

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2309

2001 SENATE TRANSPORTATION

SB 2309

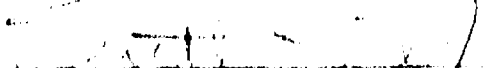
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2309

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-1-01;2-15-01

Tape Number	Side A	Side B	Meter #
2	x		14.6-36.9
2-15	x	x	48.6-End; 6.6-9.0
Committee Clerk Signature 			

Minutes:SB 2309 relates to safety standards for passenger contract carriers; and to provide a penalty.

**Senator Trenbeath:** Let the record show that I am presiding while Sen. Stenehjem testifies.

**Senator Bob Stenehjem:** ( District 30; Supports) See attached testimony.

**John Risch:** (United Transportation Union; Lobbyist 156; Supports) See attached testimony and proposed amendment.

**Senator Trenbeath:** Why would the state of ND want to interfere with BNSF and van drivers?

**John Risch:** The problem we see is that there are no references to insured and underinsured insurance. We have discussed contract negotiations and it's never been worked out.

**Senator Trenbeath:** I'm not sure if "exclusions are broad enough.

**John Risch:** If they are not excluded now, they would have to follow regulations of Highway Patrol. Our intent is only for contract carriers.

Page 2

Senate Transportation Committee

Bill/Resolution Number SB 2309

Hearing Date 2-1-01;2-15-01

**Senator Mutch:** Would shortline railroads be affected the same and are the employees covered by workman's comp?

**John Risch:** Yes to first question and No, there is no coverage.

**Senator Stenehjem:** There is already coverage, we just need to establish the "right" amount of coverage.

**Mike Muscha:** ( Brotherhood of Locomotive Engineers; Lobbyist 207; Supports) See attached testimony.

**Douglas Erhart:** ( Brotherhood of Maintenance Way Employees; Supports) Supports bill.

**Dean Richter:** ( State Farm Insurance; Lobbyist 408; Supports) Supports bill.

**Pat Ward:** ( ND Domestic Insurance Company; Supports) Supports bill.

**Senator Stenehjem:** What exactly is "right" coverage, can we get a breakdown?

**Pat Ward:** I can get that for you.

**Tom Kelsch:** ( Pacific Railroad; Opposes) States that he opposes bill and his current coverage is \$1.5 million per person and incident.

Hearing closed

Committee reopened on 2-15-01.

Senator Trenbeath moves to Do Not Pass. Seconded by Senator Espgaard. Roll call taken. 4-2-0.

Senator Trenbeath moves to reconsider. Seconded by Senator O'Connell. A verbal roll call was made to reconsider .6-0-0. Senator Trenbeath hands out a proposed amendment. Senator

Trenbeath moves to accept proposed amendment. Seconded by Senator Espgaard. Roll call

taken. 6-0-0. Senator Trenbeath moves to Do Pass as Amended. Seconded by Senator Mutch.

Roll Call taken. 6-0-0. Floor Carrier is Senator Stenehjem.

Committee closed.

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/23/2001

Bill/Resolution No.: SB 2309

Amendment to:

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This legislation will not have a fiscal effect on the state or on agency appropriations.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

<b>Name:</b>	James M. Hughes	<b>Agency:</b>	Highway Patrol
<b>Phone Number:</b>	328-2455	<b>Date Prepared:</b>	01/25/2001

**Roll Call Vote #:**

**BILL/RESOLUTION NO.**

Senate Transportation

## Committee

Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken	Do not pass
--------------	-------------

Motion Made By T. M. B. A. C. Seconded By E. S. P. G. C.

