

1999 SENATE JUDICIARY

SB 2376

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2376

Senate Judiciary Committee

Conference Committee

Hearing Date February 1, 1999

Tape Number	Side A	Side B	Meter #
1		x	4440 - end
2	x		0 - 2423
2-10-99 2	x		3408 - 4920
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SB2376 relates to noneconomic loss for serious, accidental bodily injury.

SENATOR STENEHJEM opened the hearing on SB2376 at 11:15 a.m.

All were present.

SENATOR COOK testified in support of SB2376. Rising cost of automobile insurance has become a major policy issue in states everywhere. This legislation would create a new section that would prevent uninsured motorists from bringing lawsuits for pain and suffering after an automobile accident. Michigan and California have legislation like this, No Pay - No Play. My concern is the number of uninsured motorists on the road.

SENATOR WATNE asked if someone is involved in an accident and they are uninsured, are they charged with something.

SENATOR COOK stated that the minimum fine is \$150 and have to go to Court. You also lose 12 points on your drivers license.

TOM SMITH, Domestic Insurance Company, testified to explain SB2376. He explained the bill.

This is entirely a policy decision which you as legislators have to make and address this issue.

This creates a new section to Chapter 26.1.41. That is the automobile no fault law of North

Dakota. This legislation protects the insured party from being sued for pain and suffering.

SENATOR STENEHJEM asked that what this bill would say that if I were driving down the road and if my policy had lapsed, I would be considered an uninsured motorist.

TOM SMITH stated yes, I believe so.

SENATOR STENEHJEM asked if this would have an effect on North Dakota insurance rates.

TOM SMITH stated that he did not know.

SENATOR NELSON asked if there was a cross check between the DOT and the insurance companies.

TOM SMITH stated that compulsory registration is tied to title registration. The DOT has authority to run a random sample.

AL WOLF, North Dakota Trial Lawyers, testified in opposition to SB2376. He has drafted a revised bill which is attached. I believe this bill is directed at young people and elderly people.

HOWARD SNORTLAND, AARP, testified in opposition to SB2376. I feel this bill takes our right to our day in Court.

NORM STUEMILLER, AARP, testified with concerns on SB2376. I think the uninsured motorist is a very serious problem. I don't know how to fix this problem, but I don't think is the answer.

SENATOR STENEHJEM CLOSED the hearing on SB2376.

SENATOR WATNE made a motion for DO PASS, SENATOR TRAYNOR seconded. Motion failed. 2 - 4 - 0

SENATOR NELSON made a motion for DO NOT PASS, SENATOR BERCIER seconded. Motion passed.

SENATOR NELSON will carry this bill.

4 - 2 - 0

SENATOR LYSON made a Motion to Reconsider, SENATOR WATNE seconded. Motion carried. Return this to the sponsor for amendments.

February 10, 1999 Tape 2, Side A

Senator Cook brought two sets of amendments. We have option 1 and 2.

SENATOR STENEHJEM stated that with this an extraneous issue has been put into the no-fault law.

SENATOR WATNE made a motion for Amendments, SENATOR LYSON seconded. Motion carried. 5 - 1 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR TRAYNOR seconded. Motion carried. 4 - 2 - 0

SENATOR WATNE will carry the bill.

Date: 2-1-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2376

Senate Judiciary _____ Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Watne Seconded By Traynor

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem		X			
Senator Darlene Watne	X				
Senator Stanley Lyson		X			
Senator John Traynor	X				
Senator Dennis Bercier		X			
Senator Carolynn Nelson		X			

Total (Yes) 2 No 4

Absent 0

Floor Assignment _____

Date: 2-1-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. S 2376

Senate Judiciary Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Nelson Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne		X			
Senator Stanley Lyson	X				
Senator John Traynor		X			
Senator Dennis Bercier	X				
SenatorCarolyn Nelson	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Nelson

REPORT OF STANDING COMMITTEE (410)
February 1, 1999 12:52 p.m.

Module No: SR-20-1586
Carrier: C. Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2376: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2376 was placed on the Eleventh order on the calendar.

Date: 2-8-99
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2376

Senate Judiciary _____ Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion on Reconsideration

Motion Made By _____ Seconded
By _____

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
SenatorCarolyn Nelson	X				

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

Date: 2-10-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2376

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem		X			
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X	X			
SenatorCarolyn Nelson	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

Date: 210-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2376

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Watne Seconded By Traynor

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem		X			
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
SenatorCarolyn Nelson		X			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Watne

REPORT OF STANDING COMMITTEE

SB 2376: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2376 was placed on the Sixth order on the calendar.

Page 1, line 2, after "injury" insert "; to provide for a report to the legislative council; and to provide an expiration date"

Page 1, line 9, after "who" insert "has at least two convictions under section 39-08-20 and who"

Page 1, line 10, replace "that party's" with "a" and after "vehicle" insert "owned by that party"

Page 1, after line 12, insert:

"SECTION 2. REPORT TO LEGISLATIVE COUNCIL. In 2002, the director of the department of transportation shall report to an interim committee designated by the legislative council regarding the effectiveness of section 1 of this Act in decreasing the incidents of driving without liability insurance.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective."

Renumber accordingly

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2376

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2376

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-1-99

Tape Number	Side A	Side B	Meter #
1		x	58 - 1165
2		x	4215 - end
3	x		0 - 259
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **SB 2376**

Sen. Cook introduced SB 2376 relating to non economic loss for serious, accidental bodily injury; to provide for a report to the legislative council; and to provide a penalty.

Tom Smith of Domestic Insurance Companies testified in a neutral, informational position of SB 2376.

Rep. Stefonowicz: Is this common in law to deny somebody the right to sue for the recovered damages?

Tom Smith: There are certain instances where this has occurred. That is why we have the no fault law.

Chairman Berg closed the hearing.

Tape 2, side B. Meter No. 4215

Chairman Berg opened the discussion of SB 2376.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number Sb2376

Hearing Date 3-1-99

This is a difficult issue. If our desire is to eliminate people driving without insurance then we need to put in place a statute that is similar to every mortgage that everyone has on any piece of property. You can not finance anything without insurance. We could figure out a way to have the same type of insurance tracking of people that do and don't have insurance.

End of tape 2, side B. Start tape 3.

Rep. Klein made a motion for a Do Pass.

Vice Chairman Kempenich second the motion.

The roll call vote was 12 yea, 2 nay, 1 absent.

The motion carried.

Rep. Martinson will carry the bill.

