

EFFECTIVENESS OF FINANCIAL RESPONSIBILITY REQUIREMENTS FOR DRIVING WITHOUT LIABILITY INSURANCE STUDY - BACKGROUND MEMORANDUM

The Legislative Council chairman directed the Transportation Committee to study the effectiveness of financial responsibility requirements imposed on individuals convicted of driving without liability insurance.

MOTOR VEHICLE INSURANCE

This state requires motor vehicle insurance for three situations. For all three situations, minimum limits are mandated by law. The first situation is in which the insured person injures another person or damages another person's property. A person must purchase liability insurance to answer for bodily injury or property damage that arise from this situation. Although liability insurance is a specific kind of insurance, the term is commonly used to include all mandatory coverages, including uninsured motorist, underinsured motorist, and basic no-fault insurance. In this memorandum, the term will be used in the specific sense. The second situation is in which another person injures the insured person and does not have any or enough liability insurance to pay for the bodily injury to the insured person. A person must purchase uninsured and underinsured motorist insurance to answer for bodily injury that arises from this situation. The third situation is in which the insured person's body is injured and the insured person's insurance pays for economic loss from bodily injury regardless of fault. A person must purchase basic no-fault or personal injury protection (PIP) insurance to answer for injuries that arise from this situation. Under all the situations for which mandatory coverage is required, there is not any mandatory coverage for property damage done to the insured person by another person who is not insured.

LIABILITY INSURANCE

Under North Dakota Century Code (NDCC) Section 39-08-20, a person may not drive a motor vehicle in this state without liability insurance. The owner of the vehicle is responsible for acquiring liability insurance. In addition to purchasing liability insurance, the driver must provide proof of insurance upon request by a law enforcement officer. The liability insurance must be in the amount required by Chapter 39-16.1. The minimum limits for liability insurance in Section 39-16.1-11 are \$25,000 per person and \$50,000 per accident for bodily injury and \$25,000 per accident for property damage.

Under NDCC Section 39-08-20, the offense of not having liability insurance is a Class B misdemeanor, and the sentence must include a fine of at least \$150. The second offense within 18 months includes a fine of at least \$300. In addition, the offender's driver's license is "marked." The individual's license is

suspended until that person has an insurance carrier provide the department a certificate of insurance showing insurance for three years.

HISTORY

The following is a list of bills that substantially changed the law relating to driving without liability insurance. If a bill was not changed by a subsequent bill, the last in time creation or change remains in present law.

The duty to purchase liability insurance began in 1975. In 1975, Senate Bill No. 2146 provided that a person driving without liability insurance was subject to a noncriminal offense punishable by two point demerit points. A statutory fee was specifically prohibited under the bill. In 1981, House Bill No. 1220 removed the prohibition on a statutory fee and the statutory fee was set at not less than \$25 or more than \$100. In addition, the demerit points were increased from two to six points.

In 1975, House Bill No. 1214 provided that the Department of Transportation may not register and must rescind or suspend the registration of a vehicle without basic no-fault benefits and coverage for liabilities under motor vehicle liability insurance. In 1981, Senate Bill No. 2069 prohibited the department from issuing a certificate of title or transferring a certificate of title for failure to provide basic no-fault benefits or motor vehicle liability insurance coverage.

In 1985, House Bill No. 1287 made driving without liability insurance a criminal violation. This criminal violation was a Class B misdemeanor. As a result, the statutory fee was repealed. As a consequence of being a criminal violation, under NDCC Section 39-07-09, a person stopped for driving without liability insurance may be brought by the halting officer to the nearest accessible magistrate instead of releasing the person upon a promise to appear.

In 1987, House Bill No. 1613 assigned 14 demerit points to driving without liability insurance if the violation was discovered as a result of investigation of an accident in which the driver is the owner.

In 1989, House Bill No. 1242 created a mandatory fine of at least \$150 for a violation. In addition, the bill created the duty on a person driving a motor vehicle to provide satisfactory evidence of a motor vehicle liability insurance policy upon request by a law enforcement officer. The person was given up to 20 days to provide the evidence. In 1993, House Bill No. 1488 clarified that a person that produces a valid policy of liability insurance may not be convicted or assessed court costs for a violation.

In 1991, House Bill No. 1134 provided in addition to the prohibition on the person driving without liability insurance that an owner may not cause or knowingly

permit to be driven a motor vehicle without liability insurance.

In 1995, House Bill No. 1492 increased the demerit points for a second violation of driving without liability insurance within 18 months to 12 points. The bill provided that the mandatory minimum fine of \$150 may not be suspended. The bill created the mandatory minimum penalty for driving without liability insurance within an 18-month period of \$300.

In 1997, House Bill No. 1195 increased the maximum fine for a Class B misdemeanor from \$500 to \$1,000.