## Seconded

By

[illegible]

Total	(Yes)	4	No	2
-------	-------	---	----	---

Absent 0

### Floor Assignment

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

Date: 2-15-14  
Roll Call Vote #: 2

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 0260A**

## Senate Transportation

Committee

**Subcommittee on**

or

☐ Conference Committee

Legislative Council Amendment Number

### Action Taken

**Motion Made By**

Seconded  
By

[illegible]

Total (Yes) 1 No 0

Absent 0

### Floor Assignment

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

*[Handwritten signature]*  
2-15-1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2309

Amendments to SB 2309

TRANS

2/15/01

Page 1, line 11, after "standards" insert "for contract carriers" and replace "a minimum combined single limit" with "uninsured and underinsured motorist"

Page 1, line 12, replace "four" with "not less than one" and replace "bodily injury liability, property" with "the benefit of the passengers being transported"

Page 1, line 13, remove "damage liability, and uninsured and underinsured motorist coverage"

Renumber accordingly





Date: 2-15  
Roll Call Vote #: 4

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2309

Senate Transportation

Committee

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

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

Action Taken

10413, 0102 De Pours is amended

Motion Made By

Trenbeath Seconded  
By

Mutch

Senators	Yes	No	Senators	Yes	No
1 Senator Stenejem, Chairman	X		Senator Bercler 6	X	
2 Senator Trenbeath, Vice-Chair	X		Senator O'Connell 5	X	
4 Senator Espegard	X				
3 Senator Mutch	X				

Total (Yes) 6 No 0

Absent (1)

Floor Assignment Stenejem

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

**REPORT OF STANDING COMMITTEE**

SB 2309: Transportation Committee (Sen. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2309 was placed on the Sixth order on the calendar.

Page 1, line 11, after "standards" insert "for contract carriers" and replace "a minimum combined single limit" with "uninsured and underinsured motorist"

Page 1, line 12, replace "four" with "not less than one" and replace "bodily injury liability, property" with "the benefit of the passengers being transported"

Page 1, line 13, remove "damage liability, and uninsured and underinsured motorist coverage"

Renumber accordingly

2001 HOUSE TRANSPORTATION

SB 2309

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2309

House Transportation Committee

☐ Conference Committee

Hearing Date March 8, 2001

Tape Number	Side A	Side B	Meter #
1	8		1,903
Committee Clerk Signature <i>Samuel L. Smith</i>			

Minutes: Rep. Weisz - Chairman opened the hearing on SB 2309 as engrossed: A BILL for an Act to amend and reenact section 8-02-08 of the North Dakota Century Code, relating to safety standards for passenger contract carriers; and to provide a penalty.

Sen. Stenehjem: I am state senator from District 30 here in Bismarck. A copy of Sen. Stenehjem's written testimony is attached.

Rep. Mahoney: ( 2110 ) On page 2 lists violations of this bill as infractions.

Sen. Stenehjem: That is correct.

Rep. Mahoney: That is in there where there was nothing before.

Sen. Stenehjem: Yes

Rep. Mahoney: ( 2138 ) Do you think this is strong enough? For enforcement ?

Sen. Stenehjem: I think the companies basically now -- what we found and what we did in the Senate when the bill originally came in -- it had \$4 million worth of coverage. We were concerned that maybe that was to much -- so we had someone from the insurance companies do

some research -- can we even get \$4 million worth of coverage? -- currently the as the amended Senate bill came over to you -- that is what the current van contractors to their knowledge carry \$1 million of insurance -- in overall coverage -- we figured if that is what they have with the major contractors in the state -- I think they have 100 and some vans that you use for this purpose -- we felt that that was reasonable -- we certainly thought that \$50,000 was not nearly enough.

Rep. Mahoney: What I was wondering was the infraction penalty is only up to \$500 -- is that a little weak for enforcement?

Sen. Stenehjem: If you feel that is too weak -- I have no problem with strengthening the penalty.

John Rieh: I represent the United Transportation Union railroad workers across the state of North Dakota. Mr. Rieh made available copies of his written testimony. A copy is attached.

Mike Muscha: I represent the Brotherhood of Locomotive Engineers in North Dakota. A copy of Mr. Muscha's comments are attached.

Pat Ward: I represent the North Dakota Insurance Companies and we support SB 2309.

