

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1295

2001 HOUSE TRANSPORTATION

HB 1295

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1295

House Transportation Committee

☐ Conference Committee

Hearing Date January 26, 2001

Tape Number	Side A	Side B	Meter #
1	x		4,382
		x	130
Committee Clerk Signature <i>Lauren L. Zink</i>			

Minutes: Rep. Weisz - Chairman opened the hearing on HB 1295; A BILL for an Act to amend and reenact section 26.1-40-15.1 of the North Dakota Century Code, relating to underinsured and uninsured motor vehicle insurance.

Rep. Keiser: I am George Keiser, District 47. This bill is primarily addresses a loophole in the current insurance coverage law for driving automobiles in our state. What we attempt to do is to redefine underinsured motor vehicles. The loophole is this, that a driver as one example -- is driving a car owned by another party with their permission. So there are in effect potentially two policies covering any accident which might occur - one on the original car owned by someone else and the policies which would follow that driver. There is also, if I am the innocent third party in the action and I am damaged -- like you I can collect on the uninsured motorist vehicle insurance. So I will have coverage where in those rare instances in this state where you might be involved in an accident where the coverage is either nonexistent or where whether it is inadequate. What this bill would required is that for both of the original insurance policy limits

to be address in the solution or resolution of the claim before going against my uninsured motorist liability insurance as the third party. That is what this bill really intends to do; to clarify the law so that third party - the innocent party isn't having the claim coming against their insurance prematurely.

Rep. Weisz - Chairman ( 4690 ) If I understand correctly, you are basically taking both policies and the sum together to be able to apply against the coverage?

Rep. Keiser: The first policy kicks-in as it should and then the second policy kicks-in before it gets transfer to you the third party.

Pat Ward: I am Patrick J. Ward of the Zuger, Kirmis and Smith Law firm. I have prepared testimony but I want to point out that attached to my prepared remarks is a legislative history of the uninsured and underinsured motorist law in North Dakota. A copy of Mr. Ward's presentation is attached.

Rep. Hawken; (5233) Would you clarify what the law is about --- If you are going to drive a car, what is your legal responsibility for insurance?

Pat Ward: The statute has certain minimum insurance requirements -- it will require you to have strong enough -- it can be adjusted -- but my understanding is that at the present time it is 25 - 50 for bodily injuries and liability. In other words \$25,000 per person, \$50,000 per accident. So if you had an accident and there was more than 2 individuals none would be entitled to a full \$25,000. That is the minimum required by law.

Rep. Hawken: Is there any way to enforce whether or not you have insurance?

Pat Ward: There are ways, if the police catch you driving they site the driver -- there are penalties for driving without adequate insurance but enforcement is still a problem.

Pat Ward: ( cont'd ) You can buy additional insurance. Mr. Ward continued to review several types of coverages and various examples of coverage and amounts.

Rep. Price: (5556) Medical costs are going up dramatically, how do we sit with 25 and 50 in compared with other states?

Pat Ward: I think that is a small amount but I think it is pretty standard. There is a representative of the Insurance Department here and he may have more on that.

Rep. Carlson: Basically, if I understand this your are clarifying this to go to the original intent of the bill when it was originally written? Years ago?

Pat Ward: That is correct.

Rep. Carlson: If I read this other line, a judges ruling is basically what put us in -- where we want to review this?

Pat Ward: There is at least one judge who has read the statute to not require the policies to be bundled together and allow an individual to collect almost double the amount from the liability policy; and, then still proceed in a law suit against their underinsured motorist carrier. Which essentially would rewrite the system into a excess type system which clearly the from the legislative intent from '89 session and would be a different type coverage and much more expensive; the compromise which was reached was for a more modest system that we have.

Rep. Carlson: (5924 ) Is it typical in other areas to bundle these types of coverages of two individuals together?

Pat Ward: I believe that it is. There are some states that have a different system by statute but in states who do it like our it is common to bundle them.