Date: 3-1-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2376

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Klein Seconded By Kempnich

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe		/
Vice Chairman Kempnich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim					
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz		/			

Total (Yes) 12 No 2

Absent 1

Floor Assignment Martinson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 1, 1999 4:37 p.m.

Module No: HR-36-3821
Carrier: Martinson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2376: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2376 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2376

Issue Paper

RAND

Institute for Civil Justice

The Effects of a No-Pay/No-Play Plan on the Costs of Auto Insurance in Texas

Stephen J. Carroll and Allan F. Abrahamse

WHAT IS NO-PAY/NO-PLAY?

The cost of automobile insurance has been a major public policy issue for more than a decade. A variety of public and private organizations and individuals have proposed alternative, purportedly less expensive, automobile insurance plans. But to obtain those savings, states would have to limit the rights and compensation traditionally provided to people injured in auto accidents. Recently, a new concept has emerged called "no-pay/no-play," which limits the compensation rights of people who were breaking the law when they were injured.

The Texas Senate Interim Committee on Civil Justice is studying Texas's current liability system. Senator Teel Bivins, a member of the committee, asked the Institute for Civil Justice to analyze the effects of a no-pay/no-play automobile insurance plan similar to Proposition 213 adopted in California in November 1996. We used the models we had developed to analyze Proposition 213¹ to estimate the likely effects of a similar plan on the costs of automobile insurance in Texas. This issue paper presents our results.

¹Carroll and Abrahamse (1996) provide a description of the data and methods we used to analyze the effects of Proposition 213 in California. We drew upon the results presented there for this discussion.

The plan we examine here bars drunk drivers and uninsured motorists from compensation for any non-economic losses resulting from auto accident injuries.² We estimate the likely effects of this plan on the costs of private passenger auto insurance. Because of data limitations, we did not consider the effects of the plan on the costs of commercial auto insurance or on felons.

KEY FINDINGS

Our analyses suggest that the no-pay/no-play insurance plan could reduce the costs of auto insurance. If current claiming, negotiating, and insurance purchasing patterns persist, the plan would reduce auto insurers' compensation costs for personal injuries by about 6 percent from the costs under Texas's current auto insurance rules. Given the past relationship between compensation costs and auto insurance premiums in Texas, this difference would translate into a reduction of about 3 percent in the average Texas driver's auto insurance premiums. To put this estimate in perspective, if the plan had been in force in 1996, the most recent year for which we have data

²Proposition 213 also bars compensation for any loss incurred in auto accidents by persons committing or fleeing from their crimes. However, because of data limitations, we do not consider the effects of that provision in this analysis.

on total auto insurance premiums,³ Texas drivers' auto insurance premiums would have been about \$182 million lower, a reduction of roughly \$23 in the average Texas driver's auto insurance costs.

Our results address relative costs; they show the difference between what will happen if the current system is retained and what would occur if the proposal were adopted. We do not suggest that auto insurance costs will necessarily fall if Texas adopts such a plan. For example, the plan may not reverse the long-term trend toward higher auto insurance costs. Rather, it is possible that no-pay/no-play provisions will slow the rate of growth in premiums so, over time, premiums would be roughly 3 percent less, on average, than they would be if the current system is not modified.

It should also be noted that our results address the effects of the plan on the average Texas driver. Both the expected costs of insuring a driver under the current auto insurance system and the likely effects of the plan vary from one driver to another, depending on a driver's risk factors and the coverages and policy limits purchased. For example, the savings that would result from limiting compensation to uninsured drivers injured in auto accidents would be greater in those communities in which the uninsured motorist rate is higher. Similarly, because the plan does not affect the costs of collision and comprehensive coverages, the relative savings would be greater for drivers who purchase only the personal injury and property damage liability coverages.

Because adoption of no-pay/no-play could engender changes in behavior, we recalculated our estimates under different sets of assumptions incorporating such changes. We also explored the sensitivity of these results to sampling error. Although the precise estimates vary from one set of behavioral assumptions to another, the results generally suggest that the plan would cut the costs of compensating auto accident victims by 3 to 10 percent. Thus, our basic conclusion—that the plan would result in savings of about 3 percent on the average driver's auto insurance premiums—holds for all the alternatives we considered.

PROBABLE EFFECTS OF NO-PAY/NO-PLAY IN TEXAS

The traditional rules of the tort system govern recovery for auto accident injuries in Texas. An accident victim

³National Association of Insurance Commissioners (1998).

may seek compensation for all economic and noneconomic losses from the driver who caused the accident.⁴ However, the victim is entitled to compensation only to the degree that the other driver is responsible for the accident.

The plan examined here would eliminate compensation for noneconomic losses to uninsured motorists and drunk drivers injured in auto accidents. This plan would not affect uninsured or drunk drivers' rights to compensation for economic losses. Nor would it affect the compensation rights of any other person injured in an auto accident—insured persons, sober drivers, passengers, pedestrians, bicyclists, etc.—including passengers injured while riding in cars operated by uninsured or drunk drivers.

In sum, the only accident victims who would be affected by the plan are uninsured or drunk drivers injured by an insured driver, and drunk drivers covered by uninsured motorist insurance injured by a negligent, uninsured motorist. The savings achieved by the plan would be the amount of compensation for noneconomic loss that would be paid to affected victims under the current law, plus the transactions costs—claims handling and defense costs—that insurers would have incurred in providing that compensation.

To estimate the effects of the plan, we used data derived from a representative sample of Texas auto accident injury claims closed with payment during 1992.⁵ For purposes of the analysis, we assume that the distributions of accidents, losses, and claimants reported in those data are representative of the corresponding future distributions. As a result of conversations with several major insurers, we assume that the uninsured motorist rate is 20 percent, that 90 percent of insured drivers will purchase uninsured motorist coverage, that 10 percent of insured drivers purchase medical payments coverage, and that 80 percent of insured drivers purchase personal injury protection coverage.

⁴Economic losses include an accident victim's medical costs, lost wages, burial expenses, replacement service losses, and other pecuniary expenditures. Noneconomic losses include physical and emotional pain, physical impairment, mental anguish, disfigurement, loss of enjoyment, and other nonpecuniary losses.

⁵The data were collected by the Insurance Research Council (1994) from 61 insurance companies that together accounted for about 81 percent of Texas's private-passenger automobile insurance (by premium volume) in 1992.