Rep. Weisz - Chairman if there are no other persons wishing to appear either for or against 2309 we will close the hearing to receipt of any further testimony. ( 2956 )

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2309 B

House Transportation Committee

☐ Conference Committee

Hearing Date March 9, 2001

Tape Number	Side A	Side B	Meter #
2	x		204
Committee Clerk Signature <i>Lauren B. Zink</i>			

Minutes: Rep. Weisz - Chairman opened the discussion for action on SB 2309.

Following discussion, Rep. Kelsch move a 'Do Pass' for SB 2309.

Rep. Hawken I move a second to that motion.

On a roll call vote, motion carried: 13 yeas 0 nays 1 absent.

Rep. Hawken was designated to carry SB 2309 on the floor.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2309 C

House Transportation Committee

☐ Conference Committee

Hearing Date March 15, 2001

Tape Number	Side A	Side B	Meter #
3	x		83
Committee Clerk Signature <i>Lauren L. Zink</i>			

Minutes: Rep. Weisz - Chairman reopened for reconsideration SB 2309 which was brought back from the floor for consideration of house amendments.

Steve Spilde: I am CEO for the North Dakota Insurance Reserve Fund. I apologize for this late interest in this bill; but it will effect a significant portion of our business, and that is the insurance that we provide for our senior citizens and handicapped seniors for whom we provide transportation. Our underinsured motorist -- the maximum coverage we provide is \$500,000. That is really as high as we want to go for that type of coverage -- as I understand it this bill would mandate upwards of or to \$3 million. We would have to determine whether we would want or , the premium for that amount of coverage. Our amendments a we recommend to the committee is to exclude those types of organizations -- for this type of operations.

Rep. Kelsch: This language is current statute we enacted last session so is it that you are only opposed the new limits mandated in this bill?

Steve Spilde: Yes, that is it -- the mandated limits.



Rep. Carlson: ( 346 ) I have had some calls advising me that it likely you can not even buy this kind of coverage.

Steve Spilde: I can partially answer that -- from our standpoint we would do some real soul searching before we would write this kind of coverage, if at all. Kent Olson is here may be he can speak for the industry.

John Rische: I am with the United Transportation Union. This bill on the House side generated quite a bit of interest from the railroad industry who contracts with carriers to transport our workers. From talking with Tim Buresh, from the Kramer Agency ( here in Bismarek ) he said that the standard coverage is about \$1 million and the original bill provision for \$4 million was reduce to the \$1 million today. We support the amendments to exclude public transportation. I always thought this bill addresses for only 'contract carriers'.

Rep. Ruby: This is basically only for underinsured coverage. So if there is not another party involved that wouldn't have insurance -- this bill wouldn't help the worker any --?

John Rische: Our main concern would be if the van (carrying our people) were to be hit by a drunk driver. The our workers would have to go seek damages from others when there are no resources. Van companies will have other insurance cove rages for liability.

Rep. Kelsch: ( 880 ) I move the amendments for SB 2309 be approved.

Rep. Price: ( 887 ) I second that motion.

Rep. Kelsch: ( 903 ) First, I move that we reconsider the action we took when we sent SB 2309 to the House.

Rep. Price: ( 906 ) I second that motion.

Motion carried on a voice vote:

Page 3

House Transportation Committee

Bill/Resolution Number SB 2309 C

Hearing Date March 15, 2001

Now, Mr. Chairman I move the amendments be approved.

Rep. Price: ( 921 ) I second that motion.

Motion carried on a voice vote.

Rep. Kelsch: I move a 'Do Pass as Amended for SB 2309.

Rep. Price: I second that motion.

Motion carried on a roll call vote: 13 yeas 0 nays 1 absent.

