

## REPORT ON EFFECTIVENESS OF EXEMPTING A SECURED PERSON FROM NONECONOMIC LOSS BY CERTAIN INJURED PERSONS OPERATING A MOTOR VEHICLE - BACKGROUND MEMORANDUM

In 1999 the Legislative Assembly enacted Senate Bill No. 2376 (attached as an appendix), which limits the recoverable damages of a person who is in a motor vehicle accident and does not have liability insurance if that person has at least two convictions of operating a motor vehicle without liability insurance. Section 1 of Senate Bill No. 2376 was codified in North Dakota Century Code (NDCC) Section 26.1-41-20 which states:

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 may not be assessed damages for noneconomic loss for a serious injury in favor of a party who has at least two convictions under section 39-08-20 and who was operating a motor vehicle owned by that party at the time of injury without a valid policy of liability insurance in order to respond to damages for liability arising out of the ownership, maintenance, or use of that motor vehicle.

Section 1 expires on August 1, 2003. Section 2 of 1999 Senate Bill No. 2376 requires the director of the Department of Transportation to report to an interim committee designated by the Legislative Council regarding the effectiveness of NDCC Section 26.1-41-20 in decreasing the incidents of driving without liability insurance. The report is to be made in 2002, and the Legislative Council has designated the Judiciary B Committee as the committee to receive the report.

The prime sponsor of Senate Bill No. 2376 testified the bill was introduced to encourage motorists to obtain liability insurance and, hence, reduce the rates of otherwise insured motorists. The testimony reveals the purpose of the bill was to prevent uninsured motorists from bringing lawsuits for pain and suffering after an automobile accident. It was stated that Michigan and California have similar laws.

The bill as introduced did not require the study or prerequisite convictions for driving without liability insurance. Testimony reveals the committee was uncertain whether this law would have an effect on insurance rates. The committee received testimony that the bill as introduced would have a disproportionate effect on young people and elderly people. The prime sponsor suggested amendments to provide for the study and for the prerequisite convictions. These amendments were adopted by the committee and passed in the final version of the bill.

The legislative history contains an issue paper written by Stephen J. Carroll and Ellen F. Abrahamse of the RAND Institute for Civil Justice entitled *The Effects of a No-Pay/No-Play Plan on the Cost of Auto Insurance in Texas*, which analyzed the effects of the no-pay/no-play automobile insurance plan of California, if adopted in Texas. The paper found that the adoption would translate into a reduction of about three percent in the average Texan's auto insurance premiums.

### SUGGESTED APPROACH

Upon receiving the report from the director of the Department of Transportation, the committee could ask for an expansion of duties from the chairman of the Legislative Council so that the committee may take action on the report. Although the committee directive is to receive a report, the committee may wish to receive testimony from interested persons, namely insurance companies, on the effect of this section on injured, uninsured motorists and on automobile insurance premiums generally. Upon receiving testimony, the committee may want to consider extending the operation of NDCC Section 26.1-41-20, taking no action and allowing the section to expire, or amending the section to assure a reduction in insurance premiums.

ATTACH:1