Given these assumptions, about 7 percent of future Texas auto accident victims will be uninsured drivers injured by an insured driver. Another 2 percent of future victims will be insured drunk drivers who are either injured by another insured driver or are injured by an uninsured motorist and have uninsured motorist coverage. In all, the plan would bar about 9 percent of auto accident victims from compensation for noneconomic loss. If the costs of compensating uninsured or drunk drivers hurt in auto accidents are reduced by the average compensation for noneconomic loss paid Texas drivers hurt in auto accidents, plus the associated transactions costs, the total costs of compensating auto accident victims would fall about 6 percent.

Personal injury coverages account for about half of auto insurance premiums; property damage coverages account for the other half. Thus, a 6 percent reduction in the costs of compensating auto accident victims for personal injuries translates into a 3 percent reduction in total auto insurance premiums. In 1996, total auto insurance premiums in Texas added up to about \$5.8 billion. If the plan had been in force then, the costs of auto insurance in 1996 would have been about \$182 million lower:

- Drivers denied compensation for noneconomic losses because they were drunk or uninsured when they were injured would have lost about \$124 million. (Because the attorneys who represent auto accident victims are typically paid on a contingency fee basis, a reduction of \$124 million in accident victims' gross compensation would have been divided between the victims—in the form of lower net compensation—and their attorneys—in the form of lower fees.)
- Because insurance companies would have faced smaller claims from drunk, insured drivers injured in accidents, they would have had to pay about \$21 million less in claims handling and defense costs.
- Finally, if insurance companies' other costs (general expenses, selling expenses, taxes and license fees, and dividends to policyholders) vary in proportion to compensation costs, insurance companies would have been able to cut premiums another \$37 million and still earn the same rate of profit.

POSSIBLE BEHAVIORAL RESPONSES TO NO-PAY/NO-PLAY AUTO INSURANCE

In the estimates described above, we assume that behaviors persist. But it is possible that people will change their behavior if the plan is adopted. We identi-

fied what some of these possible behavioral changes might be, modified our model to reflect alternative behavioral assumptions, and reestimated the effects of the plan. We emphasize that we have no evidence that any of these behavioral changes will occur if the plan is approved. Our purpose is to identify the extent to which our estimates are sensitive to the behavioral assumptions that underlie the calculations.

It is possible that the *claiming behavior* of uninsured or drunk drivers might change if they could no longer obtain compensation for noneconomic loss. We have found evidence of excess claiming for medical costs in auto personal injury cases across the United States.⁶ Texas's current system encourages excess claiming as a way to leverage greater compensation for noneconomic loss; by eliminating that incentive, the plan would discourage fraudulent or excessive claims. At the same time, many accident victims rely on compensation for noneconomic loss for the funds needed to pay their attorneys; eliminating this source of funds may reduce victims' ability to obtain an attorney and, consequently, discourage legitimate claims.

The civil justice policy implications of reducing the frequency of excessive claims are very different from the policy implications of reducing the frequency of legitimate claims. But from a cost perspective, the two look the same: Fewer claims imply lower costs.

To estimate how reducing the frequency of claims—excessive claims, legitimate claims, or some combination—would affect costs, we assumed that adoption of no-pay/no-play would result in either a 25 percent or a 50 percent reduction in the frequency of claims, and we estimated the savings in both cases.

The *negotiating behavior* of accident victims, of their attorneys, or of claims adjusters might change if the plan is adopted. In principle, those involved in resolving a liability claim determine the victim's economic and noneconomic loss as well as the insured's negligence. In practice, the parties often focus on the total amount of compensation that will be paid the victim, without regard for the specifics of just how much compensation is being paid for what. It is possible that those involved in resolving a claim by an uninsured or drunk driver will agree on a compensation figure that is less than what would have been paid under the current system, but not by the full amount that our data suggest is being paid for noneconomic loss.

⁶See Carroll, Abrahamse, and Vaiana (1995).

To estimate how a partial, rather than full, elimination of compensation for noneconomic loss to uninsured or drunk drivers would affect our estimates, we assumed that despite the formal provisions of the plan, uninsured or drunk drivers injured in auto accidents would be compensated for either 25 percent or 50 percent of their noneconomic loss, and we estimated the savings in both cases.

Adoption of the plan could also change some drivers' *insurance purchasing behavior*. The potential costs of going uninsured would be increased—uninsured drivers would not only be in violation of the law, they would not have access to compensation for noneconomic loss in the event that they were injured in an auto accident. At the same time, the plan would reduce the costs of purchasing auto insurance, relative to the current system. It is possible that some drivers who would go uninsured under the current system will choose to purchase insurance under the plan.

To estimate how an increase in the fraction of drivers who purchase insurance would affect our estimates, we assumed that either 25 percent or 50 percent of the uninsured motorist population chooses to purchase insurance, and we estimated the savings in both cases.

Our estimates are based on data obtained in a sample of claims; they are subject to *sampling error*. Some of these claims were high-dollar claims, and it is possible that these high-dollar claims had an undue influence on our results. However, high-dollar claims are a fact of life, and although they are relatively rare, they might indeed have a real influence on savings under the plan.

To examine the possible effect of sampling error on our results, we estimated the effects of the plan under three very different assumptions regarding the sample: First, we used all the cases in our sample to make nominal cost estimates. We then dropped the 10 percent of all cases with the greatest economic loss to obtain a second set of cost estimates. Finally, we doubled the economic loss of those in the top 10 percent of all cases to obtain a third set of cost estimates. It is unlikely that the effect of sampling error would be as great as the effect of discarding or doubling the top 10 percent of the sample.

In sum, we considered the sensitivity of our results to three alternative assumptions regarding the values of each of four factors: claim frequency, the fraction of noneconomic loss compensated, the percentage of uninsured drivers induced to purchase insurance, and the frequency of very large claims. We calculated relative savings under the plan under all 81 combinations of the four factors over

the three levels discussed above. The table shows the results of these calculations.

The first point to be seen from the table is that *relative savings in compensation costs always exceed about 3 percent*, regardless of how we combine the various factors. It seems quite likely that no-pay/no-play will reduce compensation costs in Texas.

The second point is that *relative savings in compensation costs generally exceed 6 percent*. Savings drop below 6 percent in relatively few cases, mostly those cases where drivers negotiate high compensation for noneconomic losses. Assuming that the terms of the plan are really put into practice, it seems unlikely that such negotiations will occur frequently. Thus, it seems quite likely that no-pay/no-play will modestly reduce compensation costs.

Finally, relative savings rarely exceed 10 percent. Savings approach and exceed this level when many currently uninsured drivers decide to purchase insurance after the plan goes into effect, or if we assume that our data file underrepresents high-dollar claims.

