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NO-FAULT INSURANCE IN NORTH DAKOTA - HISTORY

After a Legislative Council study of no-fault insurance during the 1971-72 interim, in 1975 the North Dakota Legislative Assembly enacted House Bill No. 1214, the North Dakota Auto Accident Reparations Act. This bill provided for a no-fault automobile insurance system. No-fault insurance law is presently codified as North Dakota Century Code (NDCC) Chapter 26.1-41.

Basically, the no-fault insurance law requires the owner of a motor vehicle to buy insurance that automatically covers an individual who sustains bodily injury in that motor vehicle. The coverage is limited to bodily injury and the resulting economic loss.

The owner with no-fault insurance is considered a secured person. As a secured person, the owner may not be sued or sue for noneconomic loss (pain and suffering) unless there is serious bodily injury. Serious bodily injury, among other things, includes medical expenses in excess of $2,500. In addition, the secured person may not be sued or sue for loss to the extent economic loss is paid or will be paid by the no-fault insurance. To be sued or sue for noneconomic loss, the serious bodily injury threshold must be met; as opposed to being sued for economic loss for which the only requirement to be sued or sue is that the loss is not covered by no-fault insurance.

SELECTED CASE LAW FROM NORTH DAKOTA

The cases described in this memorandum are chosen for the quality of the opinion that clearly addresses an issue of statutory construction, i.e., the cases state what the Legislative Assembly intended.

In *McGarry v. Skolgey*, 275 N.W.2d 321 (N.D. 1979), the Supreme Court of North Dakota stated that "[t]he mere attempt to intelligently recite the basics of no-fault ends up as a grammatical monster." The court also stated:

> This case leads us to understand why some courts have found it necessary, when encountering difficulties with no-fault cases, to use such descriptive words as "resist reconciliation," "positive repugnancy," "irreconcilable inconsistencies," and "the legislature should revisit the subject."

In *Weber v. State Farm Mutual Automobile Insurance Company*, 284 N.W.2d 299 (N.D. 1979), Robert Weber, the owner of a four-door pickup, was hunting with his wife and two friends, including John Gabby. Upon spotting some deer, John Gabby, who was in the rear passenger side seat, exited the vehicle while loading his rifle. As he closed the bolt of the gun, the gun discharged. The bullet struck and killed Robert. Robert's wife made a claim against State Farm for death benefits under no-fault coverage. State Farm denied the claim. State Farm argued that there was no causal connection between the operation of the motor vehicle and the accident. The court stated "[t]he 'causal connection' test was rooted in traditional negligent principles. One of the purposes of the no-fault law is to avoid protracted litigation over issues of fault or causation."

The court had previously held in *Norgaard v. NoDak Mutual Insurance Company*, 2001 N.W.2d 871 (N.D. 1972), the use of a rifle, notwithstanding it rested upon the automobile at the time of discharge, constituted an independent and intervening cause of death when fired and striking another person alighting from the automobile. The court distinguished *Norgaard* from the present case in that *Norgaard* was decided before adoption of the state's no-fault insurance law. Therefore, causation was important to determine.

The court reasoned that because no-fault benefits are paid for an accidental bodily injury sustained by the owner of a motor vehicle or any relative of the owner while occupying any motor vehicle, the claim should not have been denied because Richard was occupying a motor vehicle. The court concluded that "[a]lthough the legislature may not have contemplated this particular type of accident, a fair reading of the terms would indicate that they would have provided for coverage had they considered it."

In *Ertelt v. EMCASCO Insurance Company*, 486 N.W.2d 233 (N.D. 1992), John Ertelt drove his wife's car onto his grainfield and the car caught fire. John ran about three-eighths of a mile to find help. After John ran back with the help to put out the fire, he suffered a fatal heart attack. John's wife claimed survivor benefits under her no-fault coverage asserting that John died as a result of the car fire. The insurance company rejected the claim because John had not suffered an "accidental bodily injury" while "occupying" his car.

John's wife argued that the cause of John's death, the heart attack, was a result of the fire that began when John was in the car. The court held that there was no evidence that John was "occupying" the car when his heart attack occurred. The court stated:

> In this no-fault statute, "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." NDCC 26.1-41-01(12). "Accidental bodily injury" means "bodily injury, sickness, or disease,

> including death resulting therefrom, arising out of the operation of a motor vehicle." NDCC 26.1-41-01(1).

