

TRANSPORTATION COMMITTEE

The Transportation Committee was assigned three studies. The Legislative Council chairman assigned by directive a study of federal highway appropriations and state matching requirements, a study of the effectiveness of financial responsibility requirements imposed on individuals convicted of driving without liability insurance, and a study of cost-shifting of medical costs of individuals injured in automobile crashes. In addition, the Legislative Council delegated to the committee the duty to receive a report from the Upper Great Plains Transportation Institute on the outcome of the institute's study of how improvement to the transportation infrastructure of this state might enhance the business climate and the state's competitive position on economic development.

Committee members were Senators David O'Connell (Chairman), Dennis Bercier, and Thomas L. Trenbeath and Representatives LeRoy G. Bernstein, Kathy Hawken, Craig Headland, Todd Porter, Clara

Sue Price, Arlo E. Schmidt, Dorvan Solberg, Elwood Thorpe, Mike Timm, Don Vigasaa, and Robin Weisz.

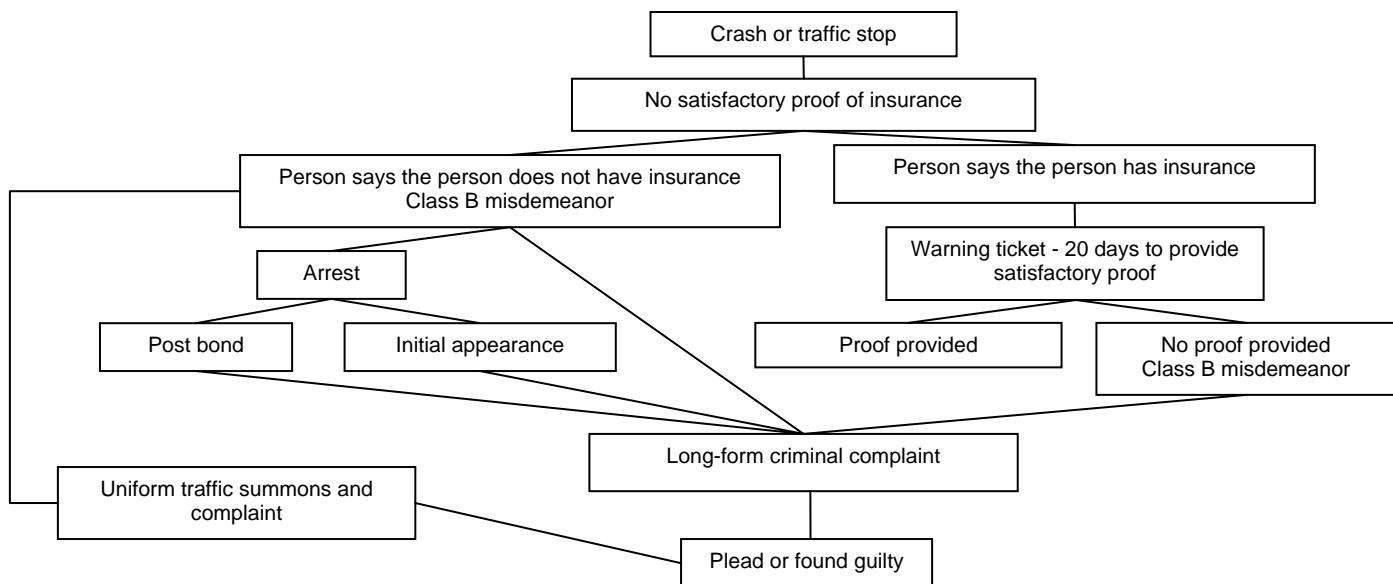
The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

EFFECTIVENESS OF FINANCIAL RESPONSIBILITY REQUIREMENTS FOR DRIVING WITHOUT LIABILITY INSURANCE STUDY

Statutory and Procedural Framework

Under North Dakota Century Code (NDCC) Section 39-08-20, a person may not drive a motor vehicle in this state without liability insurance. The owner of a vehicle is responsible for acquiring liability insurance. The liability insurance must be in the amount required by Chapter 39-16.1. The minimum limits for liability insurance in Section 39-16.1-11 are \$25,000 per person and \$50,000 per accident for bodily injury and \$25,000 per accident for property damage.

The following flow chart tracks the criminal procedure for driving without liability insurance.



Legislative History

The Legislative Assembly has substantially changed the law relating to driving without liability insurance since 1975.

The duty to purchase liability insurance began in 1975. Senate Bill No. 2146 provided that a person driving without liability insurance was subject to a noncriminal offense punishable by two demerit points. A statutory fee was specifically prohibited under the bill. In 1981, House Bill No. 1220 removed the prohibition on a statutory fee and the statutory fee was set at not less than \$25 nor more than \$100. In addition, the demerit points were increased from two to six.

In 1975, House Bill No. 1214 provided that the Department of Transportation may not register and must

rescind or suspend the registration of a vehicle without basic no-fault benefits and coverage for liabilities under motor vehicle liability insurance. In 1981, Senate Bill No. 2069 prohibited the department from issuing a certificate of title or transferring a certificate of title for failure to provide basic no-fault benefits or motor vehicle liability insurance coverage.

In 1985, House Bill No. 1287 made driving without liability insurance a criminal violation--a Class B misdemeanor. As a result, the statutory fee was repealed. As a consequence of being in violation of a criminal violation under NDCC Section 39-07-09, a person stopped for driving without liability insurance may be brought by the halting officer to the nearest

accessible magistrate instead of releasing the person upon a promise to appear.

In 1987, House Bill No. 1613 assigned 14 demerit points to driving without liability insurance if the violation was discovered as a result of investigation of an accident in which the driver is the owner.

In 1989, House Bill No. 1242 created a mandatory fine of at least \$150 for a violation. In addition, the bill imposed the duty on a person driving a motor vehicle to provide satisfactory evidence of a motor vehicle liability insurance policy upon request by a law enforcement officer. The person was given up to 20 days to provide the evidence. In 1993, House Bill No. 1488 clarified that a person who produces a valid policy of liability insurance cannot be convicted or assessed court costs for a violation.

In 1991, House Bill No. 1134 provided in addition to the prohibition on a person driving without liability insurance that an owner may not cause or knowingly permit to be driven a motor vehicle without liability insurance.

In 1995, House Bill No. 1492 increased the demerit points for a second violation of driving without liability insurance within 18 months to 12 points. The bill provided that the mandatory minimum fine of \$150 may not be suspended. The bill created a mandatory minimum penalty for driving without liability insurance within an 18-month period of \$300.

In 1997, House Bill No. 1195 increased the maximum fine for a Class B misdemeanor from \$500 to \$1,000.

In 1999, Senate Bill No. 2406 provided that if a driver of a motor vehicle is not an owner of the motor vehicle that is stopped for being operated without liability insurance, the driver does not violate the law if the driver provides the court with evidence identifying the owner and describing the circumstances under which the owner allowed the driver to drive the motor vehicle. The bill required a person who has been convicted of driving a motor vehicle without liability insurance to provide proof of insurance for three years to the Department of Transportation or else that person's driving privileges are suspended. The proof of insurance must be a certificate from an insurance carrier. The convicted person's license must contain a notation showing that the person must keep proof of liability insurance on file with the department. The fee for the notation and removal is \$50. The bill required insurance carriers to notify the director of the Department of Transportation of a cancellation or termination of an insurance policy required for a person convicted without liability insurance. In 1999, House Bill No. 1326 required a person without motor vehicle liability insurance who causes damages to another person or another's property with a motor vehicle to be court-ordered to pay the other person's deductible.

In 1999, Senate Bill No. 2376 limited the recoverable damages of a person who is in a motor vehicle accident and does not have liability insurance if that person has at least two convictions of operating a motor vehicle without liability insurance. This provision was set to expire on August 1, 2003. In 2003, House Bill No. 1190 removed the July 31, 2003, expiration date. In addition,

the bill lowered the previous convictions requirement from two to one.