GO TO SIDE B FOR CONTINUATION OF HB 1295 TESTIMONY. ( 5990 )

Kent Olson: I am the Executive Director of the North Dakota Professional Insurance Agents Association which are property and casualty agents around the state with about 200 members. They sell basically, auto insurance. One of the questions we always get as insurance agents for property and casualty insurance is what am I paying for -- why do I have to buy underinsured and uninsured insurance motorist coverage. This includes my Dad who always asks do I have to buy uninsured and underinsured motorist coverage. It is one of the most important one you can buy because it protects you, me, the passengers from the at fault other party -- so you have to have the high limits. We support this bill because it clarifies. It doesn't allow for stacking or for making money outside of your actual compensatory injuries. This clarifies it and we support it.

Rep. Schmidt: ( 246 ) In regards to the question Rep. Price asked - is 25 - 50 -- are there a lot of 25 -50 policies written?

Kent Olson: Even tho' it is low -- it may appear to be artificially low - - remember that we may have visitors to our state from L. A. County for example, 5-10 and 3 thousand. So if somebody from L.A county runs into you and is at fault -- your 25 - 50 will trigger.

**APPEARING OPPOSITION TO HB 1295:**

Sonna Anderson: I am an attorney practicing in Bismarek. I am a registered lobbyist for the North Dakota Trial Lawyers Association. Representing the Trial Lawyers, I speak in opposition to HB 1295. A copy of her prepared remarks are attached.

Rep. Jensen: ( 875 ) Would you repeat the code numbers -- the section?

Sonna Sanderson: Sure 26.1 - 40 -15.4.

Rep. Weisz - Chairman Current law states that say that it can't exceed what the level is of the uninsured policy is - right? Say if they are insured for \$100,000 and is the owners vehicle had \$50,000 the insurance would kick-in for \$50,000 -- So the difference between the two so the sum of these policies leaves nothing left for the uninsured to kick-in?

Sonna Anderson: No, I believe that it kicks-in to whatever damages are left uncompensated. I could be wrong on that.

Rep. Weisz - Chairman what is the problem with requiring that first party to kick-in?

Sonna Anderson: Say that in the case that has been suggested, if I am the victim in the example -- I haven't seen Mr. Traynor letter so I don't know if it is the exact same case -- but if I had \$100,000 uninsured coverage and in that case if there was several victims -- so there is more than the -- I believe there was 5 victims so nobody got the \$100,000 because there was only \$400,00 to be divided so they each got only \$80,000. So when it came to the drivers insurance policy and again one of the victims claimed the \$400,000 out of that either because that was divided among several people. When they compared the drivers vehicle -- it was the owners that came up to the \$80,000 and they had \$100,000 coverage under their own- so they could make a claim against their policy -- to at least have it considered. However, if they get \$80,000 from the owners policy and \$80,000 from the drivers policy. If you add those together you get \$160,000 coverage they have gotten; but still may not compensate them for their damages. They may still have damages which exceeds their compensation. They aren't able to look at the insurance policies.

Rep. Weisz - Chairman but if the underinsured is only \$100,000 to start with and you just said that they collected from their owners policy \$80,000 they are going to cross over the \$100,000 anyway so it wasn't going to compensate them for personal damages they incurred--I am still not

clear on how-- say how not bundling the two how are you getting over that limit the unissued costs? I am just taking your example -- maybe we could make it a little simpler? We don't have to bring in a lot of different parties here. If you have a \$100,00 underinsured policy --the owners policy is for \$75,000, there's an accident and a person's damages exceed \$100,000, they collect \$75,000 from their policy, correct? And how much are they going to collect from the underinsured? The full hundred grand or the 25 from the underinsured, the difference between the two?

Sonna Anderson: I don't know -- I can't answer that.

Larry Maslowski: I am the Senior Analyst from the Insurance Department. I believe the answer to your question is the difference in limits simply the trigger. Whether you can make a claim against the coverage you carry. So if you had \$25,000 liability insurance and \$100,000 underinsured motorist and your damages are let's say even \$200,000. You should be able to collect your \$75,000. The difference here is you don't trigger your underinsured. And, you should be able to justify damages due for \$100,000.

Rep. Weisz - Chairman ( 1311 ) I believe you are correct the dollars are the trigger number and has nothing to do with coverage.