Because there was no evidence of John occupying the vehicle and there was no evidence of accidental bodily injury until just before John collapsed, the court held that there was not enough evidence for John's wife to pursue a claim against the no-fault insurer.

In *State Farm Automobile Insurance Company v. Gabel*, 539 N.W.2d 290 (N.D. 1995), Mr. Gabel suffered a fatal aneurysm while driving his pickup. He then collided with a building. The court denied no-fault benefits because the death was not the result of an accident and did not arise out of the use of a motor vehicle. The court stated:

> Occupancy is not the only no-fault requirement a potential beneficiary must satisfy. Under the North Dakota Auto Reparations Act, "accidental bodily injury" is "injury . . . 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."

The court went on to say that in *Ertelt*, the court decided the case on causation grounds stating that the death was not an accident "arising out of the operation of the motor vehicle" as a vehicle. The court stated:

> The automobile must provide more than the location of the injury. The fact the injury took place within an automobile does not transport the accident into the scope of the no-fault act . . . . Accidents happen somewhere. The mere fact an accident takes place within an automobile is not enough. Accidents fortuitously taking place inside an automobile are not costs we believe the legislature intended the automobile insurer to bear . . . . We do not believe the legislature intended the no-fault law to include coverage for injuries resulting from "the failure of the human body to function properly as a result of internal, not external causes. Were the opposite true, every person 'injured' while leaning against, sitting in, or perhaps looking at, an automobile would have [no-fault] coverage."

In *Olmstead v. Miller*, 383 N.W.2d 817 (N.D. 1986), while driving a vehicle, Mr. Miller crashed into the Olmstead's anchored trailer home. Because coverage under the no-fault insurance law extends to accidental bodily injury sustained by a person while a pedestrian as a result of being struck by a motor vehicle, the issue was raised whether no-fault insurance is applicable in these circumstances.

Under NDCC Section 26-41-03(13), a pedestrian is defined as "any person not occupying any vehicle designed to be driven or drawn by power other than muscular power." The court found that although the Olmsteads were pedestrians, under the plain meaning of this section, the court did not believe the legislature intended the term to encompass all persons injured by a motor vehicle regardless of the circumstances under which the injuries occurred.

In statutory construction there are two exceptions to the plain meaning rule--one if the statute is ambiguous and the other if the statute is absurd. If the statute is ambiguous or absurd, then a court will look at other evidence of the meaning besides the plain dictionary definition of the words. In this case the court found the definition absurd. The court stated that "[I]f the legislature had intended the No-Fault Act to be applicable to anyone injured by a motor vehicle regardless of the circumstances, it could have done so through the use of a more generic term" than pedestrian. Without defining pedestrian, the court concluded that persons injured while in their homes do not fall within the definition of pedestrian.

A final case is included in this review because there is a specific urging of the Legislative Assembly to address this issue. In *Calavera v. Vix*, 356 N.W.2d 901 (N.D. 1984), the court held that the determination of medical expenses needed to meet the serious injury threshold is not limited by the statute of limitations of six years. The court said that future medical expenses shown with reasonable medical certainty for the time period after the statute of limitations are covered under no-fault coverage. One of the reasons for this determination was that "[i]f the Legislature had intended that . . . medical services must be received within a specified time period it could have easily so provided, but it did not." Justice Gierke, concurring, urged the Legislative Assembly to examine the open-ended nature of no-fault coverage and consider placing a limit on the time within which the medical expenses must occur in order for the injury to be considered a serious injury. The Legislative Assembly has not addressed this issue.

From these cases, a number of lessons may be learned. First, no-fault law is complex and results in courts using apparently conflicting rationale to determine cases. Second, no-fault does not apply every time any injury occurs in relation to a motor vehicle. The person must be occupying the motor vehicle and the injury must arise out of the operation of a motor vehicle. Occupying is more than being near or touching a vehicle. An injury arising out of the operation of a motor vehicle includes when a vehicle is not moving or the accident is something other than a crash but does not include injuries by chance that happen in a motor vehicle and are not related to the operation of a motor vehicle. Finally, although the definition of pedestrian includes any person not in a motor vehicle, the definition really means something else that has not been defined, unless a person is in a home, then the person is not a pedestrian.