In 2003, House Bill No. 1238 provided that the time of the acquisition of satisfactory evidence of a valid policy of liability insurance in effect at the time of an alleged violation for driving without liability insurance is the burden of the owner. The bill created an exception to NDCC Section 26.1-30-18 which provides that an insurance policy begins at 12:01 a.m. on the day on which coverage begins and expires at 12:01 a.m. on the day of expiration of the policy. The exception is that a person may be convicted for failure to have a valid policy of liability insurance if the time of acquisition of the policy was after the time of the alleged incident of driving without liability insurance.

Statutory Framework for Proof of Financial Responsibility

North Dakota Century Code Chapter 39-16.1, "Proof of Financial Responsibility for the Future," works in concert with Chapter 39-16, "Financial Responsibility of Owners and Operators." The purpose of these two chapters is to protect innocent victims of motor vehicle accidents from financial disaster. Both chapters are for motor vehicle owners who have already had accidents or have been convicted of certain traffic offenses. The sanctions imposed by Chapter 39-16 are intended to guarantee financial responsibility for a first accident. In contrast, the sanctions imposed by Chapter 39-16.1 are designed to establish proof of financial responsibility for future accidents.

Under NDCC Section 39-16-06, after the director of the Department of Transportation receives an accident report, the license of the driver involved in the accident is suspended unless the driver deposits security to satisfy any judgment for damages resulting from the accident. However, if the driver purchases liability insurance and provides proof of financial responsibility, the driver may drive until the accident is settled or determined by a court. If the driver is found negligent, the driver's license is suspended. However, the license is not suspended if the person had liability insurance at the time of the accident. Under Section 39-16-07, a license suspended under Section 39-16-05 remains suspended until security is deposited to answer for damages, one year has passed since the accident and no action or damages have been instituted, or the case has been settled.

Under NDCC Section 39-16.1-01, a person who commits certain offenses or fails to pay a judgment needs to provide proof of financial responsibility. Also, a person who did not have liability insurance in effect at the time of an accident is required to provide proof of financial responsibility. In addition, proof of financial responsibility is required under the following circumstances:

- Conviction for driving under the influence.
- Conviction for actual physical control.
- Refusal of chemical tests.
- Conviction for driving under revocation.
- Conviction for driving under suspension when length of suspension is for 91 days or more.

- Until a judgment for an automobile accident is fully satisfied.
- Conviction for manslaughter in which a motor vehicle is used.
- Conviction for negligent homicide in which a motor vehicle is used.
- Conviction for a felony in which a motor vehicle is used.

This proof of financial responsibility may be given by a certificate of insurance, a bond, or a certificate of deposit of money or securities with the Bank of North Dakota. If the proof of financial responsibility provided is a certificate of insurance, this certificate is called an SR-22 filing.

Under NDCC Section 39-16.1-03, the clerk of court sends notice to the director of the Department of Transportation of the failure to satisfy a judgment. Under Section 39-16.1-04, the director upon receiving this notice suspends the license unless there is an installment plan to pay the judgment and the person has proof of financial responsibility, the judgment creditor consents to a license and there is proof of financial responsibility, or the individual files an affidavit with the director stating the individual had insurance and the insurer is liable to the amounts required by the chapter. Under Section 39-16.1-05, the judgment is satisfied under the chapter if the proof of financial responsibility limits are credited to the judgment.

Under NDCC Section 39-16.1-19, proof of financial responsibility is required for one year.

Severity of the Problem and Characteristics of Uninsured Motorists

According to the Insurance Research Council, approximately 14 percent of drivers are uninsured based upon 1995-97 data. The state with the highest percentage of uninsured drivers for that time period was Colorado with 32 percent. The lowest percentage was Maine with 4 percent. North Dakota ranked 45th among the states, including the District of Columbia, and tied with New York, Nebraska, Wyoming, and Massachusetts. The three states with lower percentages of uninsured motorists were South Dakota, North Carolina, and Maine.

In 1999 the California Department of Insurance compiled the results of a questionnaire in a report entitled *Characteristics of Uninsured Motorist*. The findings included:

About 10% of those surveyed reported owning an uninsured vehicle. One of the surprising findings was that most of those who owned an uninsured vehicle also owned a vehicle that was insured. These uninsured are called hybrid uninsured and represent 58% of the uninsured in the sample. The remaining 42% were pure uninsured and did not own any insured vehicles.

The uninsured were more likely to have the following characteristics:

Variable	Uninsured More Likely to Be
Home ownership	Renter
Income	Less than \$20,000
Age	18 to 24
Education	High school or less
Sex	Male
Ethnicity	Hispanic or Black
Stability	Less time in present home

The survey reported 47 different reasons for being uninsured. Most of the reasons for being uninsured fell into two categories--nonuse of vehicle or the cost of the insurance. The majority of the pure uninsured did not insure because of the high cost of insurance. The majority of the hybrid did not insure because they claimed they did not use the vehicles.

In a 2000 article in the *Journal of Insurance Regulation* entitled "What We Know About Uninsured Motorists and How Well We Know What We Know," the author concluded that in general, uninsured motorists are found in highest numbers in metropolitan areas. In general, the rural states in the Northeast and North Central regions have a relatively small population of uninsured motorists. As to the profile of uninsured motorists, there is general agreement from most sources that male drivers make up the majority of uninsured motorists; however, there is no agreement on the magnitude. According to the article, the insurance industry has argued in several forums that uninsured motorists tend to be involved in more accidents and more severe accidents than insured motorists. However, the reason for this may be that young male motorists make up a substantial number of the uninsured motorists. The article went on to list the reasons for uninsured motorists. These reasons include:

- Low socio-economic status.
- Rigidity of the current method of pricing of insurance services.
- High insurance rates where most uninsured motorists reside.
- Low probability of being caught combined with cost of being caught compared with high insurance cost.
- Unavailability of public transportation.
- Lack of awareness of the existence of mandatory laws.

State Responses to Address Uninsured Motorists

Proof and Verification

Forty-seven states require drivers to carry automobile insurance. The remaining three states--New Hampshire, Tennessee, and Wisconsin--have financial responsibility laws. To enforce these laws, the state agencies with authority over motor vehicles and law enforcement must know if a vehicle is insured. There are two ways this information is obtained--proof of insurance by driver or owner and insurer verification of insurance. There are three times when states require proof of insurance:

1. At registration.
2. At time of accident.
3. At all times in vehicle.

Insurer verification takes four forms:

1. The insurer must notify the state agency with authority over motor vehicles of cancellations or nonrenewals.
2. The insurer must verify after an accident or arrest.
3. The insurer must verify randomly selected insurance policies upon request.
4. The insurer must submit an entire list of insurance in effect.

Insurer verification of insurance through a data base takes two forms--book of business and cancellation reporting programs. An example of a book of business program is Nevada. Nevada requires every insurer to provide the Department of Motor Vehicles with a monthly record of each policy issued, amended, or terminated in the previous month. The department compares the records of current motor vehicle registrations with the records received from insurers and mails notices to owners of uninsured vehicles. The department must send the owner, by first-class mail, a form about insurance which the owner must return to the department within 20 days. If the department does not receive a response, a second form is sent by certified mail which the owner must return within 15 days. If the owner does not return either form, the information on the form is unverifiable or the owner admits to not having insurance, the department suspends the vehicle's registration. The owner must pay a reinstatement fee of \$250 to reinstate the registration. Revenue from the reinstatement fee pays for the data base.

