

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2262

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Operator's Signature

Date

2003 SENATE TRANSPORTATION

SB 2262

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Deanna O'Neill  
Operator's Signature

10/21/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2262

Senate Transportation Committee

☐ Conference Committee

Hearing Date 1-31-03

Tape Number	Side A	Side B	Meter #
1	X		58-1350
1		X	645-725
1		X	970-1164
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

The hearing on SB 2262 relating to motor vehicle insurance definitions was opened by

**Chairman Senator Thomas Trenbeath.**

**Senator Duane Mutch:** (District 19) Introduced SB 2262 at the request of the insurance industry.

**Pat Ward:** (Representing State Farm and the National Association of Independent Insurers)

See attached testimony in support of SB 2262. Reason for the hog house amendment was that, when drafting the bill, it was realized that motorcycles were being taken out of coverage that were covered under a policy with UM and UIM coverage. That wasn't the intent. The intent is to try to fix the problem of motorcycles that are not covered under a policy.

**Rob Hovland:** (ND Domestic Insurers) See attached testimony in support of SB 2262.

**Senator Mutch:** Is the amendment agreeable to you?

**Rob Hovland:** The corrections are acceptable.

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*Deanna Ball*  
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*12/21/03*  
Date

Page 2

Senate Transportation Committee

Bill/Resolution Number SB 2262

Hearing Date 1-31-03

**Senator Mutch:** Where do the 4-wheelers fit into the picture?

**Rob Hovland:** There is a difference between vehicles that are licensed and unlicensed. That's where that distinction comes into play.

**Senator Trenbeath:** How long has the present law been in place?

**Rob Hovland:** Probably 10 years.

The hearing on SB 2262 was closed.

(Meter 645 Side B) **Senator Taylor** motioned a **Do Pass** on SB 2262. Seconded by **Senator Espegard**. Roll call vote 6-0-0. **Passed**. Floor carrier is **Senator Mutch**.

(Meter 970 Side B) SB 2262 was brought back for reconsideration by the committee. Voice vote unanimous.

**Senator Espegard** motioned to accept the amendment on SB 2262. Seconded by **Senator Taylor**. Roll call vote 6-0-0. **Passed**.

**Senator Espegard** motioned for a **Do Pass as Amended** on SB 2262. Seconded by **Senator Bercler**. Roll call vote 6-0-0. **Passed**. Floor carrier is **Senator Mutch**.

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*Deanna D. Smith*  
Operator's Signature

10/21/03  
Date

38317.0101  
Title.0200

Adopted by the Transportation Committee  
January 31, 2003

*FE*  
1-31-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2262

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 26.1-40-15.6 of the North Dakota Century Code, relating to limitations on uninsured or underinsured coverage.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new subsection to section 26.1-40-15.6 of the North Dakota Century Code is created and enacted as follows:

While operating or occupying a vehicle with three or fewer load bearing wheels unless that vehicle is described in the policy for which the claim is made."

Renumber accordingly

*Dianne D. Smith*  
Operator's Signature

*10/21/03*  
Date

Date: 1-31-03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2262

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Sen. Taylor Seconded By Senator Espgaard

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier	✓	
Senator Duaine Espgaard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nothing	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Mutch

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

Reconsidered

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Operator's Signature

Duane Mutch

10/21/03  
Date

Date: 1-31-03  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2262

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

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

Action Taken Accept the hog house amendment

Motion Made By Senator Espegard Seconded By Senator Taylor

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier	✓	
Senator Duaine Espegard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

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Dennis Bercier  
Operator's Signature

12/21/03  
Date

Date: 1-31-03  
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2262

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38317.0101 Title .0200

Action Taken Do Pass as Amended

Motion Made By Senator Espgaard Seconded By Senator Bercier

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier	✓	
Senator Duaine Espgaard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Mutch

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

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Dennis Bercier  
Operator's Signature

10/21/03  
Date



**REPORT OF STANDING COMMITTEE (410)**  
February 4, 2003 9:26 a.m.

**Module No: SR-21-1586**  
**Carrier: Mutch**  
**Insert LC: 38317.0101 Title: .0200**

**REPORT OF STANDING COMMITTEE**

**SB 2262: Transportation Committee (Sen. Trenbeath, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2262 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 26.1-40-15.6 of the North Dakota Century Code, relating to limitations on uninsured or underinsured coverage.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new subsection to section 26.1-40-15.6 of the North Dakota Century Code is created and enacted as follows:

While operating or occupying a vehicle with three or fewer load bearing wheels unless that vehicle is described in the policy for which the claim is made."