Rep. Kelsch was designated to carry SB 2309 on the floor. ( 1341 )

Date: 3/9/01  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2309

House Transportation Committee

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

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

Action Taken Do Pass

Motion Made By Rep. Kelsch Seconded By Rep. Hansen

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	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hansen

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

**REPORT OF STANDING COMMITTEE (410)**  
**March 9, 2001 12:14 p.m.**

**Module No: HR-41-5211**  
**Carrier: Jensen**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2309, as engrossed: Transportation Committee (Rep. Weisz, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2309 was placed on the Fourteenth order on the calendar.**

**PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2309**

Page 1, Line 23, after "include" insert:

"a person who operates a transportation system funded in whole or in part by public funds,"

Renumber accordingly.

Date: 3/15/01  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2309 (C)

House Transportation Committee

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

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

Action Taken Do Pass a amended

Motion Made By Rep. Kelsch Seconded By Rep. Price

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) 13 No 0

Absent 1

Floor Assignment Rep. Kelsch

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

2001 TESTIMONY

SB 2309

Testimony of Senator Bob Stenehjem  
Before the Senate Committee on Transportation  
In Support of SB 2309  
February 1, 2001

For the record, my name is Bob Stenehjem, state senator from District 30, Bismarck, and I appear here today as sponsor and strong supporter of SB 2309.

This legislation essentially puts the finishing touches to a bill passed last session with the unanimous approval of the North Dakota Senate. That legislation required safety standards for contract passenger vans that transport more than six but fewer than 15 passengers.

Following passage of the bill last session, the Highway Patrol set safety standards for these vehicles which were approved by the Legislative Council's Administrative Rules Committee, on which I served.

However, the Highway Patrol felt that they did not have clear direction from the legislature as to how much insurance to require van contractors to carry. That's why we're here today—to clarify the issue of insurance standards.

Under present law, van companies are only required to carry \$25,000 in uninsured and underinsured motorist coverage. Clearly, the existing insurance requirements doesn't begin to cover the potential for injuries if a contract van carrying 10 passengers becomes involved in an accident and several riders are injured or killed. That is why we need to address this gap in coverage.

It was also brought to the attention of the Administrative Rules Committee that there were no enforcement provisions for these safety standards, so this bill sets an enforcement provision of a misdemeanor for violations of the standards.

SB 2309 is intended to finish the job we started last session. I urge you to join with me in recommending a "DO PASS" on this bill. Thank you.



# united transportation union



750 Augsburg Avenue  
Bismarck, ND 58504  
Office: 701-223-0061  
Fax: 701-223-0061  
[johnrisch@midco.net](mailto:johnrisch@midco.net)

**RISCH**  
Legislative Director  
NORTH DAKOTA LEGISLATIVE BOARD

## Testimony of John Risch Before the Senate Transportation Committee In Support of SB 2309 February 1, 2001

My name is John Risch. I am the North Dakota Legislative Director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen and yardmasters.

Last session HB 1441 addressed most of the concerns railroad workers had in regards to traveling in contract vans. It directed the highway patrol to promulgate rules regarding safety for contract vans that carry more than six but less than 15 passengers.

The highway patrol did just that. And I commend them for their good work. The work that is left to be done is to set insurance provisions. An area that the legislature did not adequately address in 1999.

Railroad workers frequently ride in contract vans while on duty and need good insurance coverage because we are not covered under any form of workers compensation plan. Instead, we come under a federal law called the Federal Employer's Liability Act. Under that law a railroad is only responsible for an on-the-job injury when its negligence causes the injury. This is in contrast to workers compensation, which is no-fault and most on-the-job injuries are covered regardless of who is at fault.

When a contract van company is transporting on-duty railroad workers and an accident occurs, the injured employees must bring a claim against whatever party is at fault. If the van driver is at fault, the claim will be against the van company and/or the railroad. However, if the contract van driver is not at fault (for example, if the contract van is hit by a drunk driver), the injured railroad worker(s) will be forced to look to the insurance coverage of the drunk driver, who may have little or no coverage. That is why it is so important that we require contract van companies to carry adequate amounts of uninsured and underinsured insurance to cover these types of situations.

Attached to my testimony is a copy of a page from a recent contract that the Burlington Northern Santa Fe Railway used with a contract van company. The contract language requires various amounts of insurance, notably, \$4 million worth of umbrella coverage. That is where the \$4 million amount mentioned in SB 2309 came from.