Another example of a book of business program is Utah. In Utah the program is run by a private vendor. The private vendor collects information from the Department of Motor Vehicles and insurers and sends notices to owners of uninsured vehicles and if they do not acquire insurance, the Department of Motor Vehicles cancels the registration for those vehicles. All registered owners of vehicles pay a \$1 fee per year to fund the program. According to the private vendor, Utah reduced uninsured motorists from 23 to 9.3 percent in approximately four years. In addition, the Utah State Tax Commission reports that the data base may have helped identify 90,000 Utah vehicles that may have been improperly registered in other states. Other states that contract with vendors include Connecticut, Colorado, and New Mexico.

A book of business program within state government allows for law enforcement to access that information as part of a driving record check. If the program is administered by a private vendor, access may not be so convenient. For instance, in Utah the records may be only accessed through the Internet by law enforcement.

Maine has a cancellation reporting program. The law requires insurers to report the cancellation or termination of mandatory liability coverage on vehicles registered in Maine. The law requires the Bureau of Motor Vehicles to issue a notice to the owner of a vehicle reported canceled or terminated informing the owner that the registration will be suspended if the owner does not provide evidence of new insurance coverage. This evidence must be provided within 30 days. North

Dakota has a cancellation reporting program for people convicted of driving without liability insurance.

Criminal and Civil Penalties

Consequences for not having automobile liability insurance include fines, jail time, license or registration revocation, confiscation of license plates, and vehicle impounding. As to the frequency of the use of a penalty:

- 43 states impose fines.
- 22 states revoke or suspend vehicle registrations.
- 21 states revoke or suspend vehicle licenses.
- 7 states confiscate license plates.
- 3 states impound vehicles.

In a 2001 article in the *Journal of Insurance Regulation* entitled "The Uninsured Motorist Problem: An Investigation of the Impact of Enforcement and Penalty Severity on Compliance," the authors found that compulsory insurance laws significantly reduced the uninsured motorist rate. In addition, the higher level of fines for failure to comply with the law helped to reduce the level of noncompliance. However, this did not apply to jail sentences. As to the effectiveness of jail sentences, the article suggested that "while these laws are on the books, it is unlikely that they are actually being enforced and therefore are not effective. Effectiveness could be increased by consistency and uniformity of application."

The article stated that one conclusion in response to the characteristics of uninsured motorists would be for a state to more efficiently use resources by targeting individuals with the characteristics, because the likelihood of noncompliance is higher for these individuals. Another conclusion could be to increase enforcement. The article stated "it is often difficult to ascertain whether penalties exist for noncompliance, what those penalties are, and what the likelihood for getting caught is. One low-cost suggestion from this study is that states need to more fully disclose this information to all drivers." This information may be provided through insurance agents explaining the specific consequences of failing to buy liability insurance. In addition, driver's license testing could focus more on the understanding of compulsory insurance laws.

The article stated "it is important to consider the cost of the insurance and individual's ability to pay in assessing the overall potential for the laws to reduce the uninsured motorist problem."

Automobile Insurance Programs

California has enacted a low-cost automobile insurance program to provide low-cost and lower coverage insurance. The California low-cost automobile insurance program is available only to residents of Los Angeles and San Francisco who meet certain income requirements. For an accident caused by an insured, these policies provide a maximum of \$10,000 liability for bodily injury or death per person with a maximum of \$20,000 for all persons and a maximum of \$3,000 liability for damage to personal property. The standard California policy is \$15,000 per person and

\$30,000 for all persons and a maximum of \$5,000 liability for damages to personal property.

Saskatchewan, Canada, has a unique approach to compulsory insurance. Under that province's compulsory liability insurance and financial responsibility law, insurance is mandatory and included with the purchase of license plates and certificates of registration. In Saskatchewan a valid license plate is proof of valid insurance.

Testimony and Discussion

Severity and Characteristics

The committee was informed that in North Dakota approximately 7 percent of the motorists are uninsured. This is a low percentage when compared nationally. This may be attributable to the fact that this state has the lowest, or near the lowest, cost of liability insurance in the nation. The committee was informed that it is difficult to measure the number of individuals driving without liability insurance because the statistics only relate to those individuals who are caught driving without liability insurance. The current number of individuals convicted of driving without liability insurance is approximately 3,700 per year and if the present trend continues, there will be approximately 5,200 individuals convicted in 2009.

The committee was informed that economics is the major factor in determining whether individuals purchase liability insurance. As such, more people would not have liability insurance if the price of the insurance increased. In general, the average cost for liability insurance is \$193 per year. This amount does not include mandatory no-fault and uninsured and underinsured motorist coverages. In addition, individuals driving without liability insurance would most likely pay much more than the average cost if they had insurance. The committee was informed that if the coverage of liability insurance were doubled, the cost would increase by approximately 15 percent. The vast majority of automobile accidents fall well within the range of mandatory liability coverage limits.

The committee was informed that approximately 50 percent of individuals convicted for driving without liability insurance have had a previous license suspension. It was argued there is a core group that is not going to change regardless of any change in the law and that caution should be exercised in making any change because of the relative success of this state's laws. In addition, committee discussion included disfavor for any mandatory insurance.

Proof and Verification

The committee received testimony on proof of insurance in the form of proof at registration and proof in the automobile. Although in the past an individual had to list that individual's insurance policy number on the registration renewal form, that individual still states to the department that that individual has insurance when the registration renewal application is signed. The committee was informed that listing the policy number is not effective as a means of enforcement because an

individual can cancel a policy immediately after listing the number.

The committee was informed that when an individual is stopped for another offense, the law enforcement officer may and usually does ask for proof of liability insurance. The committee was informed that it appears that all insurers provide proof of insurance to customers. The committee was informed that the problem with proof of insurance cards is that a person can cancel insurance or change companies.

The committee was informed that the computer in a patrol car does not have information on the status of liability insurance for a driver. If a driver does not have liability insurance, the driver has 20 days to provide proof. According to a representative of the Highway Patrol, this provision of law is administratively burdensome. It was argued that a civil citation would be administratively less burdensome on law enforcement and the courts than a criminal citation for driving without liability insurance. A representative from the Department of Transportation argued that there should be a penalty for not having proof of insurance in a motor vehicle or there should be an incentive to have it in a motor vehicle. The committee was informed that Minnesota requires a person to produce proof of insurance and has a mandatory penalty if the person does not have proof.

To the contrary, there was testimony in support of the 20 days to provide proof of adequate insurance because it is difficult for businesses to have the correct card in the correct vehicle. In addition, without the 20 days, individuals with insurance would be punished the same as people without liability insurance.

The committee received testimony on an insurance verification system. The Department of Transportation is investigating a notification system by which the department is informed of canceled or terminated insurance policies. If the department had the system, the department would address driving without liability insurance during the registration renewal process. The committee was informed that most insurance companies do not want to have 50 systems in 50 states.

The committee was informed that present insurance verification systems do not work. The best systems in other states are 30 days behind in providing accurate information. This produces mailings to individuals who have a valid reason for not having insurance with a particular company. The committee was informed that Minnesota used to verify insurance for every driver; however, that state now does random checks.

Penalties

The committee received testimony on changes in the sanctions for driving without liability insurance and any corresponding effect on the number of convictions for driving without liability insurance. According to a representative from the Department of Transportation, there is usually a six-month period after a change in the law relating to uninsured drivers in which there is a decrease in the number of individuals driving without liability insurance. After this six-month period, any decrease is lost and the increase in the number of drivers continues as if there were never a change.

The committee received testimony on the statutory sanction for driving without liability insurance. Under NDCC Section 39-16.1-20.1, the department is prohibited from returning a license for any reason without a verified statement confirming insurance coverage and the department is more actively enforcing this provision.

The committee was informed that minimum fines were adopted by the Legislative Assembly at the urging of the North Dakota Professional Insurance Agents because judges were routinely suspending fines and were applying court costs. There was testimony in support of mandatory fines and even increasing those fines. It was suggested that an increased fine could fund unpaid property damages in a manner similar to the unsatisfied judgment fund for bodily injury.