In 1999, Senate Bill No. 2406 provided that if a driver of a motor vehicle is not an owner of the motor vehicle and is stopped for driving without liability insurance, the driver does not violate the law if the driver provides the court with evidence identifying the owner and describing the circumstances under which the owner allowed the driver to drive the motor vehicle. The bill required a person who has been convicted of driving a motor vehicle without liability insurance to provide proof of insurance for three years to the Department of Transportation or else that person's driving privileges are suspended. The proof of insurance must be a certificate from an insurance carrier. The convicted person's license must contain a notation showing that the person must keep proof of liability insurance on file with the department. The fee for the notation and removal is \$50. The bill required insurance carriers to notify the director of a cancellation or termination of an insurance policy required for a person convicted without liability insurance. In 1999, House Bill No. 1326 required a person without motor vehicle liability insurance who causes damages to another person or another's property with a motor vehicle to be court-ordered to pay the other person's deductible.

In 2003, House Bill No. 1238 provided that the time of the acquisition of satisfactory evidence of a valid policy of liability insurance in effect at the time of an alleged violation for driving without liability insurance is the burden of the owner. The bill creates an exception to NDCC Section 26.1-30-18 which provides that an insurance policy begins at 12:01 a.m. on the day on which coverage begins and expires at 12:01 a.m. on the day of expiration of the policy. The exception is that a person may be convicted for failure to have a valid policy of liability insurance if the time of acquisition of the policy was after the time of the alleged incident of driving without liability insurance.

During the 2001-02 interim, the Judiciary B Committee received a report on the effectiveness of 1999 Senate Bill No. 2376, which limited 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 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.

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 had similar laws.

The bill as introduced did not require the study or prerequisite convictions for driving without liability insurance. Testimony reveals the standing 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 Costs 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 3 percent in the average Texan's auto insurance premiums.

North Dakota Century Code Section 26.1-41-20 was set to expire on August 1, 2003. Section 2 of 1999 Senate Bill No. 2376 required the director of the Department of Transportation to report to an interim committee designated by the Legislative Council regarding the effectiveness of Section 26.1-41-20 in decreasing the incidents of driving without liability insurance. The report was made in 2002 to the interim Judiciary B Committee.

The Department of Transportation reported on the effectiveness of NDCC Section 26.1-41-20 in reducing insurance rates and reducing the number of uninsured motorists. The committee was informed that the "no pay/no play" law has not had a significant effect on insurance rates. Although the number of uninsured drivers had been decreasing since 1999, the cause was unknown. The reduction could be caused by changes in the law or the economy. The worse the times are economically, the more people drive without insurance. Committee discussion

indicated that although Section 26.1-41-20 was to expire on August 1, 2003, individual members would personally monitor the law during the 2003 legislative session. In 2003, House Bill No. 1190 removed the July 31, 2003, expiration date on Section 26.1-41-20. In addition, the bill lowered the previous convictions requirement from two to one.

The committee's study requires the review of the effectiveness of financial responsibility requirements on individuals convicted of driving without liability insurance. Effectiveness may be measured by that person buying insurance or not driving. It would be

very difficult to measure the number of individuals convicted of driving without liability insurance who do not drive after being convicted. The number of convictions of no liability insurance a second time within 18 months is an indication of whether insurance requirements are effective.

The following is a table provided by the Department of Transportation. The table contains the number of convictions for driving without liability insurance when there was a crash, when there was not a crash, or when there was a second offense within 18 months.

NO LIABILITY INSURANCE INFORMATION CONVICTIONS				
Year	No Liability Insurance (No Crash)	No Liability Insurance (With Crash)	No Liability Insurance (Second Offense)	Total
1991	1,416	229		1,645
1992	1,522	235		1,757
1993	1,435	201		1,636
1994	1,395	270		1,665
1995	1,569	265	48	1,882
1996	1,509	266	321	2,096
1997	1,805	276	261	2,342
1998	2,077	271	382	2,730
1999	2,002	278	374	2,654
2000	1,858	223	313	2,394
2001	1,655	203	337	2,195
2002	2,267	309	396	2,972
2003	2,187	195	391	2,773
2004	2,886	287	609	3,782
2005 (through June)	1,251	144	269	1,664

The following table summarizes the changes described above as well as the study:

CONSEQUENCES FOR DRIVING WITHOUT LIABILITY INSURANCE				
	Fee or Fine (Section 39-08-20)	Demerit Points (Section 39-06.1-10(3)(6))	Other	No Pay/No Play (Section 26.1-41-20)
1975	Prohibited fee	2 points	Prohibited registration on or of motor vehicle (Sections 39-04-05 and 39-04-06)	
1981	\$25 to \$100 fee	6 points	Prohibited issuance or transfer title (Section 39-05-20.3)	
1985	Class B misdemeanor with up to \$500 fine			
1987		14 points if accident		
1989	\$150 to \$500 fine			
1995	Second violation in 18 months - \$300 to \$500 fine	Second violation in 18 months - 12 points		
1997	First violation - \$150 to \$1,000 fine Second violation in 18 months - \$300 to \$1,000 fine			
1999			Required court to order uninsured who causes damage to pay deductible of insured person (Section 39-08-20.1) Required proof of insurance for three years (Section 39-08-20) Marked license \$50 fee and \$50 for removal (Section 39-08-20)	Upon two prior convictions
2003				Upon one prior conviction