In light of the above, we believe that relative savings in compensation costs under the plan will fall somewhere between 6 and 10 percent.

DATA AND METHODS

We obtained detailed information on a random sample of about 4,800 Texas auto accident injury claims closed with payment during 1992 under the principal auto injury coverages.⁷ The data describe each victim's accident, resulting injuries and losses, and the compensation obtained from auto insurance. We combined data from several sources to estimate insurers' transaction costs,⁸ including both allocated loss-adjustment expenses (costs, primarily including legal fees and related expenses, incurred on behalf of and directly attributed to a specific claim) and unallocated, or general claim-processing costs, for each line of private-passenger auto insurance.⁹

We estimated the effects of the plan on insurance costs by comparing the costs of compensating the accident vic-

⁷Insurance Research Council (1994) provides a detailed description of the database used for this work.

⁸Carroll et al. (1991), Appendix D, describe the data and methods used to estimate insurers' transaction costs.

⁹We do not include claimants' legal costs, the value of claimants' time, or the costs the courts incur in handling litigated claims. Those costs do not affect insurers' costs and hence do not affect auto insurance premiums.

**Relative Savings in Compensation Costs Provided by a No-Pay/No-Play Plan
Under Alternative Assumptions, in Texas, by Percent**

Claiming Rate	Percentage of Noneconomic Loss Compensated	Percentage of Uninsured Drivers Purchasing Insurance	Compensation Cost Savings Estimates		
			Nominal	When Top 10% Dropped	When Top 10% Doubled
No reduction	None	0	5.7	6.3	5.5
		25	7.8	7.8	7.8
		50	9.9	9.4	10.2
	25	0	4.3	4.8	4.2
		25	6.7	6.7	6.8
		50	9.1	8.5	9.4
	50	0	3.0	3.3	2.9
		25	5.6	5.5	5.8
		50	8.3	7.6	8.7
25%	None	0	7.0	7.3	6.9
		25	8.8	8.7	9.0
		50	10.7	10.0	11.1
	25	0	6.0	6.2	5.9
		25	8.0	7.8	8.2
		50	10.1	9.3	10.5
	50	0	5.0	5.1	4.9
		25	7.2	6.9	7.4
		50	9.5	8.7	9.9
50%	None	0	8.3	8.4	8.3
		25	9.9	9.5	10.1
		50	11.5	10.6	11.9
	25	0	7.6	7.6	7.6
		25	9.3	8.9	9.6
		50	11.1	10.2	11.5
	50	0	6.9	6.9	7.0
		25	8.8	8.3	9.0
		50	10.7	9.7	11.1

Calculations are based on a representative sample of Texas auto accident injury claims closed with payment during 1992.

tims in the sample under the current insurance system to the costs of compensating the same victims for the same injuries and losses under a no-pay/no-play provision. We included all accident victims—insured and uninsured drivers, passengers, pedestrians, bicyclists, people injured in single-car accidents, etc.—in these calculations.

We assumed the proportions of drivers who will purchase each available type of auto insurance personal injury coverage and, by implication, the proportion of drivers who will go uninsured under Texas's current system. Given these assumptions, we computed the probability of an accident victim will have access to compensation for each coverage, multiplied by the average compen-

sation paid to Texas accident victims under that coverage, and summed over all coverages to estimate insurers' expected compensation costs under the current system. We then estimated a break-even premium for the current system—the amount insurers would have to charge the average insured driver to recover just what they paid out in compensating victims and the transaction costs they incurred in providing that compensation.

We assumed that drivers would make the same insurance purchasing decisions under the plan and, by implication, that the same proportion of drivers would go uninsured. We computed insurers' expected compensation costs, given those assumptions, and estimated the break-

even premium under the plan—the amounts insurers would have to charge insured drivers to recover compensation costs.

Finally, we calculated relative savings under the plan as the percentage difference between the break-even premium under the current system and the one under the proposed plan.

We focused on the effects of the proposed plan on auto insurers' compensation costs, including both the amounts they pay out in compensation and the transaction costs they incur in providing that compensation. We neglected the many other factors (e.g., insurers' overhead and profit margins and investment income) that also affect insurance premiums.

We focused on the relative costs of the two insurance systems. Because any factors that proportionately affect costs under both the current system and the proposed plan cancel out in the comparison, the results are insensitive to changes in such factors over time.

BIBLIOGRAPHY

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- Carroll, Stephen J., et al., *No-Fault Approaches to Compensating People Injured in Auto Accidents*, Santa Monica, California: RAND, R-4019-ICJ, 1991.
- Insurance Research Council, *Auto Injuries: Claiming Behavior and Its Impact on Insurance Costs*, Oak Brook, Illinois, September 1994.
- National Association of Independent Insurers, *Private Passenger Automobile Experience*, Des Plaines, Illinois, 1994.
- National Association of Insurance Commissioners, *State Average Expenditures & Premiums for Personal Automobile Insurance in 1996*, Kansas City, Missouri, January 1998.
- National Association of Insurance Commissioners, *Report on Profitability, by Line, by State in 1995*, Kansas City, Missouri, November 1996.

RESEARCH BRIEFS ON AUTOMOBILE INSURANCE

RAND research briefs offer readers succinct summaries of research reports. In recent years, the ICJ has published two research briefs on automobile insurance.

Choosing an Alternative to Tort, Santa Monica, California: RAND, RB-9024, 1995, no charge; summarizes "No-Fault Approaches to Compensating Auto Accident Victims," RAND RP-229; and "Consumer Choice in the Auto Insurance Market," RAND RP-254.

How Big Is the Price Tag for Excess Auto Injury Claims? Santa Monica, California: RAND, RB-9023, 1995, no charge; summarizes *The Costs of Excess Medical Claims for Automobile Personal Injuries*, RAND DB-139-ICJ.

Issue Paper

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The Effects of Proposition 213 on the Costs of Auto Insurance in California

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JAN 15 1999

What Is Proposition 213?

The cost of automobile insurance has been a major public policy issue in California, as in many other states, for more than a decade. A variety of public and private organizations and individuals have proposed alternative, purportedly less expensive, automobile insurance plans. But, to obtain the savings from such plans, the state would have to limit the compensation traditionally provided to people injured in auto accidents. To date, policymakers confronted with this trade-off have not been willing to limit accident victims' compensation rights.