Renumber accordingly

2003 HOUSE TRANSPORTATION

SB 2262

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Deanna D. Hall  
Operator's Signature

10/21/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2262

House Transportation Committee

☐ Conference Committee

Hearing Date February 27, 2003

Tape Number	Side A	Side B	Meter #
1	x		10.3 to 36.6
Committee Clerk Signature <i>Lauren B. Fiske</i>			

Minutes:

Rep. Hawken, Vice Chairman opened the hearing on SB 2262, a bill for an Act to create and enact a new subsection to section 26.1-40-15,6 of the North Dakota Century Code, relating to limitations on uninsured and underinsured coverage.

Pat Ward a Bismarck lawyer representing State Farm Insurance. Senate bill 2262 is designed to exclude motor cycles from coverage on underinsured policies not purchased for the specific purpose of covering the motor cycle involved in the accident. This bill adds exception for non-owned uninsured cycles. A copy of his written testimony is attached.

Rep. Delmore: So if an accident happened or someone is injured -- what recourse would those people have now?

Pat Ward: I am a motor cyclist -- I have three motor cycles. I have this conversation with my wife just about every time I get on my bike. She says you haven't got the insurance started on them yet because I drop my coverage for the winter months. The point is that your medical coverage is

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*Deanna O'Neill*  
Operator's Signature

*12/21/03*  
Date

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House Transportation Committee  
Bill/Resolution Number SB 2262  
Hearing Date February 27, 2003

covered on your health insurance policy. It has never been included in the basic no-fault under the statute. what this addresses is a situation where -- say my son is off to college and he is off to college and he is insured on my auto policy but he is not insured to ride a motor cycle. while he is off to college -- he borrows a friend motor cycle -- takes it for a joy ride, falls off and is injured. Under the present system because of this over sight when the law was adopted -- he would be able to go to my no-fault insurance on my auto and get his medical bills paid to \$30,000 rather than the health policy. Really the legislature in the first place, it put that on the health policy. It is different, if it is a motor cycle if they buys the policy -- like when I call my agent and say I have this motor cycle I want to add to my policy -- that motor cycle is covered under my under insured policy -- if he is hit by an uninsured motorist I am covered. What we are trying to eliminate the situation that has come up several times where the individual never bought covered and still collects under the family's auto policy which never intended to cover have to cover motorcycle injuries.

Rob Hovland: Representing Domestic Insurers Association -- which is an organization of 10 local insurers with home offices herein the State of North Dakota. He used a board on which he drew illustrations as visual aids. this bill is trying to correct a problem of unintended coverage. He attempted to clarify for those who do not deal with some of the terms very often it can be confusing to understand uninsured motorist and under insured motorist using his illustrations. It is not clear using his words without his illustrations. He cited actual cases of students in college. Two students neither of which were insured were injured but did claim coverage under his parents because he was a student. It is almost impossible to underwrite contingencies such as this. This bill does not preclude any one from buying motorcycle insurance coverage. True some

Deanna Waller  
Operator's Signature

10/21/03  
Date

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Bill/Resolution Number SB 2262  
Hearing Date February 27, 2003

companies, mine included do not write motorcycle coverage but it is available. Motorcycle insurance is a specialized type of coverage. The no-fault statute no excludes motor cycle so this is not a big leap.

Rep. Delmore: What happens if there is not health insurance coverage for that passenger on that motorcycle ?

