

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRANSPORTATION COMMITTEE

Thursday, January 15, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

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

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

Members absent: Senators Duane Mutch, Tom Seymour

Others present: See attached appendix

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

NO-FAULT INSURANCE

At the request of Chairman O'Connell, committee counsel presented the background memorandum *No-Fault Insurance in North Dakota - History*. He said the memorandum includes selected case law from this state and a history of legislative action on the issue of no-fault insurance from 1973 to present.

At the request of Chairman O'Connell, committee counsel presented the memorandum *No-Fault Insurance in Other States*. He said the memorandum provides information on the classifications of no-fault insurance and a review of the recent repeal of no-fault insurance in Colorado. Committee counsel said there is a discrepancy as to whether no-fault is included under collision insurance or liability insurance for the purposes of the table on state average collision premiums in the memorandum. He said if no-fault is included in liability insurance it does not affect the conclusions one may draw from the memorandum. The first conclusion is that North Dakota has low no-fault rates--North Dakota ranks 50th for liability insurance premiums and 48th for collision coverage premiums. The second conclusion is that the statistics do not provide enough information to state how a change in no-fault insurance will affect premiums because of the interrelationship between coverages and other factors that affect premium rates. He provided a copy of a table entitled *No Fault - Summary of Benefits and Thresholds* provided by the National Association of Independent Insurers. He said this table provides more detailed information than the table on states with no-fault insurance in the

memorandum. A copy of the handout is on file in the Legislative Council office.

In response to a question from Representative Thorpe, committee counsel said although Michigan has high rates for collision insurance, collisions with deer do not affect this rate because these collisions are covered by comprehensive insurance.

Mr. William L. Dooley, Jr., Government Affairs Counsel, American Family Insurance, provided written testimony in the form of a letter to the committee. He said American Family would like language in the statute to state coverage will not be provided for faith-healing treatments. He said limitations on passive care modalities including massage, acupuncture, and physical therapy, similar to those used by Workforce Safety and Insurance, would be beneficial. He said these limitations should relate to the frequency of and length of care. He said chiropractic care should be limited as to the duration of treatment. He said American Family would like to see a shorter statute of limitations for claiming medical expenses. He said there should be a clear guideline for discontinuing benefits following a specified lapse in treatment and for failure to submit bills after a motor vehicle accident. He said American Family supports statutory changes stating an insurer owes for "reasonable and necessary" services and "usual and customary" charges for medical expenses. He said coverage should be eliminated for claims related to the maintenance of a motor vehicle and when getting in or out of a motor vehicle. He said American Family prefers a verbal threshold for serious injury. He said coverage should be limited to prescription drugs and exclude nonprescription drugs. He said investigational and experimental treatment should be excluded from coverage. A copy of his testimony is on file in the Legislative Council office.

Mr. Rob Hovland, North Dakota Domestic Insurers Association, provided testimony on no-fault insurance in this state. His testimony was based on a handout that is on file in the Legislative Council office. He said no-fault insurance has evolved from something different from what was intended in 1975. He said benefits have been extended beyond the original intent. He said legislative history in this and other states has shown state legislatures thought benefits would be paid in a few weeks. He said it is typical for

benefits to be paid for months and years. He said no-fault covers an individual who is injured while fixing a vehicle. He said he did not think the original intent was to cover these types of situations.

Mr. Hovland said customers want a good portion of the insurance premium returned as benefits. He said no-fault does not have a good return for the premium dollar paid compared to health care insurance. He said the return from health insurance is up to 35 percent more than no-fault insurance. He said health care insurers have cost-containment measures that are not available to automobile insurers. He said no-fault is the most expensive form of automobile insurance to administer. He said the high cost of administration is because automobile insurers must review each claim to see if it is medically necessary, was caused by the accident, and to see if the person has met the maximum medical improvement. He said no-fault claims are 5 percent of all claims but account for 20 percent of expenses. He said inadvertent billings are a problem with administration. He said hospitals do not differentiate on the billing whether the item was for an automobile accident or for something else. This requires the automobile insurer to closely review the bill. He said there are some intentional billing problems that happen when a health care provider sends a bill to the automobile insurer to see if the bill will be paid. He said health care insurers are better at administering insurance for bodily injury than automobile insurers.