Since BNSF is the largest railroad operating in North Dakota and van companies that transport BNSF crews also transport crews for other railroads in the state, we urge that this \$4 million standard be adopted into law, which is the essence of SB 2309.

Under current state law, contract van companies are only required to carry \$25,000 per person and \$50,000 per occurrence of uninsured and underinsured motorist liability coverage. These contract vans may have as many as ten railroad employees riding in them, none of whom have any workers compensation coverage. If they become involved in a serious accident involving the loss of life or limbs, there would need to be much more insurance coverage than \$50,000 to provide for those losses.

Adopting adequate insurance coverage would be good for railroad workers, but more than that, it is good public policy. State policy should act to protect innocent members of the public and prevent them from becoming burdens on society.

If contract van companies are left to run with insurance limits as low as \$50,000 and a serious accident occurs, the injured passengers might very well become wards of the state, meaning taxpayers would be left to pick up the tab.

For these reasons I respectfully ask that this committee recommend a "DO PASS" on SB 2309.

# united transportation union



750 Augsburg Avenue  
Bismarck, ND 58504  
Office 701-223 0061  
Fax 701-223 0061  
johnrisch@midco.net

JOHN RISCH  
State Legislative Director  
NORTH DAKOTA LEGISLATIVE BOARD

UTU suggested amendment to SB 2309.

Replace lines 11 through 13 up to and including the word "coverage."  
with the following language.

"Insurance safety standards for contract carriers must include  
uninsured and underinsured motorist coverage of not less than  
one million dollars per person and four million dollars per  
occurrence for the benefit of the passengers being transported."

Fifty-seventh  
Legislative Assembly  
of North Dakota

## SENATE BILL NO. 2309

Introduced by

Senators Stenehjem, Cook, O'Connell

Representatives Grumbo, Hawken, Price

- 1 A BILL for an Act to amend and reenact section 8-02-08 of the North Dakota Century Code,  
2 relating to safety standards for passenger contract carriers; and to provide a penalty.

### 3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. AMENDMENT. Section 8-02-08 of the 1999 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

#### 6 8-02-08. Safety standards for passenger contract carriers - Penalty.

- 7 1. The highway patrol shall establish minimum safety standards for passenger  
8 contract carriers transporting fewer than fifteen passengers. The safety standards  
9 must include provisions for driver qualifications; motor vehicle inspection,  
10 maintenance, and repair; hours of service; drug and alcohol testing; and insurance.

11 Insurance safety standards must include a minimum combined single limit  
12 coverage of four million dollars per occurrence for bodily injury liability, property  
13 damage liability, and uninsured and underinsured motorist coverage. Coverage  
14 may be satisfied through a primary or an excess policy.

Head, tail & brake lights, Horn, Communication equipment, Air conditioning, Windshield wipers & blades, Back up alarm, Emergency road kit, Brakes, Parking brakes, Spare tire, Tools and jack, Snow chains / traction devices, Emergency flashers, Fire Extinguisher, and First aid kit.

## Section 2 COMPLIANCE WITH APPLICABLE LAWS

TRANSPORTATION PROVIDER agrees, at its sole cost and expense, to procure and keep in full force and effect all licenses, license plates, registration fees, authorities, permits, or other taxes, fees, or levies of any nature required for the operation of said motor vehicles and to perform the transportation service for RAILROAD. In addition, TRANSPORTATION PROVIDER agrees to comply with all Federal, State and Local Laws, rules, and regulations of any governmental authority having jurisdiction applicable to said transportation services and indemnify and save RAILROAD and OAI harmless from all liability, cost and expense arising or resulting from any failure of TRANSPORTATION PROVIDER to so comply.