Proposition 213, the Personal Responsibility Act of 1996, has qualified for the November 1996 California ballot. The proposition differs from previous proposals in that it would limit the compensation rights of only those people who were breaking certain laws when they were injured. If approved, the proposition would bar drunk drivers and uninsured motorists from compensation for any non-economic losses^[1] resulting from auto accident injuries. It would also bar compensation for any loss incurred by felons who were involved in auto accidents while committing crimes or fleeing from them.^[2]

We estimated the likely effects of the proposition's provisions regarding uninsured or drunk drivers on the costs of private-passenger auto insurance. Because of data limitations, we did not consider the provisions' effects regarding felons or its effects on the costs of commercial auto insurance.

Key Findings

Our analyses suggest that the proposition would reduce auto insurance costs. If current claiming, negotiating, and insurance-purchase patterns persist, the proposition would reduce auto insurers' compensation costs for personal injuries by about 10 percent relative to the costs under California's current auto insurance rules. Given the past relationship between compensation costs and auto insurance premiums in California, this difference would translate into a reduction of about 5 percent in the average California driver's auto insurance premiums.

To put this estimate in perspective, we estimated what auto insurance premiums would have been in

1994, the most recent year for which we have data on total auto insurance premiums, if the proposition had been in force then. Statewide, California drivers' auto insurance premiums would have been about \$550 million lower if the proposition had been in force in 1994, a reduction of roughly \$40 to the average California insured driver.

Our results address relative costs; they show the difference between what will happen if the current system is retained and what would occur if the proposal is adopted. We do not suggest that auto insurance costs will necessarily fall if California adopts the proposal. Proposition 213 may not reverse the long-term trend toward higher auto insurance costs. Rather, we suggest that Proposition 213 will slow the rate of growth in premiums so that future premiums would be roughly 5 percent less, on average, than they would be if the current system is not modified.

Our results address the effects of the proposition on the average California driver. Both the expected costs of insuring a driver under the current auto insurance system and the likely effects of the proposition vary from one part of the state to another. For example, the uninsured-motorist rate is much higher in urban areas than in rural areas. Consequently, the savings that would result from limiting compensation to uninsured drivers injured in auto accidents would be greater in urban areas.

Because approval of the proposition could engender changes in behavior, we recalculated our estimates under different sets of assumptions incorporating such changes. We also explored the sensitivity of these results to sampling error. Although the precise estimates vary from one set of behavioral assumptions to another, the results generally suggest that the proposition would cut the costs of compensating auto accident victims by 10 to 13 percent. Thus, our basic conclusion--that Proposition 213 would result in savings of about 5 percent on the average driver's auto insurance premiums--holds for all the alternatives we considered.

The Probable Effects of Proposition 213: Detailed Discussion

The traditional rules of the tort system govern recovery for auto accident injuries in California. An accident victim may seek compensation for all economic and non-economic losses from the driver who caused the accident. However, the victim is entitled to compensation only to the degree that the other driver is responsible for the accident.

Proposition 213 would eliminate compensation for non-economic losses to uninsured motorists and to drunk drivers injured in auto accidents. The proposition would not affect the rights of these drivers to compensation for economic losses. Nor would it affect the compensation rights of any other person injured in an auto accident--insured, sober drivers; passengers; pedestrians; bicyclists; etc.--including passengers injured while riding in cars operated by uninsured or drunk drivers.

In sum, the only accident victims that would be affected by the proposition are

- uninsured or drunk drivers injured by an insured driver
- drunk drivers covered by uninsured-motorist insurance injured by a negligent, uninsured motorist.

The savings achieved by the proposition would be the amount of compensation for non-economic loss that would be paid to these victims under the current law, plus the transaction costs--claims handling and defense costs--that insurers would have incurred in providing that compensation.

To estimate the effects of Proposition 213, we used data derived from a representative sample of California auto-accident injury claims closed with payment during 1992.[3] For purposes of the analysis, we assume that the distributions of accidents, losses, and claimants reported in those data are representative of the corresponding future distributions. We also assume that, in the future, 30 percent of California drivers will be uninsured and that 90 percent of insured drivers will purchase uninsured-motorist coverage.

Given these assumptions, we estimate that about 11 percent of future California auto-accident victims will be uninsured drivers injured by an insured driver. Another 2 percent of future victims will be insured drunk drivers who are either injured by another insured driver or are injured by an uninsured motorist and have uninsured-motorist coverage. In all, the proposition would bar compensation for non-economic loss to about 13 percent of auto-accident victims. If the costs of compensating uninsured or drunk drivers hurt in auto accidents are reduced by the average compensation for non-economic loss paid California drivers hurt in auto accidents, plus the associated transaction costs, the total costs of compensating auto-accident victims would fall about 10 percent.

Personal-injury coverages account for about half of auto-injury premiums; property-damage coverages account for the other half. Thus, a 10 percent reduction in the costs of compensating auto-accident victims translates into a 5 percent reduction in total auto insurance premiums. In 1994, total auto insurance premiums in California added up to more than \$11 billion. Accordingly, if Proposition 213 had been in force then, the costs of auto insurance in 1994 would have been about \$550 million lower:

- Drivers denied compensation for non-economic losses because they were drunk or uninsured when they were injured would have lost about **\$360 million**. (Because some accident victims are represented by attorneys paid on a contingency fee basis, a cut of \$360 million in accident victims' gross compensation would be divided between the victims--in the form of lower net compensation--and attorneys--in the form of lower fees.)
- Because insurance companies would have faced smaller claims from drunk and insured drivers injured in accidents, they would have had to pay about **\$70 million** less in claims handling and defense costs.
- Finally, if insurance companies' other costs (overhead expenses, selling expenses, taxes, and license fees) vary in proportion to premiums, the companies would be able to cut premiums **\$118 million** and still earn the same rate of profit.

Possible Behavioral Responses to Proposition 213

The estimates described above assume that past behaviors persist. But it is possible that people will change their behavior if Proposition 213 is adopted. We speculated about what some of these possible behavioral changes might be, modified our model to reflect alternative behavioral assumptions, and re-estimated the proposition's effects. We emphasize that we have no evidence that any of these behavioral changes *will* occur if the proposition is approved. Our purpose is to identify the extent to which our estimates are sensitive to the behavioral assumptions that underlie the calculations.

It is possible that the **claiming behavior** of uninsured or drunk drivers might change if they could no longer obtain compensation for non-economic loss. We have found evidence of extensive excess

claiming for medical costs in auto personal-injury cases across the United States, and particularly in California.[4] California's current system encourages excess claiming as a means for leveraging greater compensation for non-economic loss; by eliminating that incentive to affected drivers, Proposition 213 would discourage fraudulent or excessive claims. At the same time, many accident victims rely on compensation for non-economic loss for the funds needed to pay their attorney; eliminating this source of funds to affected drivers may reduce their ability to obtain an attorney and, consequently, may discourage some legitimate claims.