However, a representative of the Highway Patrol indicated that there should be flexibility in fines so people who cannot afford to buy insurance can buy insurance instead of paying the fine. It was suggested that the committee may want to have the penalty be the cost of insurance but have the fine waived if the person purchased insurance. The committee was informed that individuals who drive without liability insurance have other costs besides the fine, including high-risk insurance.

The committee considered a bill draft that changed driving without liability insurance from a criminal to an administrative penalty with a fee of up to \$150. The bill draft required insurers to issue proof of insurance. The bill draft removed an administrative burden from law enforcement by having drivers provide proof of insurance to the court before or at the hearing on the offenses. The committee also considered a similar proposal that provided for a mandatory penalty of \$150 and clarified language relating to point reductions for violation-free driving.

The committee also considered a bill draft that changed the citation procedure for driving without liability insurance. While keeping the procedure criminal, the bill draft replaced the 20-day grace period to provide proof of insurance with the defense to the charge of providing proof to the appropriate court. In addition, the bill draft required insurers to provide proof of insurance.

The committee was informed that the proof of liability insurance issued by an insurer would be more useful if it had a bar code. The license of a person who does not pay the fee for a noncriminal offense would be suspended. The committee was informed that changing from a criminal to an administrative procedure would result in violations not being printed in the paper, which may remove a deterrent to driving without liability insurance. Committee discussion included support for requiring proof of insurance to be issued by insurance companies to customers, not lessening the fine or fee, and keeping the fine or fee mandatory.

Impounded Plates

The committee was informed by a representative of the Department of Transportation that no action is taken against an individual's motor vehicle registration when the individual is convicted of driving without liability

insurance. The committee was informed that the computerized driver's license and registration systems are somewhat mutually exclusive and it would be difficult to program a suspension of registration for an individual convicted of not having liability insurance. Committee discussion included the opinion that the department should coordinate the information systems after a conviction of driving without liability insurance so that the validity of the registration can be reviewed by the department.

North Dakota does not have a law that provides for the confiscation of license plates of individuals who have driven without liability insurance. Committee discussion included support for legislation that addresses the vehicle of the uninsured and it was suggested that the legislation should provide for the confiscation of license plates for a second offense. At the last meeting of the committee, the committee amended both bill drafts that were under consideration to include license plate confiscation for a second offense of driving without liability insurance.

The committee was informed of the issues created with the confiscation of license plates. The committee was informed that the violator should be the owner as a condition of the license plates being confiscated. In addition, the committee was informed that self-issue permits may create administrative problems with a blanket confiscation. It was argued that confiscation required more study and there are many fact scenarios that need to be addressed to make the confiscation process clear.

Committee discussion included the opinion that the major issue with the confiscation of license plates is enforcement. The committee was informed that in the administrative context, the department would have to ask a person to return the license plates for confiscation. Law enforcement would have to retrieve the license plates if the plates were not returned. Committee discussion included support for the idea that the confiscation should apply to the primary owner driving the motor vehicle without liability insurance.

Committee discussion included the idea that it would be better for the committee to attach the amendment and have it removed during the legislative session instead of bringing forth the amendment later in the legislative process. The former manner provides that the issue is guaranteed to be reviewed by the Legislative Assembly. Committee discussion included that although the idea of license plate confiscation for driving without liability insurance has merit and deserves study, the idea should be contained in a separate bill draft.

Recommendations

The committee recommends House Bill No. 1036 to provide for an administrative procedure for driving without liability insurance. The bill removes an administrative burden from law enforcement by having a driver provide proof of insurance to the court before or at the hearing on the offense, instead of to the law enforcement officer. The bill provides for a mandatory fee of \$150 and clarifies language relating to point reductions for violation-free driving. The bill requires

insurers to issue proof of insurance. In addition, the bill requires license plate confiscation for a second offense of driving without liability insurance.

The committee recommends House Bill No. 1037 to change the citation procedure for driving without liability insurance. While keeping the procedure criminal, the bill replaces the 20-day grace period to provide proof of insurance with a defense to the charge by providing proof to the appropriate court. The bill requires insurers to provide proof of insurance. In addition, the bill requires license plate confiscation for a second offense of driving without liability insurance.

HIGHWAY FUNDING STUDY

Federal Highway Appropriations

Federal highway appropriations were greatly affected by the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which the President signed into law on August 10, 2005. The Act guarantees \$244.1 billion in funding for highways, highway safety, and public transportation. The Act provides funding through federal fiscal year 2009. The Act is a continuation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21). The federal highway trust fund is the source of funding for most of the programs in the Act. Federal motor fuel taxes are the major source of income into the highway trust fund.

At the beginning of the interim, the Department of Transportation estimated that this state will receive an additional \$25.7 million of conventional funding for highways this biennium, of which \$6.4 million will go to cities and counties. These conventional funds are in addition to the amount the Department of Transportation projected this state would receive during the 2005 legislative session. These additional conventional funds will increase the amount needed for state matching funds for conventional funding by approximately \$3,944,000 for this biennium.

The Legislative Assembly provided budget authority to meet \$5.4 million of the anticipated \$8.4 million in federal emergency relief funds for projects to be constructed during this biennium. However, the Act provided an extra \$10 million per year for the construction of necessary measures for the continuation of roadway surfaces or the impoundment of water to protect roads at Devils Lake. At the beginning of the interim, the Department of Transportation estimated that because only a third of this amount will be used for state roads, this state will receive approximately \$6.7 million per year in additional emergency relief funds. The additional emergency relief funds will require approximately \$1.7 million per year in additional state matching funds, or \$3.4 million for the biennium.

At the beginning of the biennium, the Department of Transportation estimated that because of the additional conventional federal funds and emergency relief expenditures, this state will require \$10.6 million in additional matching funds. This figure includes \$3 million in matching funds needed to receive the full \$8.4 million in emergency relief funds. To meet the

shortfall, at the beginning of the interim the department anticipated using NDCC Section 24-02-44, which provides that the department may borrow money from the Bank of North Dakota to match federal emergency relief funds upon approval of the Emergency Commission. If the department does not repay the amount borrowed within the biennium, the department is required to request a deficiency appropriation from the state highway fund.

In addition to the \$10.6 million difference between the total state matching funds needed as a result of the Act and the Department of Transportation's revenue this biennium, there is projected to be a \$5.9 million difference in the 2007-09 biennium and a \$21.3 million difference in the 2009-11 biennium. Unless the department finds internal savings or receives actual income that exceeds projected income, increased or other sources of income may need to be investigated. The major present sources of income are motor vehicle fuel taxes, motor vehicle registration fees, and special fuels taxes.

State Matching Sources

In general, fuels taxes and registration fees are deposited in the highway tax distribution fund. However, \$13 of each registration fee for a passenger motor vehicle, bus, and truck weighing over 20,000 pounds goes directly into the state highway fund. The highway tax distribution fund is distributed 63 percent to the state, 23 percent to the counties, and 14 percent to the cities. Money received by the state goes into the state highway fund.

Certain income sources have recently been increased or implemented to match federal funds. In 2005, Senate Bill No. 2012 increased registration fees \$10, classified pickups as passenger motor vehicles but limited the increase due this reclassification to one-half for this biennium, and deposited \$13 of each registration fee in the state highway fund. The bill increased motor vehicle fuel and special fuels tax rates from 21 to 23 cents per gallon. The bill allowed for grant or revenue anticipation financing for the Liberty Memorial Bridge improvement project and the United States Highway 2 project improvements. This financing provides for federal reimbursement for debt financing costs relating to federal aid highway projects. This financing is done through the issuance of bonds. The bill would have redirected money collected for motor vehicle excise taxes from the general fund to the state highway fund. This transfer of revenue was vetoed by the Governor because the "diversion of funds increases the risk of an allotment, or could force the calling of a special session of the legislature to deal with future revenue requirements." In 2005 the Legislative Assembly considered, but did not pass, House Bill No. 1450, which would have doubled the driver's license fee, and Senate Bill No. 2255, which would have dedicated a one-half of 1 percent increase in the motor vehicle excise tax to the state highway fund.