## Section 3 INSURANCE REQUIREMENTS

TRANSPORTATION PROVIDER shall, at its own expense, obtain and maintain in force during the term of this Agreement the following insurance:

Worker's Compensation Insurance or coverage as required under the Worker's Compensation Act of the applicable state. The policy should include occupational disease to required statutory limits, employer's liability of One Million Dollars (\$1,000,000) THE CERTIFICATE MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY'S SUBROGATION RIGHTS AGAINST RAILROAD.

Commercial General Liability Insurance against claims arising out of bodily injury, illness or from death, from damage to or destruction of property of others, including loss of use thereof with minimum limits for bodily injury and property damage of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, including coverage for work to be performed by TRANSPORTATION PROVIDER under this agreement which is to be upon RAILROAD's rail corridor or within 50 feet of RAILROAD tracks.

Business Automobile Insurance Policy, including owned, non-owned, and hired vehicles with minimum limits for bodily injury and property damage of \$1,000,000 combined single limit, on all vehicles which TRANSPORTATION PROVIDER or any of its agents or employees may use at any time in connection with the performance of their services for RAILROAD.

Contractual Liability Insurance covering all of the liability assumed by the TRANSPORTATION PROVIDER under the provisions of this Agreement with coverage of at least \$1,000,000 combined single limit or the equivalent.

An Umbrella Liability Insurance policy covering all of the liability assumed by the Transportation Provider providing coverage in excess of all of the above coverage in an amount not less than \$4,000,000 per occurrence.

In all cases, except for Worker's Compensation, the certificate must specifically state that "Burlington Northern Railroad and The AT&SF Railway and Outsource Administrators Inc. are Additional Insureds".

TRANSPORTATION PROVIDER agrees that all insurance shall be placed with insurance companies licensed to do business in the States in which the work is to be performed, and with a current Best's Insurance Guide Rating of A- and Class VIII, or better.

It is understood and agreed that these policies are primary and not contributory and release RAILROAD as to payments of any earned premiums.

All insurance certificates provided by TRANSPORTATION PROVIDER must be satisfactory to RAILROAD as to insurance carriers covering the risks and must bear a cancellation clause providing that such insurance may not be canceled, amended, or allowed to lapse until the expiration of at least thirty (30) days advance written notice to RAILROAD.

## **BNSF VAN ACCIDENT**

On January 19, 2000, six (6) BNSF crew members were being transported from Fargo, North Dakota to Minneapolis's BNSF Northtown Yards.

They left North Dakota at approximately 6:00 a.m. The weather conditions were light snow as they were leaving and it continued to snow during the entire trip to Minneapolis.

As the van reached the suburbs of Minneapolis, the driver turned a corner too fast and slid "head on" into an oncoming semi-truck. Of the six passengers, three of them were seriously injured. In fact, it is now more than a year since the accident and two of them have not yet returned to work. Because of the seriousness of their injuries, it appears they will not be able to ever return to their good jobs on the railroad and will end up on disability.

# Brotherhood of Locomotive Engineers North Dakota State Legislative Board

MICHAEL R. MUSCHA — CHAIRMAN • DIV. 671-S00

R.R. 1, BOX 57  
ENDERLIN, ND 58027  
PHONE: 701-437-3338



• 2211 •

February 1, 2001

Re: Senate Bill 2309

Mr. Chairman, Members of the Committee,

My name is Mike Muscha. On behalf of the Brotherhood of Locomotive Engineers North Dakota State Legislative Board, I want to thank you for this opportunity to appear before this committee. I'm here in support of Senate Bill 2309 and I am asking for your help in passing this Bill.

Mr. Chairman, Committee members, two years ago we began a huge task of trying to set safety standards for passenger contract carriers. Thanks to a lot of hard work by all and an excellent job by the Highway Patrol, we have some of the best safety standards for these vehicles in the country. I think we fell short of completing the task by not setting high enough insurance safety standards. That's why we are here today to try and correct this matter.