1973

During the 1971-72 interim, the Legislative Council's interim Industry and Business Committee studied no-fault insurance. Although the study came as a result of a failed bill during the 1971 session, the focus on no-fault insurance began in 1968. In 1968, Congress directed the United States Department of Transportation to conduct a study and to report its findings and recommendations to the President and Congress. The Department of Transportation study concluded that the existing system ill serves the accident victim, the insuring public, and society at large. Further, it was concluded that the present system is inefficient, grossly expensive, incomplete, and slow. It allocates benefits poorly and very unevenly, discourages the use of rehabilitative techniques, and overburdens the courts and the legal system. Based upon the Department of Transportation study, the Nixon Administration recommended that the states adopt a first-party, no-fault compensation system for automobile accident victims.

The interim committee reviewed the report of the federal Department of Transportation and other information and outlined the arguments against the tort system. The arguments included:

1. The overhead of the automobile lawsuit system takes 56 percent of automobile insurance bodily injury premiums and leaves only 44 percent to actually reimburse the injured. Of this 56 percent, 33 percent goes to insurance companies and their agents for administrative purposes and 23 percent goes to lawyers and claim investigators.
2. There is excessive delay in settling claims.
3. The rules of fault upon which the automobile lawsuit rests preclude any compensation for 25 to 40 percent of all traffic victims.
4. Automobile negligence lawsuits take 17 percent of our national judicial resources and add to congestion of our courts.
5. Because of the high costs of defending lawsuits, insurance companies often quickly pay smaller, but perhaps exaggerated, claims simply to avoid the expenses of lawsuits but will fight larger claims because of the unpredictability of lawsuit awards.
6. Fault is often difficult, if not impossible, to determine.

The committee reviewed the arguments to defend the tort system and to criticize the no-fault insurance proposals. The arguments included:

1. A no-fault insurance system would destroy legal rights of innocent victims to seek redress for their injuries against negligent drivers.
2. The present system places the burden upon the party who is found to be liable for the accident, while under no-fault the injured party must bear the loss through that party's own insurance company.
3. Many no-fault proposals do not provide adequate compensation for intangible losses, such as for pain and suffering.
4. There might be an increase in fraudulent claims under no-fault as compared to the present system because there would be less of a need to thoroughly investigate each accident.
5. No-fault insurance would eliminate one incentive for safe driving, inasmuch as the drivers who are at fault would no longer be held responsible for the losses they caused.
6. There is no congestion of courts in North Dakota.

The committee invited representatives of the organized bar and the insurance industry to participate in its deliberations from the outset of the study. Particular attention was paid to the fact that North Dakota is a rural state and that many of the reasons given for the promotion of no-fault automobile insurance in urban, densely populated states simply do not apply in this state. For example, court congestion and delay are not major problems in this state as compared to other states. While everyone was concerned with the cost of automobile insurance, it was noted that, on a comparative basis, North Dakotans pay some of the lowest premiums in the nation. Thus, while the committee examined the experience of such states as Massachusetts, testimony provided the committee with conclusive evidence that the citizens of this state could not expect to receive the dramatic reductions in premium costs which have been so widely publicized in Massachusetts.

One of the principal factors of concern to the committee was the possibility that Congress would enact federal legislation on the subject of no-fault insurance. The Hart-Magnuson bill would have given the states a period of time in which to comply with certain federal standards. If the states failed to enact such minimum standards, the responsibility for automobile insurance would have reverted to the federal government. The national requirements would have included compulsory insurance, limitations on the tort remedy for persons injured in motor vehicle accidents, and certain minimum benefit coverages. The committee members were unanimous in concluding that federal regulation of automobile insurance is not in the best interests of the people of North Dakota.

The committee recommended a modified no-fault insurance proposal which closely followed the Dual Protection Plan, a model draft prepared by the National Association of Independent Insurers. Basically, this plan provided that all policies insuring private passenger automobiles from liability must include certain first-party benefits. These benefits included $2,000 per

person for medical, hospital, surgical, dental, vocational rehabilitation, and similar expenses; disability benefits up to $750 per month with a maximum of $6,000; and a maximum of $4,500 for benefits for a person who was not an income producer for essential substitute services, such as those of a housewife. Experience in the insurance industry indicated that these benefits would adequately compensate 95 percent of the people injured in automobile accidents. In addition to these mandatory limits, insurance companies would have been required to offer supplemental coverage to an aggregate of not less than $100,000.