Rob Hovland: I don't know what that scenario would be -- It is possible that they would not have coverage but again all they would have to do is go and get that coverage. The problem is they are not taking the responsibility to go out and do that.

Rep. Delmore: My understanding is that if this bill is passed, it is my understanding that it is the medical insurance which will pick up the cost but what if there is no medical coverage?

Rob Hovland: I don't know where they would pick it up -- all I know it would be on your private passenger auto.

Rep. Price: ( 22.0 ) In that question or the scenario that you had up there you were making the assumption that the driver had no auto insurance either.

Rob Hovland: No, my assumption was that the driver had no motor cycle insurance.

Rep. Price: Because right now if they had auto insurance-- that would be the first place they would go?

Rob Hovland: That is correct.

Rep. Price: What would be the liability of the motor cycle owner?

Rob Hovland: You get into a gray area there but there is what is called the ' assumption of risk'.

Both of the college students know that they don't have insurance, in fact, in our actual case the student did tell his passenger that he didn't have insurance on this thing. I do know there was

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Bill/Resolution Number SB 2262  
Hearing Date February 27, 2003

much liability involved there but if there was a child involved that would be different but these were two adults. We are getting into to some legalese but I believe there would be an assumption of risk issue here.

Rep. Price: But by doing this we are saying that the driver doesn't have any liability, the owner doesn't have any liability and the rider doesn't have any liability and it all goes back to somebody's health insurance.

Rob Hovland: No what we are saying is that ultimately the driver is responsible and the passenger is also responsible but all we are saying is that it doesn't matter whether you have insurance or not you are responsible -- and it behooves you to go out and get insurance coverage -- but whether you have insurance you are still responsible.

Rep. Price: So it does fall back on the health insurance?

Rob Hovland: Ultimately it can -- unless they can collect from the driver.

Rep. Weiler: Could you explain again the difference between uninsured and under insured.?

Rob Hovland: Certainly -- he then proceeded to illustrate an intersection collision.

Rep. Headland: I believe you said this a rare occurrence -- can you give the committee any indication how often this does occur?

Rob Hovland: I don't know of anybody who keeps these statistics -- I has happened to our company and we have less than 5% of the market -- It has happened to us twice in the last three years.

Rep. Delmore: What is the expense of the motor cycle insurance and how hard is it to get?

Deanna Wall  
Operator's Signature

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Date

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Bill/Resolution Number SB 2262

Hearing Date February 27, 2003

Rob Hovland: I can not tell you because we do not write it -- when I am done maybe Mr. Ward can tell as he has those three cycle but I can tell you it is no more difficult than drivers insurance when it comes to qualifying.

Rep. Delmore: so there are a number of them in the state who will sell motor cycle insurance?

Rob Hovland: Yes there are -- it isn't a matter of availability, its just a matter of responsibility of going in to get it.

Rep. Delmore: If my husband wants to get it and we have a 16 old son --what is it going to cost me?

Pat Ward: Motor cycle insurance is widely available -- I insure mine with State Farm but there are a lot of them and some specialty insurance also. Harley Davidson has an insurance program. It is quite inexpensive insurance because it does not include medical expenses anyway. Your medical expenses are on your health policy. There is no basic no-fault insurance.

Rep. Delmore: So if you had a passenger and he was injured, his medical costs would be covered under your motor cycle insurance and yours would be on your medical insurance?

Pat Ward: The is basically correct -- except his would be paid under my liability coverage. He would have bring a liability claim against me for my negligence.

Rep. Price: Under current law a licensed driver to drive an automobile and he is riding his motor cycle and his passenger gets hurt -- there is a current responsibility for medical coverage for his injuries right now?

Pat Ward: Yes that's right -- under his liability coverage.

Rep. Thorpe: Is 26.1 and 15.6 -- is that a recent code change?

Pat Ward: No --that is part of the uninsured motorist law and that has been on the books for 10

Deanna Waller  
Operator's Signature

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Hearing Date February 27, 2003

to 15 years.