Let's just look back in time a little. Fifteen to twenty years ago the railroads did not deadhead as many crews by auto. They did send some crews by train and some by railroad vehicles. Also, the number of crews deadheading at one time has changed. While in cabs of locomotives and company vehicles employees were protected by the FELA (Federal Employees Liability Act). Approximately ten years ago railroad companies started using contract carriers to transport railroad crews. Sometimes these contract carriers are transporting up to 8 crewmembers. This is when the liability issue started. This is when the quality of the van and driver came into play. Our lives and livelihood are in the hands of the driver and the quality of insurance the contract carrier carries to protect us. The contract carriers have to have coverage to protect us from the driver of another vehicle who is uninsured or underinsured. The contract carriers also must have enough insurance to cover when multiple crewmembers are being transported and become injured.

Remember we would much rather stay on the trains, we do not like going out on the highways in these vehicles in all kinds of conditions. But if we have to, let's make sure we have coverage for ourselves and our family members in case of an accident.

This is why we are asking you to vote favorably upon SB 2309.

Thank you for your consideration,

Sincerely,

Mike Muscha  
Chairman BLE North Dakota State Legislative Board

# united transportation union



750 Augsburg Avenue  
Bismarck, ND 58504  
Office: 701-223-0061  
Fax: 701-223-0061  
[johnrisch@midco.net](mailto:johnrisch@midco.net)

**RISCH**  
Legislative Director  
NORTH DAKOTA LEGISLATIVE BOARD

Testimony of John Risch  
Before the House Transportation Committee  
In Support of SB 2309  
March 8, 2001

My name is John Risch. I am the North Dakota Legislative Director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen and yardmasters.

Last session HB 1441 addressed most of the concerns railroad workers had regarding travel in contract vans when on the job. It directed the highway patrol to promulgate rules regarding safety for contract vans that carry more than six but less than 15 passengers.

The highway patrol did just that, and I commend them for their good work. The work left to be done is to set insurance provisions, an area that the 1999 legislature did not adequately address.

Railroad workers frequently ride in contract vans while on duty and need good insurance coverage because we are not covered under any form of workers compensation plan. Instead, we come under a federal law called the Federal Employer's Liability Act. Under that law a railroad is only responsible for an on-the-job injury when its negligence causes the injury. This is in contrast to workers compensation, a no-fault system where most on-the-job injuries are covered regardless of who is to blame.

When a contract van company is transporting on-duty railroad workers and an accident occurs, an injured worker must bring a claim against the party or parties at fault. If the van driver is at fault, the claim will be against the van company and/or the railroad.

However, if the contract van driver is not at fault (for example, if the contract van is hit by a drunk driver), the injured railroad worker(s) will be forced to look to the insurance coverage of the drunk driver, who may have little or no coverage. That is why it is so important that we require contract van companies to carry adequate amounts of uninsured and underinsured insurance to cover these types of situations.

Attached to my testimony is a page copied from a recent contract that the Burlington Northern Santa Fe Railway used with a contract van company. The contract language requires various amounts of insurance, notably, \$4 million worth of umbrella coverage.

SB 2309 originally contained language for \$4 million of insurance coverage, matching the \$4 million umbrella required by BNSF. Our main concern, however, is for adequate uninsured and underinsured motorist coverages.

It's my understanding that BNSF contract carriers currently carry \$1 million limits of uninsured and underinsured coverage and the engrossed version of SB 2309 contains that same \$1 million requirement. Though inadequate in the case of multiple victims, the \$1 million limit represents a compromise because higher limits for uninsured and underinsured coverages are expensive and difficult to find.

Under current state law, contract van companies are only required to carry \$25,000 per person and \$50,000 per occurrence of uninsured and underinsured motorist liability coverage, but contract vans may have as many as ten railroad employees riding in them, none of whom have any workers compensation coverage. If they become involved in a serious accident involving the loss of life or limbs, there would need to be much more insurance coverage than \$50,000 to provide for those losses.

Adopting adequate insurance coverage would be good for North Dakota's railroad workers, but more than that, it is good public policy. State policy should act to protect innocent members of the public and prevent them from becoming burdens on society.