Alternative Revenue Sources

During the 2003-04 interim, the Budget Committee on Government Administration studied highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties. The committee reviewed other states' methods of financing highway projects. The majority of states' highway revenue is generated from fuels taxes and motor vehicle registration fees.

In addition, states generate additional funding for highways from a variety of other sources. The following schedule summarizes select revenue sources that are used for highway purposes in other states in addition to fuels taxes and registration fees:

Revenue Type	State
Sales tax - General	Arizona, Illinois, Kansas, Nevada, Utah, and Virginia
Motor vehicle excise tax	Iowa, Kansas, Michigan, Missouri, Nebraska, North Carolina, and South Dakota
Motor fuels sales tax	California, Georgia, and Michigan
Auto parts sales tax	Michigan
Gaming tax	Colorado
Rental car tax	Florida, Hawaii, Iowa, South Dakota, and Utah
Severance tax	Arkansas, Kentucky, New Mexico, Oklahoma, Tennessee, and Wyoming
Corporate income tax	Maryland
Lubricating oil tax	Alabama, Mississippi, and Texas
Contractor tax	Mississippi

The 2003-04 interim Budget Committee on Government Administration reviewed information prepared by the Florida Department of Transportation regarding alternative transportation revenue sources. Alternative revenue sources identified include:

1. Vehicle miles of travel fees - An annual assessment based on the number of miles traveled in the preceding year.
2. Weight distance fees - An annual assessment based on factors, including miles driven and vehicle weight.
3. New vehicle or auto parts sales tax - Taxes on new or used vehicle purchases or on sale of automobile parts.
4. Emissions fees - An annual fee based on a vehicle's emissions characteristics and on the annual number of miles traveled.
5. Highway right-of-way lease income - Collections from leases of highway right of way for fiber optic cables, cell phone towers, or other purposes.
6. Road-branding fee - A fee charged for naming a segment of a highway for an individual or business.

At the committee's request, the Department of Transportation identified the following potential options for providing additional transportation revenue:

1. Increasing the motor vehicle fuel tax on gasoline, gasohol, and diesel fuel (a one cent per gallon increase would generate \$5 million per year, or \$10 million per biennium).

2. Increasing motor vehicle registration fees (a \$1 increase would generate \$700,000 per year, or \$1.4 million per biennium).
3. Increasing the 2 percent special fuels tax (a 1 percent increase, from 2 to 3 percent, would generate \$2.3 million per year, or \$4.6 million per biennium).
4. Increasing the excise tax on the sale of new and used motor vehicles (a 1 percent increase would generate \$10.75 million per year, or \$21.5 million per biennium).
5. Dedicating a portion of the general sales tax to transportation (a .25 percent sales tax increase would generate \$20.5 million per year, or \$41 million per biennium).
6. Increasing the tax on rental cars (a tax of \$1 per day on rental cars would generate \$360,000 per year, or \$720,000 per biennium, while a 1 percent rental car tax would generate \$180,000 per year, or \$360,000 per biennium).
7. Dedicating a portion of severance tax revenues on natural resources to transportation.
8. Imposing a sales tax on motor fuels (a 1 percent sales tax would generate \$6.4 million per year, or \$12.8 million per biennium at \$1.20 per gallon).
9. Increasing the sales tax on auto parts (a 1 percent increase would generate \$1.5 million per year, or \$3 million per biennium).
10. Shifting the funding for the ethanol incentive program to another source (this change would generate \$1.25 million per year, or \$2.5 million per biennium).
11. Providing funding for the Highway Patrol from sources other than the highway fund.
12. Enacting a personal property tax on vehicles.
13. Dedicating gambling funds to transportation.
14. Establishing toll bridges and toll roads.
15. Developing private/public partnerships.
16. Enacting a vehicle miles of travel tax.
17. Enacting a weight distance tax.
18. Bonding for highway projects; however, a revenue source would be needed to repay the bonds.
19. Appropriating money from the general fund.
20. Enacting taxes on other petroleum products.
21. Utilizing corporate income tax collections.
22. Developing rest area concessions.
23. Utilizing traffic fine collections.
24. Increasing taxes on beer and cigarettes.
25. Enacting a contractor tax.
26. Utilizing collections from mineral leases on state-owned land.
27. Utilizing room tax collections.
28. Charging for use of highway right of way.
29. Utilizing collections from an annual insurance underwriters fee.
30. Taxing alternative fuel sources.

Testimony and Discussion

Federal Funding and Matching Requirements

The committee received testimony on the importance of federal funding for road construction and maintenance. The committee was informed that there has been an increase in the number of states that pay more in through federal fuels taxes than they receive from the federal government in highway funding. In SAFETEA-LU, some states wanted to be guaranteed at least a 95 percent return. The minimum guarantee under SAFETEA-LU is 92.5 percent over the life of the bill. Rural states are protected as to the money they receive in that it will not be less in the future. Historically, for every \$1 that North Dakota drivers have paid into the federal highway trust fund, North Dakota has received \$2 of federal highway funds.

In November 2005 the Department of Transportation reduced the projected shortfall of \$10.6 million to \$4.1 million. One reason for the reduction was that there were no state highways that were roads acting as dams projects this biennium. The roads are all on Bureau of Indian Affairs routes. The committee was informed that the only known road acting as a dams project for the 2007-09 biennium is reinforcing a section of North Dakota Highway 20 near Acorn Ridge. This project will require approximately \$500,000 in state match. Another reason was that there was less federal funding than expected.

In March 2006 the committee was informed that the federal formula funding is estimated to be \$410 million versus the budgeted amount of \$407 million. As a result, the match needed by this state will be \$600,000. The committee was informed that with the \$600,000, the current projected shortfall is \$3.1 million.

Federal Mandates - REAL ID Act

The REAL ID Act of 2005 was passed in September 2005. The committee was informed that the purpose of the REAL ID Act is to allow computers to work together among the states to retrieve motor vehicle and birth certificate information. Under the Act, it will become easier to share pictures among different licenses and identifications. Under the Act, the state driver's license will become a national identification that is accessible by all the states. The committee was informed that the REAL ID Act is good for safety but is costly.

The committee was informed it will cost approximately \$14 million to implement the REAL ID Act in this state, in addition to the cost of recent changes in driver's licenses that comply with the standards of the American Motor Vehicle Association. The state will need to comply with the requirements of the Act by 2008. Of the total cost, \$6 million is attributable to developing a data base that is part of a national data base and providing access to the data base. Other costs include authenticating the identity of individuals applying for identification.

Congress did not provide any funding for the implementation of the REAL ID Act. Noncompliance does not result in the loss of funding but will result in the citizens of the noncompliant state not being able to use

their identification for federal purposes, e.g., boarding an airplane.

Committee discussion included that if there is no federal funding, a state should refuse to follow the requirements of the REAL ID Act.

No state has opted out of the Act; however, the House of Representatives in New Hampshire passed a resolution not to follow the Act, but the Senate tabled the resolution. The committee was informed that states are considering whether to comply with the Act. The committee was informed that the Department of Transportation will follow the Act unless told not to by the Governor or the Legislative Assembly. The department is attempting to secure federal funding for the Act.

The committee was informed that a REAL ID Act compliant license may not be good enough to enter Canada because the identification required to cross the border may require a chip that can be read from 35 feet.

State Funding Sources and Alternatives

The committee received testimony on the impact of increased motor fuel prices on the consumption of motor fuel, and hence the collection of motor fuels taxes. Projected revenues are very close to collections. There have been fewer miles driven in this state but the revenue has been fairly stable. The revenue may increase as people drive more as they become accustomed to higher gas prices.