As a result, Senate Bill No. 2031 was introduced during the 1973 legislative session. The committee believed that the bill would improve the efficiencies of the automobile compensation system in North Dakota. The committee thought that the Dual Protection Plan would result in eliminating much of the uncertainty accident victims now had concerning whether they would be compensated. Because of the statutory limitations it would have placed on recoveries for intangible losses in less serious cases, the committee believed that it would be possible to provide benefits to many victims who are not being compensated, with no increase in premiums. In addition, the Dual Protection Plan retained personal accountability for negligent driving, which would protect good drivers from losing their preferred status. The committee believed that the modified approach to the automobile accident compensation system offered by the Dual Protection Plan was ideally suited to meeting the needs of the people of North Dakota. The bill failed to pass.

1975

The legislative history of the bill creating the no-fault system in this state indicates there were a variety of factors raised in support of the no-fault system. One of the main considerations was that Congress was considering mandating a much stricter no-fault system than this state was considering. The testimony on the bill reveals that if this state had a no-fault system in place, Congress would exempt this state's system from the federal law. Other items considered in 1975 included an anticipated decrease in length of the waiting time for insurance benefits under a no-fault system; an anticipated increase in the number of first-party benefits without an increase in insurance rates; an increase in the proportion of premium dollars paid to injured claimants, resulting primarily because of the decrease in administrative costs such as examining and defending accident cases; and an increase in the coverage in that insurance coverage would be provided for "single car accidents." Generally, at that time the traditional insurance system did not provide coverage for single car accidents.

The legislative history of the bill creating the no-fault system in this state indicates there were a variety of factors raised in opposition to the proposed no-fault system. Factors considered in 1975 included increased cost, the threat of federal legislation was illusory, and the removal of the important legal right to sue for damages.

In 1975 a representative from Blue Cross argued that the no-fault law would raise insurance costs because of the high cost of administration of motor vehicle insurance claim versus those claims made for health care insurance. However, there was testimony that although the cost of administration for motor vehicle insurance claims is higher than health care insurance, the administration of no-fault motor vehicle insurance claims would be less than a tort-based system. Testimony cited a federal Department of Transportation report that under the tort system only 40 to 45 percent of a premium dollar is returned to an injured person. The balance of the premium dollar goes to administrative expenses, adjusting expenses, and legal expenses that include the cost of defending suits and payments to attorneys under contingent fee contracts.

The 1975 law placed the cap for no-fault benefits at $15,000. The cap for work loss or survivors' benefits was $150 per week. There was testimony that the wage loss benefit of $150 a week was set at this amount because the amount was the average wage per week in this state. Death benefits for funeral expenses were limited to $1,000. Replacement services were limited to $15 per day. The threshold to sue for noneconomic loss because of serious injury based on medical expenses was set at $1,000.

"North Dakota Auto Accident Reparations Act -- North Dakota's No-Fault Insurance Law", Thomas O. Smith, *North Dakota Law Review*, Vol. 52, No. 1 1975 (fall), discusses the coordination of benefits provisions in the 1975 law. The article states:

> It is the primary obligation of the insurance company providing no-fault coverage to make payment for economic loss . . . . [T]he insurance company may not coordinate no-fault benefits with benefits the victim receives or is entitled to receive under a hospitalization policy or an accident and sickness policy. If the victim has both types of coverage, he may recover duplicate benefits. However, the act does permit an insurance company . . . other than an insurance company providing no-fault benefits to coordinate benefits paid under its hospitalization policies or accident and sickness policies with those paid under the no-fault act. The result is that such insurers would be obligated to cover economic loss only to the extent it exceeds an insured's no-fault benefits. Any insurance company offering this type of coverage must provide a reduction or savings in the

premiums charged on these policies, and its plan to coordinate benefits must be approved by the Commissioner of Insurance. Thus, in the future insurance companies which write hospitalization or accident and sickness insurance may coordinate benefits paid under these contracts with no-fault benefits received by the injured party.

In such cases, the insured will receive a reduction or savings in the premiums charged on those contracts.

1977

In 1977 the Legislative Assembly enacted two bills relating to no-fault insurance--Senate Bill No. 2139 and House Bill No. 1510.