Rep. Thorpe: Then this is some thing that has happened recently where these companies are getting tabbed with these insurance claims?

Pat Ward: That is correct -- it is something the companies have become aware of --

Rep. Thorpe: What makes the 2 wheeler or maybe a 3 three wheeler -- what makes this any other car I might have, -- it's not insured and one of my family members for whatever reason decides to drive it -- with or without my permission -- would that come under my other vehicle policy?

Pat Ward: No there are other exclusions that come into play -- if you have another vehicle which you have not named on your policy -- that vehicle can not be covered under your uninsured motorist -- there is already an exclusion in the law for that.

Rep. Thorpe: Then how come this motor cycle gets in there?

Pat Ward: Because of the way it is defined in the code. When they passed the no-fault law they decided to take out certain vehicles -- the liability thing for medical bills -- the idea was to minimize the number of law suits -- not sure that it worked that way -- they said we are not going to put motor cycles in there -- we not going to put three wheelers in there -- because the injuries are much more serious -- then motor cycle crept back in there because of the definition they used. We want motor cyclist to by insurance but the way the exclusion is written it should have been in there for a non-owned motor cycle the same as for a non-claimed car.

There being no other persons wishing to testify either for or against SB 2262, Vice Chairman Hawken closed the hearing.

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House Transportation Committee  
Bill/Resolution Number SB 2262  
Hearing Date February 27, 2003

End Hearing record ( 36.6 )

Action on SB 2262 -

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2262 b

House Transportation Committee

☐ Conference Committee

Hearing Date March 20, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.7 to 17.0
Committee Clerk Signature <i>Lauren L. Felt</i>			

Minutes:

Rep. Weisz opened the discussion for action on SB 2262. Rep. Price presented and discussed proposed amendments which would 'hog house' this bill basically leaving the no-fault, underinsured and uninsured provisions the same as they are now and for the next two years. What the amendments would do is to provide by law an interim thorough study of the issues prior to the next session. Rep. Hawken approval of the amendments. Rep. Delmore seconded the motion. The motion carried on a voice vote.

Rep. Galvin moved a 'Do Pass as amended' motion for SB 2262. Rep. Delmore seconded the motion. On a Roll call vote the motion carried 10 Ayes 0 Nays 3 Absent and not voting.

Rep. Hawken was designated to carry SB 2262 on the floor.

End of record. ( 17.0 )

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*Deanna Waller*

12/21/03  
Date

38317.0201  
Title.0300

Adopted by the Transportation Committee  
March 20, 2003

**House Amendments to Engrossed SB 2262 - Transportation Committee 03/20/2003**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of motor vehicle and motorist insurance systems."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - MOTOR VEHICLE NO-FAULT, UNDERINSURED MOTORIST, AND UNINSURED MOTORIST INSURANCE.** The legislative council shall study, during the 2003-04 interim, the motor vehicle no-fault, underinsured motorist, and uninsured motorist insurance systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Date: 3/20/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2262

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38317.0200

Action Taken Har on Amendment

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe		✓
Mark A. Dosch	✓		Steven L. Zaiser	✓	
Pat Galvin	✓				
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby		✓			
Dave Weiler		✓			

Total Yes 10 No 3

Absent 0 Carried

Floor Assignment \_\_\_\_\_

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

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Operator's Signature Deanna Waller

Date 10/21/03

Date: 3/20/03  
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2262

House TRANSPORTATION Committee

☐ Check here for Conference Committee

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

Action Taken D P as amended

Motion Made By Pr Seconded By Bis

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe	✓	
Mark A. Dosch	✓		Steven L. Zaiser	✓	
Pat Galvin	✓				
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby		✓			
Dave Weiler	✓				

Total Yes 12 No 1

Absent 0

Floor Assignment Rep. Hansen

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

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Deanna Waller 10/21/03  
Operator's Signature Date

**REPORT OF STANDING COMMITTEE (410)**  
March 20, 2003 1:50 p.m.

Module No: HR-50-5339  
Carrier: Hawken  
Insert LC: 38317.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