The committee was informed that the total impact on fuel consumption has been minimal as the total consumption for the first 10 months of 2005 compared to 2006 has shown a decrease of about 2.5 million gallons, or about .58 percent. In addition, during the same timeframe the use of gasohol increased approximately 54 percent and gasoline usage decreased 29 percent. Part of the increase may be attributable to the tax exemption on E85 fuel, which expired on April 30, 2006. Diesel fuel usage increased almost 5.2 million gallons, or about 4 percent. The increased usage of gasohol and diesel fuel came very close to offsetting the decline in gasoline consumption. The slight decrease overall in motor fuel consumption is partially offset by the increased revenue from the 2 percent special fuels tax. Even though the gallons used which are subject to the tax have decreased, the total amount collected under the tax has increased due to the increase on the price on which the tax is calculated. This increase in price was approximately 37 percent.

The committee was informed that this state having a higher gas tax than Minnesota has not appeared to have resulted in people going to Minnesota to avoid the tax. The committee was informed that the lower cigarette taxes in this state tend to bring people in from Minnesota who then buy fuel as well as cigarettes. The committee was informed the relationship between gas tax and gas price is a mystery. For example, the gas tax in Montana is four cents more than in this state; however, on a particular weekend the price for gas in Montana was 14 cents less than in this state.

The committee was informed that there are potential funding sources other than the gas tax. Other sources of funds may include tolls, concessions, design/build,

and bonds. Oregon is piloting a program to implement a per mile tax. The difficult part of implementing a per mile tax is that the taxing authority needs to have a computer in the automobile measure the miles driven and the state in which the miles are driven.

The committee received testimony on the taxation of coal, oil, and gas as a potential source of highway funding. In addition, the committee received testimony on present proceeds from oil and gas gross production tax proceeds which are transferred to the oil and gas impact grant fund and are used for road repair and maintenance. The oil and gas impact grant fund is administered by the Energy Development Impact Office. The office provides financial assistance for basic governmental services to local units of government affected by energy activity.

Committee discussion included that the state does not share in impact funding for state roads. It was argued that the oil and gas industry wants good roads and heavily uses the roads and therefore should share in the expense. It was argued that increased state highway funding may be able to be provided through the shifting of these taxes, without a significant increase in taxes. Committee discussion included that although more money for roads is always an issue, it may not be a wise precedent to divert taxes collected from the oil and gas industry.

The committee was informed that state highways are impacted by the oil and gas industry and the department is developing a report that will estimate this impact. The report will focus on the western portion of the state. Out of the ordinary damage is done to the roads in the western portion of the state because of certain equipment that is moved for oil rigs.

The committee received testimony on additional state funding for highway projects. It was argued that there needs to be a change in funding on a state level. Many states have projects funded above federal match projects.

Increased Costs

The committee was informed that every road construction project scheduled is needed and some have not been done because of high bids. The Department of Transportation has not accepted bids that have been 15 to 20 percent higher than the engineers' estimates. The reason for the increase in bid amounts is that prices have increased for raw materials and labor. For example, the average asphalt cement bid was \$224 per ton in 2005 and was \$388 per ton in May 2006--a 73 percent increase.

As a result of increased costs, \$24 million in construction projects originally scheduled for 2006 have been delayed. Bids on United States Highway 12 and United States Highway 2 near Devils Lake have been rejected because the bids were significantly over the engineers' estimates. These projects will be rebid. The department anticipates that over \$91 million in projects for 2007 and 2008 will be scheduled at a later date.

The committee received testimony on the importance of timely road repair. The committee was informed that every \$1 million spent on road construction creates

47.5 jobs and for every \$1 spent on preventative maintenance, \$4 to \$5 is saved in construction costs in the near future. In addition, national studies have demonstrated that every \$1 invested in transportation yields approximately \$5.40 in reduced delays, improved safety, and reduced vehicle operating costs.

The committee was informed that contracts for highway construction with the department have a special provision for changing the amount paid based on a change in diesel fuel prices between the time of the bid and the time of the project. The increase in diesel fuel costs will affect the cost of projects by less than 5 percent.

The committee received testimony on costs attributable to maintaining employees at the department. The committee was informed that North Dakota has fewer employees per mile of road than any other state. The department is having particular problems recruiting and retaining equipment operators, engineers, and engineer technicians. The department utilizes every tool available to retain employees, including recruitment bonuses, performance bonuses, and scholarship programs. The department is looking at improving the perception of state employment. The committee was informed that the perception is that state employment is not stable and has low pay. It was argued that an incentive based upon a project or job may be the sort of compensation needed to retain and hire engineers and engineer technicians.

Liberty Memorial Bridge

In November 2005 the Department of Transportation informed the committee that there were no bids for the Liberty Memorial Bridge. There has been a steady decline in the number of bids over the past few years because there are fewer and larger contractors. The department receives on average three to four bids for a project, whereas the department used to receive six to seven bids.

Although the Liberty Memorial Bridge was later bid for replacement, the committee was informed that repairs on the Liberty Memorial Bridge were required before the replacement. The repairs are planned to last until the new bridge is open. The closure of the bridge affected approximately 15,000 cars per day. If those cars have to drive at least two additional miles because of the closure, then an extra 30,000 miles are driven each day. The cost of these extra miles is at least \$10,000 per day. The cost of the repairs were estimated between \$300,000 and \$400,000.

The committee was informed that bridges are monitored on a monthly basis and are thoroughly inspected every two years. The department has 59 certified bridge inspectors to inspect approximately 5,300 bridges. The last thorough inspection of the Liberty Memorial Bridge was in late 2003 or early 2004 and there was no indication of damage at that time. In January 2006 the department discovered problems on the outside of the columns and the outside flaws warranted further testing that revealed internal problems.

COST-SHIFTING OF MEDICAL COSTS IN AUTOMOBILE CRASHES STUDY

The end result of any automobile crash is that some person pays or is liable to pay for medical costs that result from the automobile crash. Depending on the fact scenario, and the insurance and drivers involved in the accident, that person may be:

1. An automobile no-fault or medical payments insurance company.
2. An automobile liability insurance company.
3. An automobile uninsured insurance company.
4. An automobile underinsured insurance company.
5. A health care insurance company.
6. The at-fault driver.

7. The driver not at fault.
8. A health care provider.
9. A medical assistance program.

The following is a table contained in *The Economic Impact of Motor Vehicle Crashes 2000* compiled by the National Highway Traffic Safety Administration. The table lists the estimated source of payments for motor vehicle crashes. The most common of these are private insurance claims. Medicare is the primary payer for people over age 65. When these sources are not available, government programs, for instance Medicaid, may provide coverage. Expenses not covered by private or governmental sources must be paid out of pocket by individuals or absorbed as losses by health care providers.

Estimated Source of Payment by Cost Category							
	Federal	State	Total Government	Insurer	Other	Self	Total
Medical	14.40%	9.77%	24.16%	54.85%	6.36%	14.62%	100%
Emergency services ¹	3.87%	75.75%	79.62%	14.74%	1.71%	3.93%	100%
Market productivity	16.20%	3.06%	19.26%	41.09%	1.55%	38.10%	100%
HH productivity				41.09%	1.55%	57.36%	100%
Insurance administration	.89%	.51%	1.40%	98.60%			100%
Workplace costs					100.00%		100%
Legal/court				100.00%			100%
Travel delay					100.00%		100%
Property damage				65.00%		35.00%	100%

¹Police and fire department responses.
Source: Blincoe, 1996

The following will review the law and recent bills that have changed the law relating to the payer of medical costs in automobile crashes. Because no-fault automobile insurance has the primary obligation for economic loss from bodily injury in an automobile crash, the law and bills relate to no-fault insurance.

Statutory Framework

Generally, the term "no-fault automobile insurance" refers to a type of automobile insurance under which claims for personal injury are made against a claimant's own insurance company rather than against the insurer of the party at fault.

