mutch, seconded by Representative Kingsbury, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

RAILROAD RIGHT OF WAY STUDY

Mr. Brian Sweeney, Burlington Northern Santa Fe Railway, St. Paul, Minnesota, provided a handout on insurers that provide federal Employers Liability Act endorsements for lessees of railroad right of way. A copy of his handout is on file in the Legislative Council office.

Mr. Steve Strege, Executive Vice President, North Dakota Grain Dealers Association, provided written testimony in response to Mr. Sweeney's handout. He said the average grain elevator cannot find an insurance company to issue a federal Employers Liability Act endorsement. A copy of his testimony is on file in the Legislative Council office.

UNINSURED AND UNDERINSURED MOTORIST COVERAGE

At the request of Chairman O'Connell, committee counsel presented a bill draft [50083.0100] excluding motorcycles from the uninsured and underinsured motorist coverage of an automobile policy.

Senator Nething said the committee had not received any testimony on the premium savings customers would realize if the bill draft were enacted by the Legislative Assembly. He said the problem to be solved by the bill draft is not that great of a problem. He said the problem is small in relation to the damage the change could have on a person who would benefit if the law remains as is.

Representative Weisz said he was unsure of how people would insure for this situation if the bill passed.

Representative Thorpe said the bill draft may prevent a cost increase.

Representative Ruby said the insurance companies wanted this change because it is difficult to determine the risk for a motorcycle accident when insuring automobiles. He said the bill draft arose from a situation in which a child who was away at college rode as a passenger on another person's motorcycle that was uninsured. He said the parents of the child did not want the child covered under their uninsured motorist coverage on their automobile. He said in this situation the parents did not think the child was insured under their policy. He said the parents can exclude the child from the policy due to recent changes in the law. He said he does not know if there would be any great cost-savings by passing the bill draft.

In response to a question from Representative Kingsbury, committee counsel said medical insurance would cover a person in the situation excluded by the bill draft, if that person had medical insurance.

In response to a question from Senator Mutch, committee counsel said mandatory uninsured and underinsured motorist coverage does not apply to offroad, all-terrain vehicles.

Representative Weisz said the reason people have insurance is to pass the cost of a particular risk to the insurance company. He said most people assume they are covered in most situations and assume they would be covered in the situation described by Representative Ruby. He said most parents would have been angry if their child was not covered under the automobile insurance policy in this situation.

It was moved by Representative Thorpe, seconded by Representative Kretschmar, and failed on a roll call vote that the bill draft relating to the exclusion of motorcycles from the uninsured and underinsured motorist coverage of an automobile policy be approved and recommended to the Legislative Council. Representative Thorpe voted "aye." Senators O'Connell, Mutch, and Nething and Representatives Headland, Kingsbury, Kretschmar, Ruby, Thorpe, and Weisz voted "nay."

NO-FAULT INSURANCE

At the request of Chairman O'Connell, committee counsel presented a bill draft [50102.0200] to modify no-fault insurance.

Mr. Rob Hovland, North Dakota Domestic Insurers Association, presented testimony on the bill draft. He said the repeal of subrogation and equitable allocation of loss relates to insurance companies. He said if one person drives a car and causes an accident with another car, the person in the other car goes to that person's insurance company to collect no-fault benefits. After that, he said, the insurance company can go after the first person's insurance company for subrogation. He said insurance companies recover as much as they pay over time. He said this reimbursement system drives up the cost of administration with no benefit to insurers.

In response to a question from Representative Ruby, Mr. Hovland said the repeal removes an expense and is better for the consumer.

In response to a question from Representative Weisz, Mr. Hovland said insurance rates will not increase because of the repeal because fault is not an issue in no-fault insurance. He said rate increases for a particular customer are based on fault.

Mr. Hovland said the committee should weigh the provisions of the bill draft by determining what is best for the North Dakota consumer. He said the question is what is the Legislative Assembly going to force consumers to buy. He said there is not a change in the bill draft that outlaws anything. He said insurance companies can still sell coverage and consumers can still purchase coverage for anything removed in the bill draft.