Larry Maslowski: Correct.

Rep. Mahoney: ( 1326 ) I am still not real clear on --from the example on what this legislation would change the current law versus the -- where you wouldn't get as much underinsured now? To use the example, \$500,000 of damages, The other coverage is --\$100,000 or whatever of \$7500 or whatever -- how does it restrict -- I am not clear?



Sonna Anderson: I was not involved in that case, I reviewed the case yesterday, so I wrote down -- I will try to explain the case -- the arguments that were used by the plaintiff's attorney was that there were two deaths in the accident -- and he was going to let another injured person -- that injured person, his client received \$80,000 from the owner's policy and \$80,000 from the driver's policy -- and then was making a claim on their own underinsured motorist vehicle coverage. The insurance company argued that the victim had \$100,000 uninsured motorist coverage. The trigger --- the difference was -- just look at the \$80,000 that she received from the owner's policy and compare that to her \$100,000 underinsured motorist coverage. That's what her attorney argued and that's what the judge -- yes, that triggered and allowed her to make a claim on her own underinsured vehicle insurance coverage. What the insurance company argued was that you should take the \$80,000 she got from the owner -- add the \$80,000 she got from the driver -- that makes \$160,000 she got. You compare the \$160,000 to her \$100,000 and she is not able to make any claim against her own insurance policy.

Rep. Mahoney: ( 1497 ) So in other words, the underinsured -- they interpreted to mean that you are going to be guaranteed basically by your underinsured to receive the \$100,000 . Beyond that you are underinsured -- so if you get less than that you are brought up to the \$100,000 damages. If you are over a \$100,000 some other sources you have ---

Sonna Anderson: That's the idea that the insurance company wants. If you get over \$100,000 from any source -- they don't have to kick in and honor their policy that they have issued. And the other argument was -- right now we just compared the driver of one vehicle to the insured's policy. The owner's policy and the insured's policy and you don't add all the other policies together that might be available.

Rep. Mahoney: The sum of your testimony is basically is that this bill is going to codify their interpretation so that me as a victim will be limited to getting my underinsured's policy -- to whatever my underinsured policy limits are? So if I get what my underinsured policy amount from other source -- I am not going to get anything from my underinsured. The \$100,000 policy limits -- If I get \$120,000 from some other sources even if my damages are \$600,000 I am not going to get anything from my underinsured motorist.

Sonna Anderson: That's right. You aren't going to be able to make a claim on your own policy. There being no other person's wishing to appear to testify either for or against H.B. 1295, Rep. Weisz - Chairman closed the hearing for receiving any further testimony. ( 1650 ).

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1295 B

House Transportation Committee

☐ Conference Committee

Hearing Date February 2, 2001

Tape Number	Side A	Side B	Meter #
1		x	2,517
Committee Clerk Signature <i>Laurie J. Fink</i>			

Minutes: Rep. Weisz - Chairman opened the discussions for action on HB 1295.

Rep. Weisz - Chairman reviewed the intricacies of the impact this bill regarding uninsured and underinsured motorist insurance would have. Rep. Mahoney amplified that discussion.

Following discussion, Rep. Price moved a 'Do Not Pass' for HB 1295.

Rep. Mahoney: I second the motion.

On a roll call vote the motion carried. 12 yeas 0 nays 2 absent.

Rep. Schmidt was designated to carry HB 1295 on the floor.

End ( 4336 )

Date: 2/02/01  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1295

House Transportation Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep. Price Seconded By Rep. Mahoney

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Howard Grumbo	✓	
Chet Pollert - Vice Chairman	✓		John Mahoney	✓	
Al Carlson	✓		Arlo E. Schmidt	✓	
Mark A. Dosch	✓		Elwood Thorpe	✓	
Kathy Hawken	✓				
Roxanne Jensen	✓				
RaeAnn G. Kelsch	✓				
Clara Sue Price	✓				
Dan Ruby	✓				
Laurel Thoreson	A				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Schmidt

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 2, 2001 12:22 p.m.