**SB 2262, as engrossed: Transportation Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2262 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of motor vehicle and motorist insurance systems."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - MOTOR VEHICLE NO-FAULT, UNDERINSURED MOTORIST, AND UNINSURED MOTORIST INSURANCE.** The legislative council shall study, during the 2003-04 interim, the motor vehicle no-fault, underinsured motorist, and uninsured motorist insurance systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

*Deanna D. Hall*  
Operator's Signature

10/21/03  
Date

2003 TESTIMONY  
SB 2262

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Operator's Signature

10/21/03  
Date

TESTIMONY OF PAT WARD IN SUPPORT OF SB 2262

SB 2262 is designed to exclude motorcycles from coverage under UM and UIM policies not purchased for the specific motorcycle involved in an accident. We are offering a hog house amendment that does just that.

This legislature when it enacted mandatory no fault coverage made the wise choice to exclude motorcycles from that law for at least two reasons. First is the component of assumption of risk that goes with riding motorcycles. Second is the greater severity of injuries in cycle accidents. It was thought that such risk should not be spread to auto drivers and unfairly skew that system. A recent study of PIP or no fault found that the average claim paid out was \$3171. Had cycles been included it would be much higher.

UM and UIM coverage are mandatory in this state. 7% of drivers in ND are uninsured. UM and UIM coverage are relatively inexpensive coverage compared to liability and comprehensive and collision coverage. Motorcycle drivers are probably more likely than average to be uninsured due to cycles being secondary seasonal vehicles and the younger ages of average motorcycle drivers.

Some of our domestic companies do not write cycles at all. Unfortunately, they have been hit with very large claims for cycle injuries under UM coverage on automobiles they insure. SB 2262 would repair this glitch in the UM and UIM statutes and allow them to exclude these vehicles from coverage thereby keeping the system in tact as designed for automobile owners and exclude vehicles not included in the original underwriting when the policies were sold.

We urge a do pass on SB 2262 with the amendments suggested.

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Operator's signature

*Deanna Waller*

12/21/03

Date



**PROPOSED AMENDMENTS TO SENATE BILL NO. 2262**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 26.1-40-15.6 of the North Dakota Century Code, relating to limitations on uninsured and underinsured coverage.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA**

**SECTION 1.** A new subsection to section 26.1-40-15.6 of the North Dakota Century Code is created and enacted as follows:

While operating or occupying a vehicle with three or fewer load bearing wheels unless that vehicle is described in the policy for which the claim is made."

Renumber accordingly

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section 4 of chapter 259, S.L. 1999 became effective August 1, 1999.

**Scope of Coverage.**

Although this section permits the terms of coverage and conditions to be more favorable to an insured or the limit higher than required by section 26.1-40-15.3, underinsured motorist coverage is essentially a function of a statute. *Score v. American Family Mut. Ins. Co.*, 538 N.W.2d 206 (N.D. 1995).

**DECISIONS UNDER PRIOR LAW**

**Limitation on Recoupment of Settlement Proceeds From Joint Tortfeasor.**

Uninsured motorist insurer does not have right to recoup the proceeds of a settlement its insured makes with a party commonly or

jointly liable with an insured tortfeasor where its insured has not been fully compensated for his injuries; recoupment should be permitted only to the extent necessary to prevent double recovery. *Hughes v. State Farm Mut. Auto. Ins. Co.*, 604 F.2d 573 (8th Cir. 1979).

**Collateral References.**

Right of insurer under automobile insurance policy to restitution of payments made under mistake, 37 A.L.R.4th 1048.

Validity and construction of provision of uninsured or underinsured motorist coverage that damages under the coverage will be reduced by amount of recovery from tortfeasor, 40 A.L.R.5th 603.