Mr. Hovland said a number of states are repealing or changing no-fault laws. He said Nevada, Georgia, Connecticut, and Colorado have repealed no-fault. He said Michigan is looking at changes, including to not allow no-fault benefits if the person has health insurance. He said only five states have over \$10,000 in no-fault insurance benefits and North Dakota's coverage is \$30,000.

Mr. Hovland said the expense ratio for no-fault insurance is increasing because of chiropractic and massage therapy. He said the expense ratio is increasing because coverage for these services can last years. He said if coverage for chiropractic and massage therapy is removed from the no-fault benefits, the expense ratio would drop approximately in half. He said limiting chiropractic and massage therapy to \$500 with a \$250 deductible would help. He said there would not be as much at stake so insurance companies would not fight as much and administrative costs would decrease.

Mr. Hovland said the provision in the bill draft for using the Workforce Safety and Insurance fee schedule is ineffective because it will not keep people from attributing medical problems to a car accident. He said "or upon" on page 3, line 16, should be removed because it leaves a gray area that courts

could read expansively. He said the removal of nonprescription drugs is a good idea because nonprescription drug coverage is expensive to administer because it is difficult to determine if the drugs are for the patient and for the accident. He said people not showing up for independent medical examinations is a growing problem. He said there needs to be a penalty to address this problem. He said raising the threshold to \$4,000 may or may not have an impact; however, removing diagnostic services from determining the threshold would have a great impact. He said removing diagnostic services would remove the incentive for a person to have many tests done to drive up medical expenses so that person can sue.

Mr. Hovland said in Colorado premiums dropped 27 percent for required coverages and 15 percent for all insurance, including comprehensive and collision, after the repeal of no-fault insurance.

Representative Ruby said if "or upon" is removed, the definition for motor vehicle should be changed to not include a trailer so there is consistency.

In response to a question from Representative Kretschmar, Mr. Hovland said it would be a gray area whether a person is in a motor vehicle if "or upon" is removed in the instance in which the person is riding in the back of a pickup. He said a person should be in the cab to have coverage under no-fault insurance. He said there are many suspicious claims in which a person is outside a vehicle and injured. He said it would be easier to prove coverage if the claimant had to be inside the vehicle.

In response to a question from Representative Ruby, Mr. Hovland said if a person is fixing a flat tire and is hurt, that person is covered under no-fault insurance; however, under the bill draft the person would not be covered. He said a person is covered if that person is repairing the universal joints under a motor vehicle and the car falls on the person. He said a person hit by another car while changing a flat tire is covered and under the bill draft would still be covered under no-fault insurance because that person would be considered a pedestrian.

Mr. Dale Haake, Nodak Mutual Insurance, Fargo, presented testimony on the bill draft. He said the main theme of the bill draft is that the insurance industry needs more control mechanisms over no-fault insurance and billing systems. He said the bill draft is trying to bring coverage closer to the use of an automobile as an automobile. He said no matter what changes are made, there will still be gray areas. He said there is only one tool insurance companies have to keep down costs--the independent medical examination. He said the independent medical examination is costly and contentious. He said insurance companies need some caps on costs and frequency of therapies. He said raising the threshold to sue for noneconomic loss from \$2,500 to \$4,000 may not have a good effect. He said the change may encourage people to have more unnecessary diagnostic testing. Theoretically, he said, diagnostic

treatment has nothing to do with whether there has been a serious injury. He said only curative treatment should be used to determine what is a serious injury.

Mr. Haake said North Dakota Century Code (NDCC) Section 26.1-41-17 relates to equitable allocation among insurance companies. He said this process is expensive and does not result in any economic gain or loss to insurers. He said NDCC Section 26.1-41-16 relates to the pure right of subrogation. He said this section includes individuals that do not have insurance in violation of the law and, for example, a construction company that leaves a hole in the road. He said Section 26.1-41-16 should be removed from the bill draft's repealing clause.

In response to a question from Senator Nething, Mr. Haake said the person that did not buy insurance would be off the hook if NDCC Section 26.1-41-16 is repealed.