Senate Bill No. 2139 clarified the definition of "owner" as to lessees and created definitions for disability, commercial vehicle, and bus. The bill required no-fault insurance during the period in which the operation of a motor vehicle is contemplated instead of if the vehicle is either present or registered in this state. The bill provided for the suspension of coverage upon request of the owner of a commercial vehicle and for the priority of payment for a person injured while occupying a bus. In particular, the bill allowed the owner of a commercial vehicle to suspend coverage if the vehicle is not used for a period of at least 30 days. In addition, the bill provided that in an accident involving a bus the individual who is hurt on that bus first has to go to that person's own policy before going to the policy on the bus.

House Bill No. 1510 created the amount of no-fault medical expenses a no-fault insurer may coordinate with a health insurer in an amount of $5,000. As introduced, the bill would have repealed the coordination of benefits provisions. Before the passage of House Bill No. 1510, if an individual had medical expenses in excess of $15,000, depending on the coordination of benefits, the first $15,000 might be paid by the no-fault insurer and the excess paid by the health care insurer. However, this did not leave any money left under the no-fault benefits for work loss, replacement services, or death benefits. Testimony states that the amendment allowed the no-fault carrier to subrogate against the health care insurer after the first $5,000 of no-fault benefits are paid, thereby leaving more benefits for items other than medical expenses.

1979

In 1979 the Legislative Assembly enacted one bill relating to no-fault insurance--House Bill No. 1503. The bill created an exception to payment for an uninsured under the assigned claims plan. The exception was that if the person owns a motor vehicle and is uninsured, and that person is injured in a motor vehicle that is uninsured, generally that person cannot collect from the assigned claims plan.

1981

In 1981 the Legislative Assembly enacted three bills relating to no-fault insurance--Senate Bill No. 2061, Senate Bill No. 2070, and Senate Bill No. 2251.

Senate Bill No. 2061 included health maintenance organizations to the health care insurers in the coordination of benefits provision.

Senate Bill No. 2070 defined motor vehicle owner for the purpose of no-fault insurance statutes. At that time, no-fault insurance laws required every owner of a motor vehicle to maintain no-fault insurance coverage on the owned vehicle and defined an owner in terms of motor vehicle registration. The result was that the seller of a motor vehicle was liable as a no-fault insurer if the buyer failed to transfer the title. The bill clarified that the owner is the person to which ownership has been transferred regardless of registration.

Senate Bill No. 2251 set the priority of payment for a person injured in a vehicle under a ridesharing arrangement. The bill provided that a person who is not the owner or a relative of the owner of the vehicle has to be covered by that person's insurance before that on the secured vehicle. The legislative history reveals the reason for this change was to promote ridesharing arrangements by lessening the liability on the owner of the vehicle.

1983

In 1983 the Legislative Assembly enacted two bills relating to no-fault insurance--House Bill No. 1194 and House Bill No. 1195. House Bill No. 1194 limited the liability of the assigned claims plan to those situations where the claimant would have been eligible for no-fault insurance. The legislative history reveals the bill was introduced to prevent claims against the plan that were not contemplated when no-fault insurance was enacted in 1975. The bill limited the benefits available under the plan to the same benefits available to someone who purchases an insurance policy with no-fault benefits.

House Bill No. 1195 prohibited the stacking of insurance coverage as it pertains to uninsured motorist coverage and no-fault benefits. Benefits are available only to the extent of the applicable basic no-fault benefits provided to an injured person, and benefits from one source cannot be added to the benefits from another source.

The bill was a response to a North Dakota Supreme Court case *St. Paul Mercury Insurance Company v. Andrews*, 321 N.W.2d 483 (N.D. 1982). The court said state law on uninsured motorist coverage does not prohibit stacking, while the law on basic no-fault does prevent stacking. The court allowed the policy provision that prohibited stacking of uninsured motor vehicle

coverage because it did not violate any established public policy. The court invited the Legislative Assembly to clearly spell out its intent.

1985

In 1985 the Legislative Assembly enacted two bills relating to no-fault insurance--Senate Bill No. 2078 and House Bill No. 1528. Senate Bill No. 2078 was a comprehensive review of all insurance laws. The bill removed the statutory title and statement of purpose for the no-fault law because both were unnecessary.