**Module No: HR-19-2219**  
**Carrier: Schmidt**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1295: Transportation Committee (Rep. Welsz, Chairman) recommends DO NOT PASS**  
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1295 was placed on the  
Eleventh order on the calendar.

2001 TESTIMONY

HB 1295



**Nodak Mutual Insurance Company**  
*An Affiliate of North Dakota Farm Bureau*

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January 25, 2001

VIA FACSIMILE & US MAIL

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Bismarck, ND 58502-1695  
Fax No. (701) 223-7387

RE: H.B. 1295

Dear Pat:

This is written to you in support of H.B. 1295 which is an amendment to the wording of the current state statutes regarding UM/UIM law in North Dakota. The North Dakota Legislature promulgated UM/UIM coverage upon all automobiles in 1987 and amended the law in 1989. You are familiar with the Legislative intent of the 1989 amendments to that law since the Legislature, although wanting to require these two coverages, did not want to make it a burdensome expense upon the consumer who would choose to purchase these coverages at a reduced level. Insurance companies have been operating and calculating consumers' premiums according to that Legislative intent based upon their understanding of the wording of North Dakota's modified difference in limits approach to UIM coverage.

Earlier last year, a ruling from Cass County District Judge Erickson altered the reliance the auto insurance industry has had upon the 1989 Legislative action by ruling that there is no requirement that all underlying limits of a tort-feasor or tort-feasors be exhausted or combined prior to an injured person bringing a claim pursuant to their UIM coverage. This would mean that an injured person bears no responsibility in the compensation of their injuries from exhausting all liability monies available to them from liable tort-feasors before bringing an underinsured motorist claim against their own insurance company. Further, in the event of multiple tort-feasors, their liability monies are not combined in determining whether an injured person can pursue an underinsured motorist claim against their own insurance company. This is completely contradictory to the Legislature's intent in amending the UIM law in 1989 and places insurance rates on this coverage in a perilous position.

In order for an insurance company to secure approval on rate modifications, it is necessary, as part of the filing with the Insurance Commissioner, to provide experience

ratios for preceding years to justify a rate increase. All trade and professional industry publications indicate that as the economy slows nationally, insurance rates on all lines, including auto, are going to increase. After approximately 13 years of rate suppression, North Dakota will not be immune from this trend.

This means that even without instability in UIM rates, those rates are bound to increase based upon statistically sound actuarial data filed with the Insurance Commissioner. Now is not the time for the Judiciary nor the Legislature to compound the problem for North Dakota consumers by injecting an element of contributory instability for which no experience ratios can be filed, but would require mere guesswork.

I would prevail upon the 57<sup>th</sup> Legislative Assembly of North Dakota to provide approval of H.B. 1295 to assist in returning the stability in UIM rates we have depended upon for the past 11 years and which is consistent with the Legislative Intent in 1989. These rates will be increasing due to normal market cycles and now is not the time to make those increases more burdensome for all North Dakota citizens.

Very truly yours,



Paul E. Traynor  
Nodak Mutual Insurance Company  
Secretary & General Counsel

PET/jap





Testimony opposing HB 1295  
Submitted by the North Dakota Trial Lawyers Association  
January 26, 2001

Members of the Transportation Committee:

My name is Sonna Anderson, I am an attorney practicing in Bismarck, and I am a registered lobbyist for the North Dakota Trial Lawyers Association. On behalf of the Trial Lawyers Association, I speak in opposition to House Bill 1295.

North Dakotans are required to purchase insurance on their vehicles. Some can only afford to purchase the minimum amounts of liability. Others have the foresight to purchase additional insurance to cover their damages in case their injuries are greater than what can be covered by "the other guy's" insurance. This is underinsured motorist coverage, a North Dakotan's "Ace in the Hole." House Bill 1295 is going to place unnecessary restrictions on when that Ace can be played.

As Section 26.1-40-15.1 presently exists in North Dakota, underinsured motorist coverage fills the "gap in coverage" that is created when the liability limits of an insurance policy on the motor vehicle which caused the accident are not sufficient to adequately compensate the injured person or persons for their injuries. It allows the injured person to be made "whole" by letting her collect underinsured benefits from her own insurance policy.

