

## **SENATE BILL NO. 2056**

**Presented by:**        **John Arnold**  
                              **Deputy Insurance Commissioner**  
                              **North Dakota Insurance Department**

**Before:**                **Senate Industry and Business Committee**  
                              **Senator Doug Larsen, Chairman**

**Date:**                 **January 23, 2023**

Good morning, Chairman Larsen and members of the Committee. My name is John Arnold, Deputy Insurance Commissioner. I stand before you today in support of Senate Bill 2295. Senate Bill 2295 does two things. One, it increases efficiency in the administration of the North Dakota Automobile Insurance Plan (AIP), which is commonly referred to as the “assigned risk plan.” Two, it dissolves the Unsatisfied Judgement Fund (UJF), which has become obsolete in the view of the Insurance Department.

Section two of the bill pertains to the AIP. The AIP provides a mechanism for individuals to obtain the legally required personal auto insurance coverages when they are unable to acquire coverage on the private market due to their underwriting risk. 26.1-25-15 creates a loose framework through which the AIP is administered; essentially it currently states that companies can come together and form an agreement to operate the AIP. The Automobile Insurance Plan Service Office (AIPSO) is utilized by companies to assist in the administration of the AIPs across the country. Currently, since 26.1-25-15 only states that insurance companies can form an agreement, the administration of North Dakota’s AIP requires AIPSO contracting with one of their members to act as a fronting company to initially take on the risk of AIP policies, and then assess their competitors when losses are incurred.

Last fall, AIPSO contacted the Insurance Department proposing what is now section two of SB 2261. The existing language of 26.1-25-15, with slight amendments, will become subsection one. The big ask is found in subsection eight (page 2, lines 18 and 19). Subsection eight allows for an entity, other than a company, manage and operate the AIP. This means that an organization, such as AIPSO, could be selected by companies, and a fronting company would no longer be necessary. The newly created subsections two through seven and nine create a more detailed regulatory framework for the AIP, necessary since an entity for which we may not already have regulatory authority may be operating the plan.

Sections one and three of bill relate to the UJF. The UJF was created by the 30<sup>th</sup> Legislative Assembly (1947) to provide a “fund of last resort” from which residents could collect financial compensation if injured by an uninsured motorist. It is important to note that the UJF is not a form of supplemental coverage, and only pays when there is a complete absence of coverage.

The 42<sup>nd</sup> Legislative Assembly (1971) established the requirement that auto policies include uninsured motorist coverage. The 44<sup>th</sup> Legislative Assembly (1975) established the requirement of maintaining proof of liability coverage. As a result, claims to the UJF have drastically

reduced. The Department's research shows that from 1948 to 1968 claims to the UJF totaled approximately \$2.5 million. From 1969 to 2023 claims amounted to approximately \$197,000.

It is now extremely rare that anyone could even qualify to make a claim against the UJF. Essentially, a completely uninsured pedestrian would have to be hit by an uninsured motorist to be eligible. And if that were to happen, the injured pedestrian would need to obtain legal counsel to make a claim that is capped at \$10,000 per person, with a maximum payout of \$20,000. An individual who is completely uninsured probably doesn't have the money to hire an attorney in the first place, and if they were able to, the expense would likely take a significant cut out of the claim.

The lack of use isn't the only reason why we are requesting that the UJF be dissolved, however. Administering the UJF, although unused, still comes at a cost to the fund. By statute, when the UJF balance drops below \$150,000 on June 1, during the subsequent year the Department of Transportation is to assess an additional \$1 fee on each vehicle registration. In 2019 the fund dropped below \$150,000 and so each vehicle registration in 2020 included the \$1 fee. By the end of 2020 the fund had grown to over \$700,000. Our estimate is that the fund will not drop below \$150,000 for more than 40 years.

The original purpose of the UJF has mostly been eliminated due to other legislative action, and in the very rare case that may apply, other factors make the UJF an inadequate source of financial compensation for the injured. What is left is a fund that will slowly be exhausted on administrative costs until the citizens replenish it, just to again be spent on administrative processes. In the Department's view, this is a waste, and it is time to dissolve this fund.

Chairman Larsen and members of the committee, I respectfully request the committee give SB 2295 a Do Pass recommendation, and I would be happy to answer any questions that you may have. Thank you.

## **CHAPTER 26.1-23 UNSATISFIED JUDGMENT FUND**

### **26.1-23-01. Unsatisfied judgment fund - Administration of the fund by commissioner - Appropriation.**

The commissioner shall administer the unsatisfied judgment fund. The commissioner shall perform all duties and responsibilities in regard to the fund not otherwise delegated to the attorney general or the state treasurer under this chapter. Judgments recovered under this chapter must be paid from moneys deposited in the fund and the moneys are hereby appropriated for such purpose. The expenses arising from administration of the fund must be paid from the fund within the limits of legislative appropriation.