**26.1-40-15.6. Limitations.** The uninsured and underinsured coverages provided for in sections 26.1-40-15.1 through 26.1-40-15.7 do not apply to bodily injury, sickness, disease, or death resulting therefrom of an insured:

1. While occupying a motor vehicle owned by, furnished or available for the regular use of the insured, a resident spouse, or resident relative, if such motor vehicle is not described in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy;
2. While operating or occupying a motor vehicle without the specific permission of the owner thereof, or without a reasonable belief that the insured is entitled to do so;
3. For damages for pain, suffering, mental anguish, inconvenience, or other noneconomic loss which could not have been recovered had the owner or operator of the motor vehicle responsible for such loss maintained the security required under any applicable state no-fault law;
4. For punitive, exemplary, or other noncompensatory damages;
5. With respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist;
6. Until the limits of all bodily injury liability policies and bonds that apply have been exhausted by payment of settlements or judgments, or such limits or the remaining part of them have been offered to the insured in writing;
7. When the insured, without the written consent of the insurer, shall make any agreement or settlement with any person who may be legally liable therefor, if such agreement adversely affects the rights of the insurer. The insurer is not bound by any agreement or settlement without its prior knowledge and consent. This limitation does not apply to underinsured motorist coverage when the insured has advised the insurer, in compliance with subsection 2 of section

## 26.1-40-15.7

## INSURANCE

26.1-40-15.5, and the insurer has failed to advance the required payment to protect its right of reimbursement and subrogation;

8. If the insured has failed to report the accident to the proper law enforcement authorities as soon as practicable; and
9. While operating a motor vehicle in which the individual is specifically excluded.

**Source:** S.L. 1989, ch. 375, § 6; 2001, ch. 280, § 1. section 1 of chapter 280, S.L. 2001 became effective August 1, 2001.

**Effective Date.**

The 2001 amendment of this section by

**26.1-40-15.7. General provisions.**

1. After selection of limits by a named insured or applicant for insurance, the insurer or any of its affiliates is not required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of optional limits. Such selection by a named insured or an applicant is valid for all insureds under the policy. The insured may make, subject to the limitations expressed in sections 26.1-40-15.1 through 26.1-40-15.7, a request for additional coverage or coverage more extensive than that provided on a prior policy.
2. No insurer is required to offer, provide, or make available coverage conforming to sections 26.1-40-15.1 through 26.1-40-15.7 in connection with any excess policy, umbrella policy, or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation, or use of a specifically insured motor vehicle.
3. Notwithstanding any other provision of sections 26.1-40-15.1 through 26.1-40-15.7, an insurer may make underinsured motorist coverage a part of uninsured motorist coverage.
4. Notwithstanding any other provision of sections 26.1-40-15.1 through 26.1-40-15.7 or other laws of this state, a motor vehicle liability insurance policy may provide as to uninsured and underinsured motorist coverage, that any dispute with respect to issues of liability and damages may be submitted to binding arbitration if both parties agree. Such policy may also provide that coverage questions are not subject to arbitration.
5. Nothing in sections 26.1-40-15.1 through 26.1-40-15.7 may be construed to prevent an insurer from offering, making available, or providing coverage terms and conditions more favorable to its insured or limits higher than are required by sections 26.1-40-15.1 through 26.1-40-15.7.

**Source:** S.L. 1989, ch. 375, § 7.

**Expanded Coverage.**

Statutory definition of motor vehicle was not applicable in a case involving an injury

resulting from operation of a combine because statutory scheme expressly allowed insurance companies to provide broader uninsured motorist coverage than required by statute, and

**TESTIMONY ON SENATE BILL 2262**

My name is Rob Hovland. I am currently serving as Chairman of the North Dakota Domestic Insurers Association, which is comprised of 10 insurance companies that have a home office in North Dakota. The domestic companies that write property and casualty insurance are Dakota Fire, Farmers Union, Nodak Mutual, Hartland Mutual, and my employer, Center Mutual. We support Senate Bill 2262.

The North Dakota property and casualty industry has sustained enormous losses over the past ten years. For example, from 1991-1995, the industry had a 151% loss ratio in homeowners' insurance -- meaning for every dollar in premium collected, \$1.51 in losses and expenses were incurred. From 1995-2000, the loss ratio was approximately 175%. In 2001, the loss ratio is estimated to be 350%. In the last ten years, while the results are not as dramatic, the industry has also lost money in auto insurance.