The civil justice policy implications of reducing the frequency of excessive claims are very different from the policy implications of reducing the frequency of legitimate claims. But from a cost perspective, the two look the same: Fewer claims imply lower costs.

To estimate how reducing the frequency of claims--excessive claims, legitimate claims, or some combination--would affect costs, we assumed that adoption of Proposition 213 would result in either a 25 percent or a 50 percent reduction in the frequency of claims by drunk and uninsured drivers, and estimated what the savings would be in each case.

The **negotiating behavior** of accident victims, of their attorneys, or of claims adjusters might change if the proposition is adopted. In many cases, objective measures of an accident victim's non-economic losses or of the insured's negligence or both are not available and are determined in the course of negotiations. Our data reflect the results of those negotiations as they are conducted in the context of California's current insurance system. It is possible that under the proposition those involved in resolving a claim by an uninsured or drunk driver will agree on a compensation figure that is less than what would have been paid under the current system, but not by the full amount that our data suggest is being paid for non-economic loss.

To estimate how a partial, rather than full, elimination of compensation for non-economic loss to uninsured or drunk drivers would affect our estimates, we assumed that, despite the formal provisions of Proposition 213, uninsured or drunk drivers injured in auto accidents would be compensated for either 25 percent or 50 percent of their non-economic loss and estimated what the savings would be in each case.

Adoption of the proposition could also change some drivers' **insurance-purchase behavior**. The potential costs of going uninsured would be increased--uninsured drivers would not only be in violation of the law, they would not have access to compensation for non-economic loss if they were injured in an auto accident. At the same time, the proposition would reduce the costs of purchasing auto insurance relative to the current system. It is possible that some drivers who would go uninsured under the current system will choose to purchase insurance under the proposition.

To estimate how an increase in the fraction of drivers who purchase insurance would affect our estimates, we assumed that either 25 percent or 50 percent of the uninsured-motorist population chooses to purchase insurance and estimated what the savings would be in each case.

Our estimates are based on data obtained in a sample of claims; they are subject to **sampling error**. Some of these claims were high-dollar claims, and it is possible that these high-dollar claims had an undue influence on our results. However, high-dollar claims are a fact of life, and although they are relatively rare, they might indeed have a real influence on savings under the proposition.

To examine the possible effect of sampling error on our results, we estimated the proposition's cost

effects under three very different assumptions about the sample: (1) We used all the cases in our sample. (2) We dropped the 10 percent of all cases with the greatest economic loss. (3) We doubled the economic loss of cases in the top 10 percent of all cases. It is unlikely that the effect of sampling error in a file of 6,000 cases would be as great as the effect of discarding or doubling the top 10 percent of the sample.

In sum, we considered the sensitivity of our results to three alternative assumptions about the values of each of four factors: claim frequency, the fraction of non-economic loss compensated, the percentage of uninsured drivers induced to purchase insurance, and the frequency of very large claims. We calculated relative savings under Proposition 213 under all 81 combinations of the four factors over the three levels discussed above.

Table 1 shows the results of these calculations.

Table 1

Relative Proposition 213 Savings (%) Under Alternative Assumptions

Claiming Rate	Proportion of Non-Economic Loss Compensated	Percentage of Uninsured Drivers Getting Insurance	Cost Savings Estimates		
			Nominal	Drop Top 10%	Double Top 10%
No claiming reduction	No non-economic loss	0%	10.0	9.0	10.8
		25%	11.2	10.4	12.2
		50%	12.4	11.9	13.6
	25% of non-economic loss	0%	7.5	6.7	8.1
		25%	9.2	8.7	10.1
		50%	11.0	10.7	12.1
	50% of non-economic loss	0%	4.9	4.5	5.3
		25%	7.3	6.9	7.9
		50%	9.6	9.4	10.5
25% claiming reduction	No non-economic loss	0%	11.4	10.5	12.2
		25%	12.3	11.7	13.3

		50%	13.2	12.8	14.4
	25% of non-economic loss	0%	9.5	8.8	10.1
		25%	10.8	10.3	11.7
		50%	12.2	11.9	13.3
	50% of non-economic loss	0%	7.6	7.1	8.1
		25%	9.4	9.0	10.1
		50%	11.1	10.9	12.1
50% claiming reduction	No non-economic loss	0%	12.8	12.0	13.6
		25%	13.4	12.9	14.4
		50%	14.1	13.7	15.2
	25% of non-economic loss	0%	11.5	10.9	12.2
		25%	12.4	12.0	13.3
		50%	13.3	13.1	14.5
	50% of non-economic loss	0%	10.3	9.8	10.9
		25%	11.4	11.1	12.3
		50%	12.6	12.4	13.7
Maximum			14.1	13.7	15.2
Top quartile			12.4	12.0	13.5
Median			11.2	10.7	12.2
Bottom quartile			9.5	9.0	10.3
Minimum			4.9	4.5	5.3

The results in Table 1 support three important conclusions.

First, *relative savings always exceed about 5 percent*, regardless of how we combine the various factors. It seems quite likely that Proposition 213 will reduce compensation costs.

Second, *relative savings generally exceed about 10 percent*. Savings drop below 10 percent only in the relatively few cases in which drivers negotiate high compensation for non-economic losses. If the terms of the proposition are *really* implemented, it seems unlikely that such negotiations will occur

frequently. Thus, it seems quite likely that Proposition 213 will modestly reduce compensation costs.

Finally, *relative savings rarely exceed about 13 percent*. They do so only when many currently uninsured drivers decide to purchase insurance after Proposition 213 goes into effect and/or if we assume that our data file under-represented high-dollar claims.

In light of these findings, we believe that the relative savings under Proposition 213 will fall somewhere between 10 and 13 percent.

Data and Methods

We obtained data from closed-claim surveys conducted by the Insurance Research Council.[5] These surveys obtained detailed information on a random sample of about 6,000 California auto-accident injury claims closed with payment during 1992 under the principal auto-injury coverages. The data describe each victim's accident, resulting injuries and losses, and the compensation obtained from auto insurance. We combined data from several sources to estimate insurers' transaction costs,[6] including both allocated loss-adjustment expenses--costs, primarily legal fees and related expenses, incurred on behalf of and directly attributed to a specific claim--and unallocated, or general claim-processing costs, for each line of private-passenger auto insurance.[7]

We estimated the effects of Proposition 213 on insurance costs by comparing the costs of compensating the accident victims in the sample under the current insurance system with the costs of compensating the same victims, for the same injuries and losses, under Proposition 213. We included all accident victims--insured and uninsured drivers, passengers, pedestrians, bicyclists, people injured in single-car accidents, etc.--in these calculations.