#### **26.1-23-01.1. Collection of amounts owed the unsatisfied judgment fund - Costs paid.**

Payments from the unsatisfied judgment fund may be made, without court order, to pay contingent professional fees and costs incurred in connection with the recovery of amounts owed to the fund by any person on whose behalf the fund has previously paid a full or partial judgment.

#### **26.1-23-02. Attorney general - Appointment of counsel.**

The attorney general shall appoint a special assistant attorney general as legal counsel for the fund pursuant to section 54-12-08 and the special assistant attorney general may perform all the duties and responsibilities in regard to the fund delegated to the attorney general under this chapter. The attorney general at the attorney general's discretion may appoint special counsel to defend the fund. The trial judge of the district court shall fix the amount of the special counsel's fees and expenditures, and certify the amount to the attorney general who, after approving, shall certify the amount to the commissioner.

#### **26.1-23-03. Additional registration fee - Deposit in fund - Suspension of fee.**

At the time of registering a motor vehicle, the owner shall pay to the director of the department of transportation, in addition to the registration fees, a fee of one dollar for each motor vehicle registered. The fees must be deposited with the state treasurer who shall credit the fees to the unsatisfied judgment fund. If on June first of any year the amount of uncommitted money in the fund is one hundred fifty thousand dollars or more, the requirement for the payment of the fee is suspended during the succeeding year and until the year in which the fee is reimposed. The fee must be reimposed for any year whenever on June first of the previous year the uncommitted amount of the fund is less than one hundred fifty thousand dollars.

#### **26.1-23-04. Recovery from fund.**

When any person, who is a resident of this state, recovers in any court in this state a judgment for an amount exceeding three hundred dollars in an action for damages resulting from bodily injury to, or the death of, any person occasioned by, or arising out of, the ownership, maintenance, operation, or use of a motor vehicle by the judgment debtor in this state, upon the judgment becoming final, the judgment creditor may, in accordance with this chapter, apply to the judge of the district court in which the judgment was rendered, upon notice to the attorney general, for an order directing payment of the judgment out of the fund. Upon the hearing of the application, the judgment creditor shall show:

1. That the creditor has obtained judgment as set out in this section, stating the amount thereof and the amount owing thereon at the time of the application;
2. That the creditor has caused an execution to be issued thereon and that:
  - a. The sheriff has made a return thereon showing that no property of the judgment debtor liable to be seized in satisfaction of the judgment debt could be found; or
  - b. The amount realized on the sale of property seized, or otherwise realized under the execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due thereon;

3. That the creditor has caused the judgment debtor, when the debtor is available, to be examined pursuant to law for that purpose, touching the debtor's property, and in particular as to whether the debtor is insured under a policy of automobile insurance against loss occasioned by the debtor's legal liability for bodily injury to, or the death of, another person;
4. That the creditor has made an exhaustive search and inquiry to ascertain whether the judgment debtor is possessed of property, real or personal, liable to be sold or applied in satisfaction of the judgment; and
5. That as a result of the search, inquiry, and examination, the creditor has learned of no property possessed by the judgment debtor and liable to be sold or applied in satisfaction of the judgment debt, or that the creditor has learned of certain property, describing it, owned by the judgment debtor and liable to be seized or applied in satisfaction of the judgment, and has taken all necessary proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the amount remaining due thereon.

**26.1-23-05. Recovery from fund when liability cannot be determined.**

When bodily injury to, or the death of, any person who is a resident of this state is occasioned by or arises out of an accident caused by the operation, maintenance, or use of a motor vehicle in this state and the identity of the person against whom an action might be brought for the recovery of damages for the bodily injury or death resulting from the accident cannot be ascertained, any person who would be entitled to bring the action to recover damages may bring an action in the district court of the county in which the accident occurred within six months from the date of the accident against the unsatisfied judgment fund, by service upon the commissioner and the attorney general, for the recovery of the damages from the fund, provided notice of the accident was given to some police officer immediately after the accident occurred and the name of the officer is alleged in the complaint. A payment may not be made from the fund in satisfaction of any judgment obtained in the action in excess of five thousand dollars, exclusive of costs, for bodily injury to, or the death of, any one person, nor in excess of ten thousand dollars for any one accident.

This section does not limit the liabilities or remedies of any person on the claim for relief growing out of the accident for which suit was brought against the fund, but the fund is subrogated to the rights of any person who has obtained judgment under this section, to the extent that the fund has made payment in satisfaction thereof.

**26.1-23-06. Attorney general may appear.**

Section 26.1-23-04 does not apply in the case of any judgment entered by default, unless the commissioner and the attorney general have been given at least thirty days' notice prior to hearing, to which notice shall be attached a copy of the summons and complaint. Upon receipt of the notice, the attorney general may enter an appearance, file a defense, appear by counsel at the trial, or take any other action the attorney general deems appropriate on behalf of the fund and in the name of the defendant, and may thereupon, on behalf of the fund and in the name of the defendant, conduct a defense, and all acts done in accordance therewith shall be deemed to be acts of the defendant. The attorney general may appear and be heard on any application for payment from the fund and may show cause, if any, why the order applied for should not be made.