In response to a question from Senator Nething, Mr. Haake said the ability to subrogate or not subrogate will not affect a customer's premium because a customer's premium is increased if the customer is at fault. He said individual rate increases depend on if the customer causes the accident, not subrogation.

Mr. Pat Ward, North Dakota Domestic Insurers Association, presented testimony on the bill draft. He said the idea for removal of NDCC Section 26.1-41-16 came from him and he now supports not removing Section 26.1-41-16. He said insurance companies are widely in agreement for the removal of equitable allocation.

In response to a question from Senator Nething, Mr. Ward said increasing the coverage for funeral expenses and removal of the benefit have not been considered as changes to no-fault insurance law. He said the major issue is medical expenses.

Mr. Ward said a higher threshold for medical expenses encourages more medical procedures. He said the removal of diagnostic testing as a way of determining the threshold should be adopted in the bill draft. He said routine followup treatments must be removed from coverage. He said a person injured on a trailer should be removed from coverage. He said trailers are unsafe and do not have safety belts. He said coverage for a person in the back of a pickup should be removed because public policy does not support encouraging people to ride in the back of pickups. He said the bill draft promotes prompt billing in response to providers that do not bill for months or years.

In response to a question from Senator Nething, Mr. Ward said requiring billing within 45 days is an arbitrary number. He said insurance companies want a reasonable time and that amount of time could be a different amount of time.

Mr. Ward said people that do not show up for an independent medical examination are becoming more of a problem. He said the only recourse insurance companies have against increasing medical costs is the independent medical examination. He said an

independent medical examination is done in 2 percent of all cases. He said some attorneys use the strategy of having clients not show up so that insurance companies have twice the cost as a means of punishing insurance companies for using this tool. He said most doctors do not do independent medical examinations because they may be a witness in a lawsuit. He said the doctors that do independent medical examinations are very expensive. He said the bill draft would provide recourse for insurance companies against individuals that do not go to an independent medical examination.

Mr. Ward said the bill draft includes a limit on copying expenses. He said the bill draft changes the statute of limitations from two years to one year on claims and four years to two years when benefits have already been provided. He said the limitations make sure that costs are related to the accident.

In response to a question from Senator Nething, Mr. Ward said setting the cost for 25 pages at \$20 is an attempt to arrive at a reasonable amount. He said copies should not be a profit center for health care providers.

In response to a question from Senator Nething, Mr. Ward said once a person makes a claim, that person can continue to make the claim. He said a change in the bill draft shortens the time for the first claim for benefits. He said this does not relate to the time in which a person may make a tort claim. He said the shortened period is from the time of the accident or the time the person should have known of the injury.

In response to a question from Senator Nething, Mr. Ward said a no-fault insurance company must pay claims within 30 days.

Mr. Jeff Askew, North Dakota Chiropractic Association, provided written testimony on the bill draft. He said chiropractic care is effective health care and is cost-effective. He said the licensing board for chiropractors is aggressively going after fraud and abusive providers. He said there is adequate law for the licensing board to address bad behavior. A copy of his testimony is on file in the Legislative Council office.

Mr. Dan Ulmer, Blue Cross Blue Shield of North Dakota, presented testimony on the bill draft. He said the changes in the bill draft will create a cost shift to health insurance. He said automobile insurance rates are very low in this state. He said the claim period of 45 days needs to be longer. He said it regularly takes 60 to 90 days to bill an insurance company.

Mr. David Peske, North Dakota Medical Association, provided testimony on the bill draft. He said the 45-day period to bill an insurance company should be lengthened to at least 90 days. He said the section on medical records needs to be reviewed because \$20 for 25 pages may not be reasonable, considering postage and other costs of administration.

Representative Weisz said in interest of time and because changes will be reviewed during the

legislative session, he would propose a number of amendments.

It was moved by Representative Weisz, seconded by Representative Thorpe, and carried on a voice vote that the bill draft to modify no-fault insurance be amended as follows:

- **Remove all bracketed language on pages 2 and 3.**
- **Leave the threshold for serious injuries at \$2,500 and exclude diagnostic testing from determining that amount.**
- **Change the time that services are required to be billed from 45 to 90 days.**
- **Remove NDCC Section 26.1-41-16 from the repealer clause.**

In response to a question from Representative Ruby, Representative Weisz said the removal of the bracketed language on pages 2 and 3 would result in not having a separate class of providers for chiropractic, acupuncture, and massage therapy.