We assumed that the proportion of drivers who will purchase each available type of auto insurance personal-injury coverage and, by implication, the proportion of drivers who will go uninsured under California's current system will be about the same as those today. Given these assumptions, we computed the probability that an accident victim will have access to compensation under each coverage, multiplied by the average compensation paid California accident victims under that coverage, and summed over all coverages to estimate insurers' expected compensation costs under the current system. We then estimated a *break-even premium* for the current system--the amount insurers would have to charge the average insured driver to just recover what they paid out in compensating victims and the transaction costs they incurred in providing that compensation.

We assumed that drivers would make the same insurance-purchase decisions under the proposition and, by implication, that the same proportion of drivers would go uninsured. We computed insurers' expected compensation costs under these assumptions, and estimated the break-even premium under the proposition--the amount insurers would have to charge insured drivers to just recover compensation costs.

Finally, we calculated relative savings under the proposition as the percentage difference between the break-even premium under the current system and the one under the proposition.

We focused on the effects of the proposed plan on auto insurers' compensation costs, including both the amounts they pay out in compensation and the transaction costs they incur in providing that compensation. We neglected the many other factors (e.g., insurers' overhead, profit margins, and investment income) that also affect insurance premiums.

We focused on the relative costs of the two insurance systems. Because any factors that proportionately affect costs under both the current system and the proposed plan net out in the comparison, the results are insensitive to changes in such factors over time.

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Insurance Research Council, *Auto Injuries: Claiming Behavior and Its Impact on Insurance Costs*, Oak Brook, Ill., September 1994.

National Association of Insurance Commissioners, *State Average Expenditures & Premiums for Personal Automobile Insurance in 1994*, Kansas City, Mo., January 1996.

[1] *Economic losses* include an accident victim's medical costs, lost wages, burial expenses, replacement service losses, and other pecuniary expenditures. *Non-economic losses* include physical and emotional pain, physical impairment, mental anguish, disfigurement, loss of enjoyment, and other nonpecuniary losses.

[2] Felons would be allowed to collect damages for intentional acts of harm against them.

[3] The data were collected by the Insurance Research Council (1994) from 61 insurance companies that together accounted for about 77 percent of California's private-passenger automobile insurance (by premium volume) in 1992.

[4] See Carroll, Abrahamse, and Vaiana (1995).

[5] Insurance Research Council (1994) provides a detailed description of the data.

[6] Carroll et al. (1991), Appendix D, describe the data and methods used to estimate insurers' transaction costs.

[7] We do not include claimants' legal costs, the value of claimants' time, or the costs the courts incur in handling litigated claims. Those costs do not affect insurers' costs and, hence, do not affect auto-insurance premiums.

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Source: S.L. 1985, ch. 316, § 17.
 Derivation: N.D.C.C. 26-31-05.

26.1-40-22. Penalty. Any person violating sections 26.1-40-18 through 26.1-40-21 is guilty of a class A misdemeanor.

Source: S.L. 1985, ch. 316, § 17.
 Derivation: N.D.C.C. 26-31-06.

CHAPTER 26.1-41

AUTO ACCIDENT REPARATIONS

Section	Section
26.1-41-01. Definitions.	fits unenforceable — Exemption of benefits from process.
26.1-41-02. Security requirements — Authority of director of the department of transportation.	26.1-41-11. Mental and physical examinations.
26.1-41-03. Suspension of coverage — Written request by owner.	26.1-41-12. Discovery of facts about an injured person.
26.1-41-04. Optional excess no-fault benefits.	26.1-41-13. Priority of applicable security — Coordination of benefits.
26.1-41-05. Self-insurance — Liability policies — Authority of commissioner.	26.1-41-14. Stacking of basic no-fault benefits prohibited.
26.1-41-06. Persons entitled to basic no-fault benefits.	26.1-41-15. Motor vehicle liability insurance — Extraterritorial provision.
26.1-41-07. Persons not entitled to benefits.	26.1-41-16. Insurer's right of subrogation.
26.1-41-08. Secured person exemption.	26.1-41-17. Equitable allocation of losses among insurers.
26.1-41-09. Payment of basic and optional excess no-fault benefits.	26.1-41-18. Assigned claims plan.
26.1-41-10. Assignment of nonmedical bene-	26.1-41-19. Limitation of actions.

26.1-41-01. Definitions. As used in this chapter:

1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death resulting therefrom, arising out of the operation of a motor vehicle, and which is accidental as to the person claiming basic or optional excess no-fault benefits.
2. "Basic no-fault benefits" means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred and resulting from accidental bodily injury to any one person as the result of any one accident may not exceed thirty thousand dollars, regardless of the number of persons entitled to the benefits or the number of basic no-fault insurers obligated to pay the benefits. Basic no-fault benefits payable may not exceed one hundred fifty dollars per week per person prorated for any lesser period for work loss or survivors' income loss, or three thousand five hundred dollars for funeral, cremation, and burial expenses.
3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
4. "Bus" means:
 - a. Any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school

- or privately owned and operated for compensation for the transportation of children to or from school.
 - b. Any motor vehicle owned by a charitable, religious, educational, or governmental corporation or organization designed for carrying more than ten passengers and used for the transportation of persons not for compensation.
 - c. Any motor vehicle owned by a political subdivision and operated as part of a public transit system in which all or a portion of the costs of operation are subsidized by the political subdivision or the federal government.
5. "Dependent survivors" means the surviving spouse of a deceased injured person if residing in the deceased's household at the time of the deceased's death, and other persons receiving support from the deceased injured person at the time of the deceased's death which would qualify them as dependents of the deceased for federal income tax purposes under the federal Internal Revenue Code. The dependency of a surviving spouse terminates upon remarriage.
 6. "Disability" means the inability to engage in substantially all of the injured person's usual and customary daily activities.
 7. "Economic loss" means medical expenses, rehabilitation expenses, work loss, replacement services loss, survivors' income loss, survivors' replacement services loss, and funeral, cremation, and burial expenses.
 8. "Injured person" means a person who sustains accidental bodily injury.
 9. "Medical expenses" means reasonable charges incurred for necessary medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care rendered in accordance with a recognized religious healing method. Medical expenses do not include that portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility, or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically needed.
 10. "Motor vehicle" means a vehicle having more than three load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
 11. "Noneconomic loss" means pain, suffering, inconvenience, and other nonpecuniary damage recoverable under the tort law of this state.
 12. "Occupying" means to be in or upon a motor vehicle or engaged in the immediate act of entering into or alighting from the motor vehicle.