PROOF OF FINANCIAL RESPONSIBILITY

North Dakota Century Code Chapter 39-16.1, "Proof of Financial Responsibility for the Future," works in concert with Chapter 39-16, "Financial Responsibility of Owners and Operators." The purpose of these two chapters is to protect innocent victims of motor vehicle accidents from financial disaster. Both chapters are for a motor vehicle owner who has already had an accident or has been convicted of certain traffic offenses. The sanctions imposed by Chapter 39-16 are intended to guarantee financial responsibility for a first accident. In contrast, the sanctions imposed by Chapter 39-16.1 are designed to establish proof of financial responsibility for future accidents.

Under NDCC Section 39-16-06, after the director receives an accident report, the license of the driver involved in the accident is suspended unless the driver deposits security to satisfy any judgment for damages resulting from the accident. However, if the driver purchases liability insurance and provides proof of financial responsibility, the driver may drive until the accident is settled or determined by a court. If the driver is found negligent, the driver's license is suspended. However, the license is not suspended if the person had liability insurance at the time of the accident. Under Section 39-16-07, a license suspended under Section 39-16-05 remains suspended until security is deposited to answer for damages, one year has passed since the accident and no action or damages has been instituted, or the case has been settled.

Under NDCC Section 39-16.1-01, a person who commits certain offenses or fails to pay a judgment needs to provide proof of financial responsibility. Also, a person who did not have liability insurance in effect at the time of an accident is required to provide proof of financial responsibility. In addition, proof of financial responsibility is required under the following circumstances:

- Conviction for driving under the influence.
- Conviction for actual physical control.
- Refusal of chemical tests.
- Conviction for driving under revocation.
- Conviction for driving under suspension when length of suspension is for 91 days or more.
- Until a judgment for an automobile accident is fully satisfied.
- Conviction for manslaughter in which a motor vehicle is used.
- Conviction for negligent homicide in which a motor vehicle is used.
- Conviction for a felony in which a motor vehicle is used.

This proof of financial responsibility may be given by a certificate of insurance, a bond, or a certificate of deposit of money or securities with the Bank of North Dakota. If the proof of financial responsibility provided is a certificate of insurance, this certificate is called an SR-22 filing.

Under NDCC Section 39-16.1-03, the clerk of court sends notice to the director of the failure to satisfy a judgment. Under Section 39-16.1-04, the director upon receiving this notice, suspends the license unless there is an installment plan to pay the judgment and the person has proof of financial responsibility, the judgment creditor consents to a license and there is proof of financial responsibility, or the individual files an affidavit with the director stating the individual had insurance and the insurer is liable to the amounts required by the chapter. Under Section 39-16.1-05, the judgment is satisfied under the chapter, if the proof of financial responsibility limits are credited to the judgment.

Under NDCC Section 39-16.1-19, proof of financial responsibility is required for one year. In 1993, House Bill No. 1488 reduced the requirement to file proof of responsibility from three years to one year.

The following is provided by the Department of Transportation and is a list of situations in which individuals failed to maintain insurance and subsequently had their operator's licenses suspended.

SUSPENSIONS AS A RESULT OF NO INSURANCE					
Failure to Maintain Proof of Financial Responsibility (Sections 39-16.1-07 and 39-16.1-20)		Failure to File Proof of Insurance After Crash (Section 39-16-05)		Failure to Maintain Liability Insurance (Section 39-08-20)	
1991	1,791	1991	892		
1992	1,749	1992	843		
1993	757	1993	911		
1994	1,081	1994	1,215		
1995	1,046	1995	1,091		
1996	932	1996	1,264		
1997	1,045	1997	1,431		
1998	998	1998	1,124		
1999	935	1999	1,027	1999	407
2000	1,043	2000	891	2000	2,405
2001	1,126	2001	950	2001	2,656
2002	984	2002	1,002	2002	1,628
2003	999	2003	974	2003	978
2004	1,040	2004	944	2004	1,171
2005 (through June)	558	2005	536	2005	660

SUGGESTED STUDY APPROACH

The committee may wish to compare the changes in law to the changes in convictions for driving without liability insurance and suspensions as a result of not maintaining liability insurance. This may provide an insight as to the effectiveness of changes in the past. As stated previously, the only notification sent by insurers to the department of drivers who have had insurance canceled or terminated is when the driver previously has been convicted of driving without liability insurance. In the recent past, extending this

concept to all drivers has been considered by the Legislative Assembly, but the related bills have failed to pass. The committee may revisit this legislation, especially in light of changes in technology which may make this more feasible than in the past. The committee may wish to receive testimony from the Department of Transportation, the Insurance Department, and insurers on means by which mandatory liability insurance compliance may be increased through changes in the law.