In 1975 the Legislative Assembly enacted the North Dakota Auto Accident Reparations Act, which provided for a no-fault automobile insurance system. This no-fault automobile insurance law became effective on January 1, 1976, and remains in effect, with amendments. North Dakota Century Code Chapter 26.1-41 comprises most of the state's no-fault automobile insurance law. Under this system, the owner of an insured motor vehicle (secured person and secured motor vehicle) is required to have insurance coverage for the payment of basic no-fault benefits and liabilities covered under motor vehicle liability insurance.

Under a no-fault system, there are limitations on the right of a victim to sue if injured in a motor vehicle accident. North Dakota Century Code Chapter 26.1-41 precludes tort actions by injured parties for damages covered by no-fault insurance. Chapter 26.1-41 prohibits all tort actions for the bodily injury unless there is a serious injury. A serious injury means an accidental

bodily injury that results in death, dismemberment, serious and permanent disfigurement, or disability beyond 60 days, or which results in medical expenses in excess of \$2,500.

Under NDCC Section 26.1-41-13, a basic no-fault insurer has the primary obligation for economic loss from bodily injury unless there is workers' compensation coverage. Under Section 26.1-41-13(3), the basic no-fault insurer pays for the first \$10,000 of medical expenses and the health care insurer pays the remainder. This coordination of benefits is designed to ensure that there is not a double payment.

Legislative History

Coordination of Benefits

In 1977, House Bill No. 1510 created the amount of no-fault medical expenses a no-fault insurer may coordinate with a health care insurer in the amount of \$5,000. As introduced, the bill would have repealed the coordination of benefits provisions. Before the passage of House Bill No. 1510, if an individual had medical expenses in excess of \$15,000, depending on the coordination of benefits, the first \$15,000 might be paid by the no-fault insurer and the excess paid by the health care insurer. However, this did not leave any money left under the no-fault benefits for work loss, replacement services, or death benefits. The amendment allowed the no-fault carrier to subrogate against the health care insurer after the first \$5,000 of no-fault benefits are paid, thereby leaving more benefits for items other than medical expenses.

In 1981, Senate Bill No. 2061 included health maintenance organizations as health care insurers in the coordination of benefits provision.

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

In 1991, Senate Bill No. 2089 clarified the exclusion of basic no-fault insurers from the prohibition from coordinating benefits without providing the purchaser with an equitable reduction or savings in cost. In addition, the bill allowed a basic no-fault insurer to recover all no-fault benefits, not solely basic no-fault benefits, from another no-fault insurer when tort law would require recovery.

In 2003, Senate Bill No. 2275 increased the amount of no-fault medical expenses a no-fault insurer may coordinate with a health care insurer from in excess of \$5,000 to \$10,000. In short, the no-fault insurer pays the first \$10,000 of medical expenses and the health care insurer pays medical expenses after \$10,000. Generally, health care insurers were for the increase because inflation had increased the cost of medical procedures. Because the threshold was at \$5,000 for 18 years, health care insurers had to pay more medical expenses as inflation caused more expenses to exceed the threshold. Generally, no-fault insurers were against the increase because health care insurers are more efficient at administering insurance for medical expenses. One example showed that health care insurers had over a 30 percent lower expense ratio than no-fault insurers.

Other Major Legislation

In 1985, House Bill No. 1528 increased the maximum level for basic no-fault benefits from \$15,000 to \$30,000 and optional excess no-fault benefits for motor vehicle insurance from \$40,000 to \$80,000. The bill increased the threshold amount defining serious injury from \$1,000 to \$2,500 of medical expenses. The stated reason for the bill was that \$15,000 was not large enough to cover serious accidents. In those accidents, if an individual does not have medical insurance, the individual must pay the balance above the no-fault limits. The reason for the increase in the medical expenses threshold was to balance the increased benefit with the removal of more of the right to sue.

In 1989, House Bill No. 1467 increased the time for filing a no-fault insurance claim in an action to recover further benefits for a loss in which the basic or optional excess no-fault benefits have been paid from two to four years after the last payment of benefits. The time for filing was increased in an action for benefits for survivors' income loss and replacement services loss and funeral expenses for one to two years after the death or from four to six years after the accident from which the death results, whichever is earlier. The time for filing was increased in an action to recover further survivors' income loss or replacement services loss benefits from two to six years after the last payment for

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

In 1991, Senate Bill No. 2555 increased the funeral expense benefit from \$1,000 to \$3,500. The increased benefit was expected to cost approximately 22 cents per vehicle per year.

In 2005, Senate Bill No. 2047 made modifications to mandatory no-fault automobile insurance. Basically, no-fault insurance pays for medical expenses for accidental bodily injury from a crash while occupying the motor vehicle. The bill removed from the definition of "accidental bodily injury" injury resulting from entering or alighting from a stopped motor vehicle and not caused by another motor vehicle. The bill changed the definition of "medical expenses" so that the charges must be usual and customary instead of merely reasonable. The bill expressly included diagnostic services as medical expenses and excluded charges for drugs sold without a prescription, experimental treatments, and medically unproven treatments. The bill changed the definition of "occupying" to exclude getting into or out of a motor vehicle. The bill provided for a court to order the insured to reimburse the insurer for an independent medical examination that the insured failed to appear for without good cause.

Senate Bill No. 2047 also repealed NDCC Section 26.1-41-17, which provided for equitable allocation of losses among insurers. This section provided for an insurer to recover no-fault benefits paid to an injured person from the motor vehicle liability insurer of a secured person based upon tort law principles. In other words, if an individual drives a motor vehicle and causes an accident with another motor vehicle, the individual in the other vehicle goes to that individual's insurance company to collect no-fault benefits; after that the insurance company can proceed against the first individual's insurance company for equitable allocation. The legislative history reveals that under this procedure, insurance companies recover as much as they pay over time. As such, this reimbursement system drives up the cost of administration with no benefit to insurers.

No-Fault Insurance in Other States

Saskatchewan has had no-fault insurance since 1946 and Puerto Rico has had no-fault insurance since 1968. The first state to adopt the modified no-fault insurance system was Massachusetts in the early 1970s. In the 1970s no-fault laws were enacted in 16 states. Since that time, five of those states repealed no-fault laws--Colorado, Connecticut, Georgia, Nevada, and Pennsylvania. Although Pennsylvania repealed its law in 1984, it adopted a new law in 1990.

Twelve states have some form of no-fault insurance. No state has enacted a no-fault law since 1976.

Theoretically, there are three ways to classify no-fault insurance:

- Absolute no-fault.
- Modified no-fault.
- Choice no-fault.

Absolute no-fault is when a driver relinquishes the right to sue for pain and suffering in exchange for coverage for all economic loss. No state has this form of no-fault. The state with the closest form to absolute no-fault is Michigan. Michigan has unlimited coverage and it is very difficult to sue for noneconomic loss.

Modified no-fault is coverage in which first-party benefits are provided regardless of fault and the right to sue for pain and suffering is permitted only after meeting a statutorily defined threshold. Some states use a dollar threshold and some states use a verbal threshold. Every state with a no-fault law is a modified no-fault state. These states are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah.

Of the states that are modified no-fault states, three are choice no-fault states. Under this system, a driver may choose to be included in the modified no-fault system or the tort system. States with this form of no-fault coverage are New Jersey, Pennsylvania, and Kentucky.

"Add-on" insurance is expanded first-party coverage that has no-fault benefits for medical expenses and lost wages but does not restrict lawsuits for pain and suffering. Although this type of insurance is closely related to no-fault, it is not no-fault. The reason the coverage is called "add-on" is because it is added on to the existing tort liability system. The nine add-on states are Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas, Virginia, and Washington.

The remaining 29 states are tort liability states. An individual injured in a motor vehicle accident must collect payment from the at-fault driver, if any, and must be able to prove negligence. However, some vehicle owners purchase medical payments coverage to provide personal injury protection.