Mr. Hovland said litigation has not been reduced by no-fault because there are still issues to determine relating to whether the threshold for serious injury has been met. He said automobile insurers are targets for lawsuits because they are perceived as having "deep pockets." He said it is not uncommon for individuals to have treatments done so that the serious injury threshold is met.

Mr. Hovland said the coordination of benefits threshold has been raised from \$5,000 to \$10,000, which has reduced the benefits from no-fault insurance coverage. He said the per vehicle per claim cost is up 37.8 percent and this increase does not include the increased costs that would result from the increase in the coordination of benefits threshold.

Mr. Hovland said massage therapy, chiropractic care, and preexisting injuries are some of the biggest expenses for no-fault insurers. He said there is an incentive to attribute all injuries to an automobile accident because there is no deductible for no-fault and a higher payment rate than health care insurers. He said preexisting conditions create a gray area that requires administrative cost to review. He said it is not cost-effective for automobile insurers to dispute preexisting injuries. He said if the insurer loses, the insurer must pay both sides attorneys' fees, but this is not the case if the insured loses. He said chiropractic care was not included in the original legislation. He said chiropractic care was not mainstream care in

1975. He said there should be a limit on the number of chiropractic treatments covered by no-fault. He said 80 percent of the problems with no-fault insurance are related to chiropractic care and massage therapy.

Mr. Hovland said no-fault should be limited to accidents that happen in a moving vehicle. He said North Dakota is one of only six states with limits over \$10,000. He said North Dakota has a \$30,000 limit.

Mr. Hovland addressed arguments against changes in no-fault and the repeal of no-fault. He said people argue that the repeal of no-fault will result in a shift in cost to health insurance, which will result in people not being able to afford health insurance. He said South Dakota does not have mandatory no-fault insurance and has an almost identical percentage of individuals covered by health insurance. He said it is argued that if chiropractic care is removed from no-fault coverage then insureds will go to more costly physical therapy. He said this has not happened in other states.

Mr. Hovland said it is impossible and impractical for automobile insurance to have preferred providers. He said because no-fault insurance is mandated by law, automobile insurers do not have any leverage in negotiating preferred provider agreements. He said a substantial share of the market is required for preferred provider agreements to work. He said there are approximately 85 companies that sell no-fault insurance in this state. He said it would be a violation of antitrust laws if they grouped together to fix payment rates for medical care.

In response to a question from Representative Ruby, Mr. Hovland said there are procedures by which an automobile insurer may recover from the insurer of the individual at-fault for benefits paid under no-fault.

In response to a question from Representative Ruby, Mr. Hovland said a health care insurer would not enter an agreement with an automobile insurer for the administration of no-fault benefits. He said if they did they would have the same cost of administration because of the more stringent review required for no-fault bills than health care bills.

In response to a question from Representative Weisz, Mr. Hovland said the adoption of mandatory no-fault coverage does not prevent, but increases, lawsuits. He said raising the threshold of serious injury would not reduce lawsuits.

In response to a question from Senator Nething, Mr. Hovland said there would be options for the purchase of first-party medical coverage if there were repeal of mandatory no-fault. He said customers would be able to choose the amount of medical coverage they wanted based on need, instead of having a mandated amount.

In response to a question from Representative Thorpe, Mr. Hovland said Center Mutual Insurance charges the average rates of \$55 to \$75 for a vehicle

and approximately \$120 to \$150 per family for no-fault insurance.

In response to a question from Representative Kretschmar, Mr. Hovland said first-party coverage may have a deductible. He said this coverage would have cost-containment measures that may not be introduced into no-fault because of its mandatory nature. He said these cost-containment measures would be a reaction to market forces. He said no-fault should be repealed so that these measures can be introduced into automobile insurance.

In response to a question from Representative Weisz, Mr. Hovland said 8 to 9 percent of the people in the United States do not have health care insurance. He said most individuals without automobile insurance most likely do not have health care insurance.

In response to a question from Senator Nething, Mr. Hovland said the no-fault insurance system cannot be fixed, but may be improved.

In response to a question from Representative Weisz, Mr. Hovland said a driver may purchase medical coverage benefits in South Dakota to cover first-party injuries. He said Center Mutual Insurance requires customers to purchase medical coverage. He said \$5,000 is most likely the average amount purchased.