In response to a question from Representative Ruby, the amendments will not address whether a person should be covered while upon a vehicle or on a trailer.

It was moved by Senator Nething, seconded by Representative Kretschmar, and carried on a voice vote that the bill draft to modify no-fault insurance be amended to remove the overstrike on page 3, lines 18 through 23.

Senator Nething said he was afraid of what would happen by removing the language in some fact scenarios. He said because he does not know of the complete effect of the change, no change should be made at the present time.

Representative Thorpe said the amendments weakened the bill draft, but he said he would support the bill draft as amended.

It was moved by Representative Weisz, seconded by Representative Thorpe, and carried on a roll call vote that the bill draft, as amended, relating to the modification of no-fault insurance, be approved and recommended to the Legislative Council. Senators O'Connell, Mutch, and Nething and Representatives Headland, Kingsbury, Kretschmar, Ruby, Thorpe, and Weisz voted "aye." No negative votes were cast.

DEALER LICENSING

At the request of Chairman O'Connell, committee counsel presented the third draft of a bill draft [50041.0300] to regulate low-speed vehicle dealers, the second draft of a bill draft [50085.0200] to regulate snowmobile dealers, and the second draft of a bill draft [50086.0200] to regulate all-terrain vehicle dealers. He said the only change in all the bill drafts was the extension of the time a dealer has to submit state fees, taxes, and applications collected on behalf of a customer to the Department of Transportation from 15 to 30 days and allowing the director to waive a

violation for good cause if the time taken by the dealer exceeds the 30 days. He said this change was made to the motorcycle bill draft as well.

Mr. Keith Kiser, Director, Motor Vehicle Division, Department of Transportation, provided testimony on the bill drafts. He said the department does not have any concerns with the changes in the bill drafts. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Thorpe, Mr. Kiser said the department takes the position that if a dealer that sells a different type of vehicle than the dealer has a license for and if that vehicle is taken in on trade, the dealer does not need a dealer's license for that vehicle. He said there is an exception for trailer dealers that allows a trailer dealer to purchase a rider on an automobile dealer's bond to be bonded to sell trailers. He said bond companies require two separate bonds and do not sell riders.

In response to a question from Representative Thorpe, Mr. Kiser said the purpose of the bond is to protect consumers and the state.

Representative Thorpe said he cannot support the bill draft because of the need for multiple bonds if a person has multiple dealerships. He said the law should provide flexibility so that a person with multiple dealerships can purchase one bond.

In response to a question from Senator Nething, Mr. Kiser said there would not be a vehicle left that does not require a dealer's license to sell that vehicle if the bill drafts are passed by the 59th Legislative Assembly. He said the reason for the bill drafts is to address a recommendation by the State Auditor.

Representative Ruby said the ability to purchase one bond is up to bonding companies and testimony received has stated that bonding companies do not sell one bond for multiple dealers.

In response to a question from Representative Thorpe, Mr. Kiser said the bond form provided by the department for insurers to complete is specific to each type of dealership. He said the department could structure the form so that a bonding company could check off the appropriate vehicles that are covered under the bond. He said the language to allow this is in the law relating to trailer dealers.

In response to a question from Senator O'Connell, Mr. Dwayne Wahl, D & S Auto & Trailer Sales, Mandan, said he purchases bonds with riders for other vehicles sold.

It was moved by Representative Thorpe, seconded by Representative Weisz, and carried on a voice vote that the bill drafts relating to low-speed vehicle dealers, snowmobile dealers, all-terrain vehicle dealers, and motorcycle dealers be amended to allow a dealer to purchase a rider on a dealer's bond for other types of dealerships.