**26.1-23-07. Appeal from order.**

An order made under section 26.1-23-04 is subject to appeal to the supreme court by the judgment creditor, or by the attorney general, in the manner provided by law for the taking of appeals from final orders in a civil action.

**26.1-23-08. Limitation on amount payable from fund - Nonassignable.**

1. Recovery from the fund is limited to payment of the following, exclusive of costs:

- a. Ten thousand dollars for bodily injury, including death, of one person in any one accident.
  - b. Twenty thousand dollars for bodily injury, including death, of two or more persons in any one accident.
2. The amount authorized to be paid must be within the limits provided by this section, and must be determined as follows:
  - a. If the judgment creditor has effected collection of a portion of the judgment from any source, except as provided for in subdivisions b and c, the fund is authorized to pay the creditor the difference between the amount collected and the amount of the judgment, or ten thousand dollars, whichever is smaller. If the judgment creditor has collected an amount equal to the limits payable from the fund from the insurance or nonexempt assets of the judgment debtor, then the creditor is precluded from recovery from the fund.
  - b. If the judgment creditor has effected collection of a portion of the judgment from payment from workforce safety and insurance, then the amount collected from that source must be subtracted from the judgment before the procedure outlined in subdivision a is followed.
  - c. If the judgment creditor was covered by an uninsured motorist insurance policy at the time of the accident, then the maximum liability limit of that policy must first be subtracted from the judgment before the procedure outlined in subdivision a is followed. If the maximum liability limit of the policy is equal to the limits payable from the fund, then no recovery from the fund is allowed.
3. The right of any person to recover from the unsatisfied judgment fund is not assignable and subrogation of the right is not allowed.

**26.1-23-09. Order on state treasurer to pay judgment.**

If the court is satisfied of the truth of the matters shown by the judgment creditor as required by section 26.1-23-04, and if the applicant has taken all reasonable steps to enforce the collection of the judgment, and if there is good reason for believing that the judgment debtor has no property liable to be or applied in satisfaction of the judgment or of the balance owing thereon and is not insured under a policy of automobile insurance by the terms of which the insurer is liable to pay, in whole or in part, the amount of the judgment, the court shall make an order directed to the state treasurer requiring the treasurer, subject to section 26.1-23-08, to pay from the unsatisfied judgment fund the amount of the judgment or the balance owing thereon, and the state treasurer shall comply with the order.

**26.1-23-10. Judgment assigned to state.**

Before making any payment from the unsatisfied judgment fund on any judgment in compliance with an order, the state treasurer shall require the judgment creditor to assign the judgment to the state treasurer for the use and benefit of the fund.

**26.1-23-11. Order of payment from fund - Prorate distribution.**

If, at the time of the filing of the order, there is not sufficient moneys in the unsatisfied judgment fund to satisfy the order, the order must be registered by the state treasurer and must be paid when the moneys are available in the fund and subsequent orders must be paid in the order of registration. If more than two judgments are obtained against a judgment debtor upon claims for relief arising out of one accident and the aggregate amount due, after crediting any collections, exceeds twenty thousand dollars, the court in making its order shall direct that the state treasurer shall prorate the distribution from the fund in the proportion which each judgment or the balance unpaid thereon bears to the sum of twenty thousand dollars.

**26.1-23-12. Amount to be repaid before privileges restored - Interest - Installment payments - Compromise of amount due.**

When the operator's license or driving privileges of any person, or the registration of a motor vehicle registered in the person's name, has been suspended or revoked pursuant to the laws

of this state, and the state treasurer has paid from the fund any amount toward the satisfaction of a judgment and costs recovered against the person, the suspension or revocation may not be removed, nor the operator's license or driving privileges or registration restored, nor any new license or driving privilege issued or granted to or registration be permitted to be made by the person until the person has repaid in full to the state treasurer the amount paid from the fund, together with interest thereon at the rate of six percent per annum from the date of payment, and has furnished proof of financial responsibility as required by the laws of this state. The court in which the judgment was rendered, upon ten days' notice to the attorney general, may make an order permitting payment of the amount in installments, and in this case, the person's operator's license, driving privileges, or registration privileges, if the same have been suspended or revoked, or have expired, may be restored and shall remain in effect unless the person defaults in making any installment payment specified in the order. In the event of any default, the commissioner shall, upon notice of default, suspend the person's operator's license, driving privileges, or registration privileges until the amount of default has been paid in full and the additional sum of two hundred dollars has been paid to the fund to be applied to the judgment. The judgment debtor may petition the court in which the judgment was rendered for a compromise of the judgment. The court in its discretion, upon notice to the attorney general, may order a compromise if the court is satisfied that a compromise would be in the interests of justice and that the fund would benefit therefrom. Upon payment in full of the compromised amount, the attorney general shall issue a satisfaction of judgment to the judgment debtor. A compromise may not be ordered which is less than five hundred dollars or twenty percent of the judgment, whichever amount is greater.