Colorado

The most recent state to convert to a tort system, after being in a no-fault system, is Colorado. Colorado's no-fault insurance statutes sunsetted on July 1, 2003. During the 2003 session, the General Assembly of Colorado considered a number of bills to reform the no-fault insurance system. However, legislation was not adopted to reform the no-fault system. The General Assembly considered bills with many cost-saving provisions, including a bill that would have reduced average premiums for no-fault insurance by as much as 30 percent. The most viable options appeared to have died after intense lobbying efforts by trial lawyers and health care providers. This resulted in the application of the sunset clause and a return to the tort system.

The impetus for change was that Colorado's average insurance premiums were the ninth highest in the country. This resulted in the Governor challenging the General Assembly to either fix the "broken" no-fault insurance system or join the other states that have a tort

system. The Governor indicated he would not sign any legislation extending no-fault unless there were significant savings attached to the legislation. He also expressed comfort with going to a tort system.

Commentators stated the main reason for the need for change to the no-fault system was it provided expensive and broad medical coverage. Policyholders were required to buy \$130,000 in no-fault coverage. This was the third largest medical benefits package in the country. It was argued that this much coverage was not required because the average claim was about \$7,800 and 96 percent of the claims were under \$25,000. In addition, the law did not have delineated cost-containment standards but limited the medical expenses to those that were reasonable. This allowed for a broad range of treatments to be included under the no-fault insurance.

The Colorado Health and Hospital Association wants to reinstitute mandatory medical coverage on automobile insurance policies because of the shift of costs to medical facilities after the repeal of no-fault. On August 18, 2005, the Colorado interim Committee on Auto Insurance received a memorandum from the Colorado Legislative Council staff on funding for trauma care and emergency medical services. The memorandum stated "because of the growing financial problems of trauma centers, many states have passed legislation to establish dedicated funding sources for trauma centers or to provide temporary funding until long-term solutions are addressed.

Pennsylvania

In the *Journal of Insurance Regulation* published by the National Association of Insurance Commissioners in 2004, an article entitled "Choice Automobile Insurance: The Experience of Kentucky, New Jersey, and Pennsylvania" provided a history on conclusions about Pennsylvania. Pennsylvania became a choice no-fault state after having a near absolute system repealed in favor of a tort system. The original no-fault system allowed accident victims to recover unlimited medical and rehabilitation benefits and had a tort threshold of \$750. According to the article, given those standards it is not surprising that automobile insurance premiums in Pennsylvania increased 875 percent over the life of the original no-fault system; however, converting to a tort system did little to help.

Under the current system, Pennsylvania drivers are offered two options--limited tort and full tort. Drivers who choose full tort preserve the right to seek noneconomic damages for injuries caused by others. Full tort is the default choice of the driver. If the driver wishes to choose limited tort, then the driver must choose in writing. Policyholders who choose limited tort can expect a minimum savings of 15.3 percent relative to full tort. Because limited tort is less expensive, insurance agents have little incentive to recommend it; however, about 60 percent of the drivers in metropolitan areas and 33 percent of drivers in counties where premiums are relatively low choose limited tort.

Both full and limited tort drivers are required by law to purchase bodily injury coverage as well as personal

injury protection. The legal personal injury protection minimum is \$5,000 and if a limited tort driver sustains economic injuries in excess of this limit, the driver can sue the at-fault driver for the remainder of economic damages. In short, Pennsylvania drivers are essentially offered a choice between a tort system with a mandatory personal injury protection add-on and a no-fault system with a verbal threshold.

In 2005 the Insurance Research Council released a study comparing automobile injury claims in New Jersey and Pennsylvania, two states that have choice automobile insurance systems. Pennsylvania had lower claim costs and hence lower insurance rates. The study attributed the lower claims to Pennsylvania's stricter restrictions on no-fault claims for pain and suffering and half of the visits to a chiropractor, uses of MRIs, and hiring attorneys as compared to New Jersey. Pennsylvania also has medical cost-containment provisions that limit reimbursement levels for medical care to 110 percent of the prevailing Medicare rate.

Testimony and Discussion

The committee received testimony from the North Dakota Healthcare Association on the repeal of no-fault in Colorado and the effect on hospitals. The association supports the retention of mandatory no-fault insurance. It was argued that the repeal of no-fault would have negative consequences to large institutions with trauma centers.

A representative from the insurance industry informed the committee that the major issue for insurers is excessive treatments by chiropractors and massage therapists. The committee was informed that the cause for this may be that consumers like chiropractic care and massage therapy and are motivated to attribute any ache or pain to an automobile accident to receive this treatment.

Committee discussion included that if no-fault insurance is repealed, health care insurance premiums will increase. In addition, one member of the committee was informed by a legislator in Colorado that the repeal of no-fault created a cost-shift from a payer to no payer.

REPORT ON IMPROVEMENTS IN TRANSPORTATION INFRASTRUCTURE BY THE UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Section 23 of Senate Bill No. 2032 provided for a report to be given by the Upper Great Plains Transportation Institute before July 1, 2006, on the outcome of the institute's study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development. In addition, Senate Bill No. 2018 provided a general fund appropriation of \$360,000 to the Upper Great Plains Transportation Institute to conduct this study.

The Upper Great Plains Transportation Institute is established by NDCC Chapter 54-53. The institute is administered by and in conjunction with North Dakota State University. The purpose of the institute is to

conduct research in the field of transportation and logistics to better understand the marketing factors associated with the geographical location of the state and the Upper Great Plains in the field of transportation and their influence on the socio-economic systems of the state, region, and country. Research areas include the study of commodity and other freight movements into and out of the state to better understand the various factors affecting the marketing of area products and services.

The institute consults with an Advisory Transportation Council made up of a diverse group of governmental and private sector interests. The council was made up of one representative from the Greater North Dakota Chamber of Commerce, the Public Service Commission, the North Dakota Farmers Union, the North Dakota Grain Growers Association, the Wheat Commission, the Department of Commerce, the North Dakota Grain Dealers Association, the North Dakota Motor Carriers Association, the Aeronautics Commission, the Department of Transportation, the Agriculture Commissioner, the North Dakota Association of General Contractors, the North Dakota railway industry, and the North Dakota primary sector of manufacturing.

The study made the following highway recommendations:

- A preservation program that keeps pavement in good condition generates substantial economic benefits.
- Highway access to key industrial and agricultural facilities should be analyzed on a case-by-case basis.
- The benefits and costs of eliminating or mitigating spring load limits on key highway segments should be analyzed on a case-by-case basis; however, load limit elimination on highway segments serving key agricultural and manufacturing locations may be cost-effective.
- New mechanistic pavement analysis techniques offer potential for improved forecasting of pavement lives and may make it possible to shorten the durations of spring load restrictions in some cases and identify more cost-effective designs. As such, it is important to develop data and input to fully utilize these advanced procedures.
- Selective case studies should be undertaken of highway load limits in counties so that a cost-effective analysis plan can be developed. A great deal of information must be developed in order to assess the benefits and costs of uniform county load limits.

The study made the following rail recommendations:

- The Department of Transportation should continue its rail assistance program.
- Additional funds are needed for rail assistance programs.
- Increased axle loads, travel speed, and efficiency will make the state more attractive to business.

The study made the following air service recommendations:

- Infrastructure and capacity constraints that limit growth and expansion need to be addressed to accommodate increased demand.
- Encroachment of incompatible land development and attendant concerns with noise and safety need to be addressed.
- Funding will become a greater problem as time passes so there is an urgency to developing air service.

The committee was informed that the figures in the study are based on 2005 construction costs and actual construction costs are greater now. In addition, the cost to travelers also has increased because of the increase in the price of petroleum products. The committee was informed that presently the state has approximately 90 percent of the highway transportation funds available that the state needs to ideally have available.