In response to a question from Representative Weisz, Mr. Hovland said Center Mutual Insurance requires \$2,500 in medical coverage for automobile insurance customers in South Dakota. He said the insurance is required because it prevents a lawsuit by a passenger in the insured's car against the insured when the passenger does not have health care insurance.

Mr. Jim Poolman, Commissioner, Insurance Department, provided information on the study. He said he has no position on whether changes should or should not be made to the no-fault insurance system. He said the Insurance Department does not receive many consumer complaints related to no-fault insurance.

Mr. Kent Olson, North Dakota Professional Insurance Agents, provided testimony on the study. He said the major reason for the support of no-fault insurance in 1975 by insurance agents was that insurance agents were for state regulation, instead of federal regulation of the insurance industry. He quoted information from the *2002 Crash Facts Book* provided by the Department of Transportation and said there were 465,271 drivers in North Dakota. He said there were approximately 700,000 vehicles. He said there were approximately 4,883 people injured by automobile accidents. He said this is seven-tenths of 1 percent of all North Dakotans. He said a very small portion of North Dakotans are injured in automobile accidents, but every driver has to pay for no-fault.

Mr. Olson said the total amount of money received by insurance companies for no-fault insurance in

premiums was approximately \$26 million and the total payout was approximately \$18 million. He said the \$18 million of pure loss combined with the expenses of administering no-fault results in a combined loss ratio of around 100 percent.

Mr. Olson provided a number of anecdotal stories of individuals being covered by no-fault insurance for accidents related to loading and unloading an automobile or an attached trailer, repairing a motor vehicle, or being injured while on a trailer. He said no-fault should only cover injury that occurs while a vehicle is moving and while the injured person is in the vehicle. He said there should be a shorter statute of limitation and all benefits other than medical services should not be covered by no-fault insurance.

In response to a question from Senator Nething, Mr. Olson said he did not have any figures on the related reduction in insurance rates if his suggestions were adopted into law. He said he understood the importance of the Legislative Assembly having those figures if the Legislative Assembly was to address his suggestions.

In response to a question from Representative Ruby, Mr. Olson said people purchased medical coverage before 1975. He said medical coverage insurance allows insurance companies to control losses and keep rates low. He said in 1975 the average policy for medical coverage for automobile insurance was \$5 per year.

In response to a question from Representative Weisz, Mr. Olson said the main reason for abuses in no-fault is that no-fault is mandatory.

In response to a question from Representative Weisz, Mr. Olson said no-fault is different from the other required coverages in this state. He said liability coverage forces a person to take care of the damage that person causes in an accident. He said no-fault forces a person to take care of that person.

In response to a question from Representative Weisz, Mr. Olson said removing the mandatory nature as it relates to the coverage of medical expenses would reduce the opportunity for abuse and would give insurance companies the ability to address problems.

Ms. Bonnie Staiger, North Dakota Chiropractic Association, presented written testimony to the committee. She said the North Dakota Chiropractic Association is addressing the concerns of fraud and abuse through its licensing procedures. She said the solution for fraud and overutilization is the enforcement of existing statutes. A copy of her testimony is on file in the Legislative Council office.

Ms. Paula Grosinger, North Dakota Trial Lawyers Association, testified on the study. She provided an article on no-fault insurance in Colorado. She said it is too soon to make any conclusions based on what has happened in Colorado. A copy of the article is on file in the Legislative Council office.

Ms. Grosinger said although North Dakota has increased tort filings from 1992 through 2001, being one of the few states with an increase, this state had the lowest number of tort filings nationally. She said only 540 tort cases go to court each year. She said this state has the lowest percentage of automobile cases than any other state. She said all of the anecdotal evidence provided by Mr. Olson is not evidence of fraud because the injureds were covered under the terms of the statute.

Ms. Grosinger said the removal of no-fault insurance would have a major effect on small medical facilities. She said the delays in payment for services provided at these medical facilities may have an effect on whether these facilities are viable.

In response to a question from Senator Nething, Ms. Grosinger said the North Dakota Trial Lawyers Association takes no position on the no-fault issues. She said when no-fault was enacted the trial lawyers were against no-fault. She said although most trial lawyers see the advantages to the benefits provided by no-fault, the lawyers do not support the removal of the right to sue.

Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, presented testimony on the study. He said the removal of no-fault would shift costs to health care, thereby increasing premiums. He said the coordination of benefits change that went into effect on August 1, 2003, will not be reflected in insurance contracts until they are renewed. He said the medical coverage option to no-fault insurance would have a smaller pool of insureds and this would result in higher rates.

DEALER LICENSING STUDY

At the request of Chairman O'Connell, committee counsel presented the memorandum *Licensing of Motorcycle and Low-Speed Vehicle Dealers - Background Memorandum*.

Mr. Keith Magnusson, Director, Driver and Vehicle Services, Department of Transportation, provided testimony on the study. He said the regulation of motorcycle dealers is a consumer protection issue. He said the changes in the regulation of new and used motor vehicle dealers is a success story. He said the law is much easier to enforce.

Mr. Justin Bohn, North Dakota Motorcycle Dealers Association, provided testimony on the study. He said there are 72 motorcycle dealers in this state and some have dealerships in home settings. He said he is working with the all-terrain vehicle dealers to combine motorcycle and all-terrain vehicle dealers under one license called a power sports dealer.

In response to a question from Representative Weisz, Mr. Bohn said about 35 dealers are part of the Motorcycle Dealers Association.

In response to a question from Senator O'Connell, Mr. Bohn said a square-footage requirement would be a good regulation for motorcycle dealers. He said

there are issues with small dealers not collecting the appropriate taxes and consumer protection issues related to the products some dealers sell.

Representative Weisz said the committee should compare the different uses for the different vehicles studied to the uses for the fees collected for each vehicle.

ALTERNATIVE METHODS FOR RECORDING AND DISCHARGING MOTOR VEHICLE LIEN STUDY

At the request of Chairman O'Connell, committee counsel reviewed a bill draft [50003.0100] to allow for an electronic lien notification procedure.

Mr. Magnusson provided testimony on the bill draft. He said the benefits of the bill draft are that it is voluntary and removes certain paperwork. He said the department will not have to send a paper title with the recorded lien to the lender. He said when the lien is paid off, the lender will send an electronic signal to the department and the department will mail the title with the lien removed to the owner. He said the bill draft removes delay and confusion. He said the electronic lien notification procedure would prevent a lienholder from losing the title and thereby remove any attendant delay in obtaining a title. He provided letters from the Nissan Motor Acceptance Corporation, US Bank, and Chase Auto Finance in support of the creation of an electronic lien notification procedure. A copy of these letters is on file in the Legislative Council office.

In response to a question from Representative Weisz, Mr. Magnusson said the initial attachment of the lien will follow the same procedure as it does presently. The attachment of the lien will be accomplished through a paper application procedure. He said the department is investigating placing automobile dealers online so dealers can enter into the department's computer system and enter liens.

Ms. Marilyn Foss, North Dakota Bankers Association, provided testimony on the bill draft. She said financial institutions are generally supportive of electronic enhancements. She said whether the electronic lien notification procedure is useful to a financial institution will depend upon the procedures adopted by the department.

Mr. Wade Elder, Capital Credit Union, Bismarck, provided testimony on the bill draft. He said the bill draft provides many potential benefits, including the reduction of forms, less mailing costs, less storage costs, and better customer service. He said there will need to be the adoption of certain tracking procedures to show bank examiners. He said it is important that the procedure is voluntary.

Mr. Keith Kiser, Director, Motor Vehicle Division, Department of Transportation, provided testimony on the bill draft. He said the electronic procedure would remove the requirement of the lender signing a release of lien and mailing the lien to the owner. He

said under the electronic lien notification procedure the lender would electronically notify the department of the release of a lien and the department would send the new title to the owner.

In response to a question from Representative Weisz, Mr. Kiser said the attachment of a lien would be the same as it is presently; however, the removal of the lien would be electronic.

In response to a question from Representative Ruby, Mr. Kiser said there would be no savings to a customer under the electronic lien notification system as compared to the present system, unless the customer loses the title with a signed lien release. He said the major savings of the electronic lien notification procedure is to financial institutions.

No further business appearing, Chairman O'Connell adjourned the meeting at 2:00 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:1