It is a multiple step process. First, the injured person looks at what insurance coverage is in place on the vehicle that caused the accident, usually this is the insurance purchased by the owner of the vehicle. Once the insured victim has proven damages, the owner's insurance company pays the victim accordingly, to the extent of the policy limits.

If the insured victim was not fully compensated for the injuries she suffered, she can compare the amount that she received from the owner's policy to the amount of underinsured motorist coverage she had purchased from her own company. If her own underinsured motorist coverage is greater than the amount she received from the owner's policy, then the insured victim can look to her own policy for compensation. She still has to prove her damages and she can't be compensated for more than her proven damages.

In some cases, there may be more than one insurance policy in place to provide coverage. For example, the car causing the accident might have been driven by someone besides the owner. Both the driver's and the owner's insurance policies would step in to provide coverage to the insured victim. If she is fully compensated through those payments, there is no need to look further. However, if she is not fully compensated, even after receiving payment from both of the policies, she may then begin the process of attempting to collect from her own underinsured motorist coverage to "fill the gap."

This is a multiple step process. First, the insured victim must see if the owner's vehicle meets the statutory definition of an "underinsured vehicle." As the law now stands, she needs only compare her policy's underinsured motorist coverage with the vehicle owner's coverage. If her policy had a higher underinsured motorist coverage, she could make a claim for underinsured coverage from her policy. However, she still has to prove her damages before she is compensated, and her own underinsured motorist coverage is the last in line to cover the damages.

With the proposed change, the insured victim would have to add the driver's and the owner's liability limits together and then compare that sum with her policy's underinsured motorist coverage. If the two sums were equal, she would not be able to make a claim on her policy, even if her damages were significantly higher than the sum of the owner's and driver's policy limits combined.

If one were rendered quadriplegic in an accident, it would not be unusual for the compensable damages to escalate to several hundred thousand dollars or more. If the owner's and driver's policy each paid \$100,000 to the victim, the insured victim may still be left with hundreds of thousands of dollars in uncompensated damages. If that victim had an underinsured motorist policy of \$100,000 as well, she would be able to collect an additional \$100,000 from her own policy. She would still not be fully compensated, but she would have an additional \$100,000.

If House Bill 1295 were passed in its present form, the insured victim would not be able to make a claim for coverage under her own policy and would be left with a \$200,000 recovery and several hundred thousand dollars of uncompensated damages. Moreover, her insurance company would keep it's \$100,000.

The effect of House Bill 1295 makes it more difficult for the insured victim, who had the foresight to provide a greater amount of underinsured motorist coverage for herself, to make a claim for the benefits that she, herself has purchased. In effect, it keep her from playing her "Ace card".

This is not a good bill for the citizens of North Dakota. I urge you to vote a DO NOT PASS on House Bill 1295.

Thank you. I would be happy to try and answer any questions you may have.



National Conference of State Legislatures

# NCSL LEGISBRIEF

Briefing Papers on the Important Issues of the Day

JANUARY 2000

VOLUME 8, NUMBER 3

## The Problem of Uninsured Motorists

By Cheye Calvo

*Uninsured motorists increase the cost of auto insurance.*

*Most states have enacted measures to identify uninsured motorists before damage is done.*

*Lawmakers in 11 states have established uninsured motorist databases.*

Uninsured motorists increase the cost of auto insurance by limiting the pool of insured drivers and forcing people to buy special uninsured motorist coverage. Compulsory laws in 44 states require drivers to purchase auto insurance, and financial responsibility laws in every state hold motorists accountable for bodily injury and property damage resulting from car accidents. Still, significant populations of uninsured motorists drive in every state. Lawmakers in recent years have focused on these lawbreakers as a way to address high auto insurance premiums.

**Measuring the Problem.** What's the likelihood the car next to yours is uninsured? Estimates range from 5 percent to 40 percent, but there is no standard measure for uninsured motorists. This complicates assessing the relative success or failure of state programs to reduce uninsured motorists. State motor vehicle agencies and insurance industry groups disagree over the most accurate method of estimating the number of uninsured motorists. The American Association of Motor Vehicle Administrators has formed a subcommittee to develop a national standard.