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13. "Operation" of a motor vehicle means operation, maintenance, or use of a motor vehicle as a vehicle. Operation of a motor vehicle does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the injury occurs off the business premises, or conduct in the course of loading and unloading the vehicle unless the injury occurs while occupying it.
14. "Owner" means the person in whose name the motor vehicle has been registered. If ownership has been transferred, but the registration record has not been changed, "owner" means the person, other than a lienholder, to whom ownership has been transferred. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person, other than a lienholder, who holds the legal title to the motor vehicle. If the motor vehicle is the subject of a security agreement with the debtor having the right to possession, a lease with an option to purchase with the lessee having the right to possession, or a lease with a term of six months or more with the lessee having the right to possession, "owner" means the debtor or lessee.
15. "Pedestrian" means any person not occupying any vehicle designed to be driven or drawn by power other than muscular power.
16. "Rehabilitation expense" means the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.
17. "Relative" means any of the following residing in the same household as the owner: a person related to the owner by blood, marriage, or adoption, or a foster child. A person resides in the same household if that person usually makes a home in the same family unit, even though temporarily living elsewhere.
18. "Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had the injured person not been injured, not for income but for the benefit of the injured person or the injured person's household. Replacement services loss does not include any loss after the death of an injured person.
19. "Secured motor vehicle" means a motor vehicle with respect to which the security required by this chapter was in effect at the time of its involvement in the accident resulting in accidental bodily injury.
20. "Secured person" means the owner, operator, or occupant of a secured motor vehicle, and any other person legally responsible for the acts or omissions of the owner, operator, or occupant.

21. "Serious injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of two thousand five hundred dollars. An injured person who is furnished the services in subsection 9 without charge or at less than the average reasonable charge for the service in this state is deemed to have sustained a serious injury if a court determines that the fair and reasonable value of the services exceeds two thousand five hundred dollars.
22. "Survivors' income loss" means loss sustained after an injured person's death by dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work the decedent would normally have performed had the decedent not died.
23. "Survivors' replacement services loss" means expenses, not to exceed fifteen dollars per day after the injured person's death, by dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the services the decedent would have performed not for income but for the benefit of the decedent's household.
24. "Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the period of disability, would have performed had the person not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work that the injured person was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.

Source: S.L. 1985, ch. 316, § 18; 1985, ch. 332, § 3; 1991, ch. 322, § 1; 1991, ch. 323, § 1.

Derivation: N.D.C.C. 26-41-03.

Disability.

—Not Shown.

Where plaintiff did not miss any work because of an auto accident, nor did he expect to miss any work in the future, and when asked if there were things that he could not do that were related to the accident, he responded "No," and where plaintiff presented no evidence that any of his daily and customary activities were substantially affected by the accident, while plaintiff may have been injured, the evidence raised no issue of material fact that his injuries constituted a "disability." *Ellingson v. Knudson*, 498 N.W.2d 814 (N.D. 1993).

Entitlement to No-Fault Benefits.

One becomes entitled to no-fault benefits under the condition of occupancy of the vehicle, not on foreseeability of accident. *Ertelt v. EMCASCO Ins. Co.*, 486 N.W.2d 233 (N.D. 1992).

Medical Expenses.

Medical expenses do not have priority over any other form of economic loss. *St. Alexius Hosp. v. Eckert*, 284 N.W.2d 441 (N.D. 1979).

The "reasonable degree of medical certainty" standard does not apply to medical expenses that have already been incurred. *Erdmann v. Thomas*, 446 N.W.2d 245 (N.D. 1989).

Expert medical testimony is not required to lay the foundation for the admission of medical bills or expenses into evidence. *Erdmann v. Thomas*, 446 N.W.2d 245 (N.D. 1989).

26.1-41-07. Persons not entitled to benefits. Basic or optional excess no-fault benefits are not payable to or on behalf of any person while:

1. Occupying any motor vehicle without the expressed or implied consent of the owner or while not in lawful possession of the motor vehicle.
2. Occupying a motor vehicle owned by such person which is not insured for the benefits required by this chapter unless uninsured solely because the insurance company of the owner has not filed a form pursuant to subsection 2 of section 26.1-41-05 to provide the basic no-fault benefits required by this chapter.
3. During a racing or speed contest, or in practicing or preparing for a racing or speed contest.
4. Intentionally causing or attempting to cause injury to oneself or another person.

Source: S.L. 1985, ch. 316, § 18.
Derivation: N.D.C.C. 26-41-08.

Eligibility.

Under section 26.1-41-08(2), two requirements must be satisfied before a secured person can claim the secured-person exemption against an injured person who is not the owner of the unsecured vehicle: the injured person must be a person who may qualify for no-fault benefits under section 26.1-41-06 and the injured person cannot be excluded from no-fault coverage under this section. *Van Klootwyk v. Arman*, 477 N.W.2d 590 (N.D. 1991).

Hunting Accidents.

This section does not exclude from coverage

a person injured in a hunting accident while he is occupying his own car. *Weber v. State Farm Mut. Auto. Ins. Co.*, 284 N.W.2d 299 (N.D. 1979).

Indians on Reservation.

This section does not exclude from benefits enrolled Indians who are injured in automobile accidents occurring on an Indian reservation. *State ex rel. Moug v. North Dakota Auto. Assigned Claims Plan*, 341 N.W.2d 623 (N.D. 1983).

Collateral References.

No-fault insurance; general release of tortfeasor by accident victim as affecting automobile insurer's obligation for personal injury protection (PIP) benefits, 39 A.L.R.4th 378.

26.1-41-08. Secured person exemption.

1. In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person is exempt from liability to pay damages for:
 - a. Noneconomic loss unless the injury is a serious injury.
 - b. Economic loss to the extent of all basic no-fault benefits paid or to become payable for such injury under this chapter after subtracting the same elements of loss recoverable under any workers' compensation law.
2. The exemption under subsection 1 does not apply unless the person who has sustained accidental bodily injury is a person who may qualify for basic no-fault benefits pursuant to section 26.1-41-06 and who is not excluded under section 26.1-41-07.