It was moved by Representative Thorpe, seconded by Representative Kretschmar, and failed on a roll call vote that the bill draft, as amended, relating to the licensing of low-speed

vehicle dealers be approved and recommended to the Legislative Council. Senator Nething and Representatives Kretschmar and Thorpe voted "aye." Senators O'Connell and Mutch and Representatives Headland, Kingsbury, Ruby, and Weisz voted "nay."

It was moved by Senator Nething, seconded by Senator Mutch, and carried on a roll call vote that the committee take no further action on the bill draft, as amended, relating to the licensure of snowmobile dealers. Senators O'Connell, Mutch, and Nething and Representatives Headland, Kingsbury, Kretschmar, Ruby, and Weisz voted "aye." Representative Thorpe voted "nay."

It was moved by Senator Mutch, seconded by Representative Ruby, and carried on a roll call vote that the committee take no further action on the bill draft, as amended, relating to the licensing of all-terrain vehicle dealers. Senators O'Connell, Mutch, and Nething and Representatives Headland, Kingsbury, Kretschmar, Ruby, and Weisz voted "aye." Representative Thorpe voted "nay."

At the request of Chairman O'Connell, committee counsel presented a bill draft [50042.0400] to modify the regulation of motorcycle dealers.

Mr. Wahl presented testimony to the committee. He said the bill draft had serious flaws because it had mandatory penalties. He said the Department of Transportation should have some discretion over penalties. He said it is unfair for there to be an exception for signs of manufacturers to the requirements for signs of used motorcycle dealers. He provided a handout on the loss of sales tax to the state if the bill draft were to become law. A copy of the handout is on file in the Legislative Council office.

Mr. Kiser said the fees for violations are based upon the language for new and used car dealers. He said the present process is to give the dealer a written notification of the violation. He said the dealer has an opportunity for an administrative hearing.

In response to a question from Representative Ruby, Mr. Kiser said when the new and used car dealer law took effect, the department notified dealers of the requirements of the law. He said for the first six months to one year, the department issued warning letters instead of imposing the fees. He said the fees are mandatory and no warning letters are issued to dealers.

In response to a question from Representative Thorpe, Mr. Kiser said the language for the exemption to signage requirements came from the new and used car dealer law. He said the requirements of the manufacturer far exceed the signage requirements in law for used automobile dealers.

In response to a question from Representative Thorpe, Mr. Kiser said manufacturers may require signs that may be smaller than what is required by law; however, manufacturers require multiple signs.

In response to a question from Representative Thorpe, Mr. Kiser said a 32-square-foot sign is so the public knows the person is in the business of selling motorcycles. He said 32 square feet is a four-foot by eight-foot sheet of plywood.

In response to a question from Representative Thorpe, Mr. Kiser said the department is against the discretionary issuance of citations for the violations of dealer licensing laws. He said the department does not want to have to make case-by-case determinations for every violation.

In response to a question from Representative Thorpe, Mr. Kiser said Mr. Wahl's loss of sales tax handout presumes the buyer would not buy another motorcycle if the buyer could not buy the motorcycle from the used dealer. He said it is not a violation to refer a customer to another dealer. He said the statute prohibits a negotiated sale for another dealer. He said this prevents collusion with another dealer. He said one person is hired to do all inspection for dealer licensing. He said he does not anticipate the department would hire another person if more dealers were licensed under the bill draft.

In response to a question from Representative Thorpe, Mr. Kiser said the language prohibiting a business in a residence is in existing law. He said this prevents temporary operations. He said a residence is not an appropriate place to sell motorcycles.

It was moved by Representative Thorpe, seconded by Senator Mutch, and carried on a roll call vote that the committee take no further action on the bill draft, as amended, relating to the modification of the licensing requirements for motorcycle dealers. Senators O'Connell and Mutch and Representatives Headland, Kingsbury, Ruby, and Thorpe voted "aye." Senator Nething and Representative Kretschmar voted "nay."

OTHER BUSINESS

It was moved by Representative Kretschmar, seconded by Representative Kingsbury, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.

It was moved by Senator Nething, seconded by Representative Ruby, and carried that the meeting be adjourned sine die. No further business appearing, Chairman O'Connell adjourned the meeting at 2:00 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:1