As a result, several companies have quit writing insurance in our state, some companies have discontinued writing certain lines of insurance, and probably all companies have significantly tightened their underwriting guidelines. A "hard market" has resulted -- not from the perspective of insurance companies, but from the consumers' standpoint. Rates have increased dramatically, and in some situations, availability has become an issue.

So many insurance companies have left our state or quit writing insurance, that the House IBL Committee recently recommended passing a Bill which requires that in the future, companies must notify the Insurance Commissioner before they walk out the door or quit writing. In another Bill proposed by the Insurance Commissioner's office,

they are asking the Legislature to give them the power to put a program in place that would force companies to accept insurance if the property and casualty market deteriorates further, and affordable insurance is no longer available.

The fact that these types of Bills are being proposed and considered shows the seriousness of the problem and the recognition that a potential crisis is looming.

The North Dakota Domestic Insurers have put extensive effort into identifying problem areas our industry is facing, and put together a package of Bills intended to make our state a more attractive place to write. We have also tried to find alternatives to premium increases.

Senate Bill 2262 is one of the bills we are proposing. It is designed to fix a definition problem in the uninsured (UM) and underinsured (UIM) motorist statute that we believe has led to increased rates caused by unintended statutorily required coverage. Under our current statutes, a personal auto insurer is required to provide UM/UIM coverage to motorcycle drivers and passengers under a variety of circumstances. This can occur even if the insurance company does not insure motorcycles, is unaware that their policyholder drives or rides on motorcycles, or the driver has no motorcycle license.

For example, a college student who is injured while riding as a passenger on a motorcycle would have access to UM/UIM benefits under his personal auto policy, and would possibly have access to UM/UIM coverage under his parents auto policy, if he is determined to be a resident of his parents' household. It seems very unlikely that the legislature ever intended this result.

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This type of exposure, which is impossible to underwrite (assess the risk) leads to significant cost increases that are shared by all consumers, which is particularly unfair to consumers who are never involved with motorcycles.

Senate Bill 2262 does not prohibit anyone from obtaining UM/UIM coverage, it simply avoids personal auto policies from unknowingly having exposure to motorcycle drivers or passengers.

It should also be noted that motorcycles are not included in the definition of vehicles that are required to have mandatory no-fault (PIP) insurance.

We would urge a Do Pass on Bill 2262.

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26.1-40-15.4. Other insurance and priority of payment.

Statute text

1. Any damages payable to or for any insured for uninsured or underinsured motorist coverage must be reduced by:

a. The amount paid, or payable under any workers' compensation or other similar law, exclusive of nonoccupational disability benefits; and

b. Amounts paid or payable under any valid and collectible motor vehicle medical payments, personal injury protection insurance, or similar motor vehicle coverages.

2. Regardless of the number of motor vehicles involved, the number of persons covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for uninsured motorist or underinsured motorist coverage may not be added to or stacked upon limits for such coverages applying to other motor vehicles to determine the amount of coverage available to an insured in any one accident.

3. If an insured is entitled to uninsured motorist or underinsured motorist coverage under more than one policy, the maximum amount such insured may recover may not exceed the highest limit of such coverage provided for any one vehicle under any one policy. If more than one policy applies, the following order of priority applies:

a. A policy covering a motor vehicle occupied by the injured person at the time of the accident;

b. A policy covering a motor vehicle not involved in the accident under which the injured person is a named insured;

c. A policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent it exceeds the coverage of a higher priority policy.

History

Source: S.L. 1989, ch. 375, § 4.

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1. North Dakota State Law requires all motor vehicles (including automobiles and motorcycles) that are subject to licensing and used on public roads to carry the following coverages:

**Liability** - Covers third party claims for bodily injury and property damage if you are at fault in an motor vehicle accident.