**Special Reporting Programs.** Financial responsibility laws enacted primarily in the 1930s and 1940s require motorists to pay damages from motor vehicle accidents. Compulsory laws in every state but Iowa, Mississippi, New Hampshire, Tennessee, Virginia and Wisconsin require drivers to meet financial responsibility by buying motor vehicle liability insurance. Virginia, while not a compulsory state, encourages auto insurance by charging uninsured motorists at registration a \$500 fee. Financial responsibility and compulsory provisions, by themselves, are passive laws, triggering action only after an accident or failure to satisfy a judgment for damages. Most states have enacted measures to identify uninsured motorists before damage is done. For instance, evidence laws require drivers to provide proof of insurance upon registration (29 states), an accident (43 states) or a traffic stop (29 states).

To identify uninsured motorists, states recently have turned to special—often electronic—reporting programs that require insurance companies to provide information on insured drivers to state agencies.

Lawmakers in 11 states, including Colorado, Florida and Louisiana, have established uninsured motorist databases. Insurance companies must supply information on all policies and periodic updates for terminations, nonrenewals, new policies and major policy changes. Insurance information is compared with vehicle registrations. These programs cast the widest possible net to identify uninsured motorists, but place great burdens of time and expense on state agencies and insurance companies.

Twelve states have opted for more limited notification requirements. Programs like ones in Georgia, Minnesota and Oklahoma require insurers to notify state agencies of terminations and nonrenewals, often only for high-risk drivers.

National Conference  
of State Legislatures

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Illinois, Missouri, New Mexico, Ohio and Oregon operate random sampling programs. These programs require insurance policy verification for drivers selected randomly by state agencies. Lawmakers in Delaware and Rhode Island passed random sampling laws in the 1990s, but the programs were not implemented.

The Illinois sampling program enacted in 1991 has received considerable attention from other states and the insurance industry. Unlike other programs, Illinois periodically checks that all high-risk drivers as well as a random sample from the general population carry auto insurance.

The insurance industry prefers the Illinois program to more intensive reporting requirements because of its limited mandate and focus on high-risk drivers. The program has also proved cost effective for the state, with 1998 revenues from fines exceeding administrative costs by \$500,000.

**Penalties and Fines.** Lawmakers have also enacted tougher penalties and fines to discourage uninsured motorists. Financial responsibility laws typically suspend driver's licenses and registrations of motorists failing to pay damage judgments. More recent measures suspend licenses and registrations for drivers identified as uninsured and impose fines and reinstatement fees from \$50 to \$500 for first-time offenders and more for subsequent violations.

Laws in many states allow law enforcement personnel to take vehicle tags from uninsured motorists. Some states authorize vehicle impoundment. A 1997 Colorado law requires police officers at traffic stops to confiscate licenses of drivers who don't have required proof of insurance. Drivers are issued temporary licenses and given seven days to demonstrate proof of insurance with the Department of Motor Vehicles. Ohio last year became the first state to seize and destroy the vehicle of a three-time offender as part of the state's "car crushing" program.

**Conclusion.** Laws directed at reducing the number of uninsured motorists vary greatly among states, and lawmakers continue to revise their programs. In 1999, Alabama became the 44th state to enact compulsory insurance. Maryland lawmakers passed legislation phasing out its random sampling program, opting for a database program to begin June 2000. Missouri also will institute a database program by January 2001. California enacted a unique pilot program to make available to low-income motorists in certain areas more affordable policies with lower liability limits.

NCSL since August 1999 has received calls from lawmakers and staff in over 20 states who want to review uninsured motorist laws during the 2000 sessions.

Increased attention to the problem of uninsured motorists is showing results. Most states with new programs report declining uninsured motorist rates. However, results remain preliminary and inconclusive. Time and continued attention will identify which programs prove most successful and cost effective.

#### Contacts for More Information

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*Lawmakers have also enacted tougher penalties and fines to discourage uninsured motorists.*

*Increased attention to the problem of uninsured motorists is showing results.*