The 1975 no-fault law had a legislative declaration that the purpose of the law was:

1. To avoid inadequate compensation to victims of motor vehicle accidents, to require registrants of motor vehicles in this state to procure insurance covering legal liability arising out of ownership or operation of such motor vehicles, and to provide benefits to persons occupying such motor vehicles and to persons injured in accidents involving such motor vehicles; and
2. To limit the right to claim damages for noneconomic loss in certain cases and to organize and maintain an assigned claims plan.

The legislative history reveals that this section was repealed because it was nonsubstantive. The reason for the repeal was because the statement of purpose is unnecessary because the purpose is provided by the substantive provisions of the law.

House Bill No. 1528 increased the maximum level for basic no-fault benefits from $15,000 to $30,000 and optional excess no-fault benefits for motor vehicle insurance from $40,000 to $80,000. The bill increased the threshold amount defining serious injury from $1,000 to $2,500 of medical expenses. The primary sponsor of the bill stated the reason for the bill was that $15,000 was not large enough to cover serious accidents. In those accidents, if an individual does not have medical insurance, the individual must pay the balance above the no-fault limits.

As introduced, the bill did not contain an increase in the medical expenses threshold for serious injury. The testimony reveals the reason for the increase in the threshold was to balance the increased benefit with the removal of more of the right to sue. The main concern was with increased benefits was increased premiums, resulting in more people not purchasing mandatory insurance. In the House the threshold was increased to $4,000 with the idea that there might "possibly even be a very small savings" in premiums. The Senate Judiciary Committee reduced the threshold from $4,000 to $2,000.

The resulting $2,500 threshold appears to be a compromise between trial lawyers and the insurance industry. It was argued that the increase from $15,000 to $30,000 would affect a very small number of injured people. It was also argued that the increase from $1,000 to $4,000 for the medical expenses threshold might exclude 60 percent of the possible causes of action. Setting the threshold at $2,500 balanced these concerns with the expectation that insurance rates would not significantly increase.

In 1985 the Legislative Assembly considered, but did not pass, Senate Bill No. 2454, which would have required no-fault insurers to notify the Registrar of Motor Vehicles of nonrenewal of a policy. Upon receipt of the notification, the Department of Transportation would not have allowed registration of the motor vehicle.

1987

In 1987 the Legislative Assembly enacted one bill relating to no-fault insurance--Senate Bill No. 2413. This bill provided that a basic no-fault insurer may coordinate any benefits it is obligated to pay for medical expenses as a result of accidental bodily injury in excess of $5,000. The bill clarified the coordination of benefits happened after the first $5,000 in medical expenses.

In 1987 the Legislative Assembly considered, but did not pass, House Bill No. 1078. This bill would have required a no-fault insurer to notify the registrar of motor vehicles of policies that have been canceled or lapsed in the previous month. The bill was meant as a means of enforcing mandatory insurance laws.

1989

In 1989 the Legislative Assembly enacted three bills relating to no-fault insurance--Senate Bill No. 2056 and House Bill No. 1409 and House Bill No. 1467. Senate Bill No. 2056 made technical corrections that included the changing of the term workmen's to workers' compensation.

House Bill No. 1409 provided that an insured who purchased optional excess no-fault benefits is entitled to optional excess no-fault benefits commencing upon the exhaustion of basic no-fault benefits if the injured person or that person's relative is injured in a motor vehicle not owned by the insured or as a pedestrian. The legislative history reveals the bill was introduced to clarify the practice being done at present by most automobile insurance companies, thereby making the entitlement mandatory.

House Bill No. 1467 increased the time for filing a no-fault insurance claim in an action to recover further benefits for a loss in which the basic or optional excess no-fault benefits have been paid from two to four years after the last payment of benefits. The time for filing was increased in an action for benefits for survivors' income loss and replacement services loss and funeral expenses for one to two years after the death or from four to six years after the accident from which the death results, whichever is earlier. The time for filing was increased in an action to recover further survivors' income loss or replacement services loss benefits from

two to six years after the last payment for benefits. The bill increased the time for filing if basic or optional excess no-fault benefits have been paid for loss suffered by an injured person before death and action to recover survivors' income loss or replacement services loss benefits from one to two years after death or from four to six years after the last benefits are paid, whichever is earlier.