**Uninsured (UM) and Underinsured Motorist (UIM)** - Covers claims for bodily injury you might make against another at fault party that has no insurance (UM) or who has liability limits less than your UIM coverage.

2. North Dakota also requires Personal Injury Protection (PIP) or No-Fault coverage for motor vehicles. However, the definition of motor vehicle in the No-Fault law does not include vehicles with three wheels or less. Therefore, while No-Fault is required for all motor vehicles with 4 wheels or more it is not required of motorcycles.

**Personal Injury Protection (PIP) - No Fault** - Covers you for specific economic losses (such as medical expenses, wage loss, burial expense etc.) incurred as a result of a motor vehicle accident due to a bodily injury. Coverage exists regardless of whether you or the other party was at fault.

3. If you are injured in a motor vehicle accident in a car with insurance the following would generally be the progression of claims:

- a. Claim against the PIP - No Fault coverage for medical expenses, wage loss etc.
- b. Claim against the Liability of the at fault party if your injuries were serious (in excess of a \$2,500 threshold) and involved non economic loss or extensive economic loss.
- c. Claim against the Uninsured Motorists coverage of the car you are in if the at fault party does not have liability insurance.
- d. Claim against the Underinsured Motorist coverage of the car you are in if the at fault party has liability insurance less than your UIM limits, and you have a valid claim whose amount exceeds the amount available from the at fault party's liability.

4. If you are injured in a motor vehicle accident while occupying a motorcycle with insurance the following would generally be the progression of claims:

- a. Claim against your personal health care provider for medical expenses.
- b. Claim against the Liability of the at fault party.
- c. Claim against the Uninsured Motorists coverage of the motorcycle if the at fault party does not have liability insurance.
- d. Claim against the Underinsured Motorist coverage of the motorcycle if the at fault party has liability insurance less than your UIM limits, and you have a valid claim whose amount exceeds the amount available from the at fault party's liability.

4. If you are injured in a motor vehicle accident while occupying a motorcycle with no insurance the following would generally be the progression of claims:

- a. Claim against your personal health care provider for medical expenses.
- b. Claim against the Liability of the at fault party.
- c. Claim against the Uninsured Motorists coverage of your personal auto insurance policy if the at fault party does not have liability insurance.
- d. Claim against the Underinsured Motorist coverage if the at fault party has liability insurance less than your UIM limits of your personal auto insurance



policy, and you have a valid claim whose amount exceeds the amount available from the at fault party's

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Testimony of Patrick Ward in Support of SB 2262 in House Transportation

SB 2262 is designed to exclude motorcycles from coverage under UM and UIM policies not purchased for the specific motorcycle involved in an accident. The Senate Engrossment does just that. It adds an exception for non-owned uninsured cycles.

This legislature when it enacted mandatory no fault coverage made the wise choice to exclude motorcycles from that law for at least two reasons. First is the component of assumption of risk that goes with riding motorcycles. Second is the greater severity of injuries in cycle accidents. It was thought that such risk should not be spread to auto drivers and unfairly skew the PIP or no fault auto insurance system. A recent study of PIP or no fault found that the average claim paid out was \$3,171.

UM and UIM coverage are mandatory in this state. In spite of this, 7% of drivers in ND are uninsured according to DOT figures. Motorcycle drivers are probably more likely to be uninsured due to cycles being secondary seasonal vehicles and the younger ages of typical motorcycle drivers.

Some of our domestic companies do not write cycles at all. Unfortunately, they have been hit with very large claims for cycle injuries under UM coverage on automobiles they insure. This is because under current law a person injured on

a borrowed motorcycle which is not insured can recover benefits against a family auto UM or UIM policy even though such a risk was never considered when the policy was written. SB 2262 would repair this glitch in the UM and UIM statutes and allow them to exclude these vehicles from coverage thereby keeping the system in tact as designed for automobile owners and motorcycles designated in a policy and exclude motorcycles not included in the original underwriting when the policies were sold.

We urge a Do Pass on SB 2262 with the Senate Engrossment.

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Operator's Signature

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