If contract van companies are left to run with insurance limits as low as \$50,000 and a serious accident occurs, the injured passengers might very well become wards of the state, meaning taxpayers would be left to pick up the tab.

For these reasons I respectfully ask that this committee recommend a "DO PASS" on SB 2309.



+  
**CONTRACT AGREEMENT**

**VENDOR ID # \_\_\_\_\_**

THIS AGREEMENT made in Eden Prairie, Minnesota on this \_\_\_\_th day of \_\_\_\_ 1997 between Outsource Administrators Inc., hereinafter referred to as "OAI" and \_\_\_\_\_, hereinafter referred to as "TRANSPORTATION PROVIDER". The effective date of this Agreement shall be \_\_\_\_\_, 1997.

**RECITALS**

A. OAI has been designated by The Atchison, Topeka and Santa Fe Railway Company and Burlington Northern RAILROAD Company, both Delaware corporations, (herein individually or collectively referred to as "RAILROAD") as Transportation Administrator to handle all T&B employee transportation for RAILROAD.

WHEREAS, TRANSPORTATION PROVIDER owns, leases or operates:

VENDOR NAME  
ADDRESS  
CITY, STATE  
PHONE #

WHEREAS, TRANSPORTATION PROVIDER wishes to perform transportation services for RAILROAD.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions herein set forth, the parties agree as follows:

1. OAI has been requested by RAILROAD to assist it in selecting transportation service providers for use by RAILROAD.
2. TRANSPORTATION PROVIDER agrees to provide transportation services for RAILROAD for compensation as outlined in Exhibit(s) attached hereto.

**Section 1. SERVICES TO BE PROVIDED BY TRANSPORTATION PROVIDER**

TRANSPORTATION PROVIDER, at its sole cost and responsibility during the term of this agreement, shall:

A. Provide vehicles that meet the following criteria:

1. All vehicles used to provide service will be maintained in good repair, shall be clean and in safe operating condition and shall be no more than four (4) years old.
2. A fully operational back up alarm.
3. A fully inflated spare tire.
4. A secured location for personal baggage, including proper restraints.
5. Fully operational seat belts for all passengers (driver included).
6. Centralized location containing all vehicle maintenance records.
7. A fully functional two-way radio on the railroad frequency.
8. A fully functional cellular phone, as required.
9. Tires with sufficient tread.

UTU suggested amendment to SB 2309.

Replace lines 11 through 13 up to and including the word "coverage."  
with the following language.

"Insurance safety standards for contract carriers must include  
uninsured and underinsured motorist coverage of not less than  
one million dollars per occurrence for the benefit of the passengers  
being transported."

**Testimony of Senator Bob Stenehjem  
Before the House Committee on Transportation  
In Support of SB 2309  
March 8, 2001**

For the record, my name is Bob Stenehjem, state senator from District 30, Bismarck, and I appear here today as sponsor and strong supporter of SB 2309.

This legislation essentially puts the finishing touches to a bill that passed last session with overwhelming approval. That legislation required safety standards for contract passenger vans that transport more than six but fewer than 15 passengers.

Following passage of the bill last session, the Highway Patrol set safety standards for these vehicles which were approved by the Legislative Council's Administrative Rules Committee, on which I served.

However, the Highway Patrol felt that they did not have clear direction from the legislature as to how much insurance to require van contractors to carry. That's why we're here today--to clarify the issue of insurance standards.

Under present law, van companies are only required to carry coverage of \$25,000 per person and \$50,000 per occurrence in uninsured and underinsured motorist insurance. Clearly, the existing insurance requirements don't begin to cover the potential for injuries if a contract van carrying 10 passengers becomes involved in an accident and several riders are injured or killed. That is why we need to address this gap in coverage.

It was also brought to the attention of the Administrative Rules Committee that there were no enforcement provisions for these safety standards, so this bill sets an enforcement provision of a misdemeanor for violations of the standards.

SB 2309 is intended to finish the job we started last session. I urge you to recommend a "DO PASS" on this bill. Thank you.