1991

In 1991 the Legislative Assembly enacted three bills relating to no-fault insurance--Senate Bill No. 2089, Senate Bill No. 2302, and Senate Bill No. 2555.

Senate Bill No. 2089 clarified the exclusion of basic no-fault insurers from the prohibition from coordinating benefits without providing the purchaser with an equitable reduction or savings in cost. In addition, the bill allows a basic no-fault insurer to recover all no-fault benefits, not solely basic no-fault benefits, from another no-fault insurer when tort law would require recovery.

Senate Bill No. 2302 included a motor vehicle owned by a political subdivision and operated as part of a public transit system for which the costs are subsidized by the government in the definition of bus for the purposes of no-fault insurance.

Senate Bill No. 2555 increased the funeral expense benefit from $1,000 to $3,500. The legislative history reveals that "a no-frills funeral" ranges between $3,000 and $4,200. The increased benefit was expected to cost approximately 22 cents per car per year.

1993

In 1993 the Legislative Assembly considered, but failed to pass, Senate Bill No. 2376. This bill would have required an insurer to report every suspension, cancellation, or nonrenewal to the Department of Transportation.

1995

In 1995 the Legislative Assembly considered, but did not pass, Senate Bill No. 2465. This bill would have required the creation of a no-fault arbitration committee made up of the Insurance Commissioner, an insurance consumer, an insurance company, a lawyer, an insurance agent, and a medical professional. The committee would have been required to develop and recommend rules and procedures for arbitration between an insurer and a claimant regarding a disagreement as to no-fault benefits.

1997

In 1997 the Legislative Assembly enacted one bill relating to no-fault insurance--Senate Bill No. 2046. The bill made technical corrections.

In 1997 the Legislative Assembly considered, but did not pass, House Bill No. 1273. The bill would have required an insurer to pay treble damages if the insurer failed to give notice of determination of basic no-fault benefits or terminated basic no-fault benefits retroactively.

1999

In 1999 the Legislative Assembly enacted one bill relating to no-fault insurance--Senate Bill No. 2376. This bill 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. In other words, a person with no-fault insurance may not be assessed damages for pain and suffering in favor of a person who has at least two convictions of operating a motor vehicle without liability insurance.

In addition, in 1999 the Legislative Assembly enacted Senate Bill No. 2406. The bill requires a person who has been convicted of driving a motor vehicle without liability insurance to provide proof of insurance 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 is $50. The bill requires insurance carriers to notify the director of a cancellation or termination of an insurance policy required for a person convicted of driving without liability insurance.

In 1999 the Legislative Assembly considered, but did not pass, Senate Bill No. 2378. This bill would have increased the coordination of benefits from $5,000 to $10,000.

2001

In 2001 the Legislative Assembly considered, but did not pass, House Bill No. 1389. The bill would have changed the priority in which no-fault benefits are paid to a person injured while occupying a bus. The bill would have placed the no-fault insurer of the bus at the top of the priority list instead of the bottom.

2003

In 2003 the Legislative Assembly enacted two bills related to no-fault insurance--Senate Bill No. 2275 and House Bill No. 1190.

Senate Bill No. 2275 increased the amount of no-fault medical expenses a no-fault insurer may coordinate with a health insurer from in excess of $5,000 to $10,000. In short, the no-fault insurer pays the first $10,000 of medical expenses and the health care insurer pays medical expenses after $10,000.

There was testimony for and against the increase. Generally, health insurers were for the increase. The reason for the increase was that inflation has increased the cost of medical procedures. Because the threshold was at $5,000 for 18 years, medical insurance had to

pay more medical expenses as inflation caused more expenses to exceed the threshold.

Generally, no-fault insurers were against the increase. They argued that health insurers are more efficient at administering insurance for medical expenses. One example showed that medical insurers had over a 30 percent lower expense ratio than no-fault insurers. Medical insurers have the experience, expertise, and size to more efficiently administer medical insurance. In addition, the increase lowers the amount of no-fault benefits available for benefits that are not medical expenses, including work loss and replacement services benefits.

House Bill No. 1190 removed the expiration date on the section of law that prohibits a person that had two convictions for driving without liability insurance and was driving without liability insurance from receiving noneconomic loss for serious injury in an action against the insured. In addition, the bill lowers the previous convictions requirement from 2 to 1.