



FINANCIAL RESPONSIBILITY AND UNINSURED MOTORISTS

All fifty states have adopted some form of financial responsibility laws to try to address the problem of uninsured motorists; despite these laws, there are still uninsured motorists who continue to be involved in accidents leaving some victims uncompensated. This has resulted in a number of attempts in recent years to try to improve South Dakota's motor vehicle financial responsibility law, including legislation introduced in the 2000 Legislative Session. While the legislation did not pass, the concerns surrounding this legislation resulted in the formation of a working group made up of legislators, state agency representatives, county treasurers, and representatives of the insurance industry. This group attempted to take a look at how serious the problem is in the state and at the steps the state should take to solve the problem. This issue memorandum will review what that work group considered and its suggested solutions.

Overview of South Dakota's Law

Since January 1, 1987, all drivers and owners of motor vehicles in South Dakota have been required to be financially responsible before driving any motor vehicle that is required to be licensed. A person can maintain financial responsibility by one of four methods.

- (1) *Motor Vehicle Liability Insurance* – Liability insurance pays the other driver's medical, vehicle repair, and other costs when a person is at fault in a motor vehicle accident. This is the primary method of maintaining financial responsibility in the state. The law requires an owner's policy of liability insurance with at least the minimum coverage of \$25,000 for bodily injury to or death of one person in an accident, \$50,000 for bodily injury to or death of two or more persons in an accident, and \$25,000 because of injury or destruction of property in an accident. These minimum requirements (25/50/25) have not changed since 1985 and are comparable to minimum requirements set in other states. There have been failed attempts in South Dakota in recent years to increase these minimum requirements. California recently decreased their minimum requirements from 15/30/5 to 10/20/3 as a part of a pilot project to lower premiums and to encourage the purchase of insurance.
- (2) *Bond* – The law allows a person to file a bond with the Department of Commerce and Regulation. The bond must be from a surety company authorized to transact business in the state and be conditioned for payment

of at least the same minimum amounts as liability insurance. This method of maintaining financial responsibility is not currently being used.

- (3) *Certificate of Deposit* – The law allows a person to deposit with the State Treasurer a certificate of deposit or securities in the amount of fifty thousand dollars. The treasurer, upon receiving such a deposit, issues to the person a certificate as proof of financial responsibility. One person is currently using this method.
- (4) *Certificate of Self-insurance* – Finally, the law allows a person to have a certificate of self-insurance issued by the Department of Commerce and Regulation. The certificate must be supplemented by an agreement by the self-insured that the self-insured will pay, with respect to any accidents, the same amounts that an insurer would have been obligated to pay under a motor vehicle liability policy. Large companies with a number of vehicles operating in the state have used this method to maintain financial responsibility. Currently, four companies are self-insuring.

Every driver of a licensed motor vehicle must provide evidence of financial responsibility upon being involved in a reportable traffic accident or being detained for a suspected driving violation. The driver is required to provide written evidence upon the request of a law enforcement officer. If a driver cannot produce such written evidence, the law enforcement officer may issue the driver a citation for failure to maintain financial responsibility.

If a driver does not have written proof of financial responsibility and is cited for a

violation, the law permits the driver to submit, personally or by mail, written evidence to the court that the driver was in compliance with the law at the time of the citation. If the court finds the written evidence to be acceptable, the law requires that further proceedings on the charge be dismissed.

A person guilty of failure to maintain financial responsibility is subject to the penalties of a Class 2 misdemeanor and a suspension of his or her driver's license for a period of not less than thirty days.

Other States' Methods

All states have laws that set the minimum amounts of insurance or other financial security drivers must maintain to pay for the effects of their negligence if an accident occurs. Most states also have laws requiring drivers to have auto liability insurance before they can legally drive a motor vehicle.

A few states, including North Dakota, have experimented with state-operated funds to provide a source of funds for accident victims when the at-fault party has no means of paying a judgment. However, these unsatisfied judgment funds have only resulted in limited effectiveness.

Nineteen states, including South Dakota, require uninsured motorist coverage, and a handful of states, including South Dakota, require underinsured motorist coverage as part of a liability policy. These policies in South Dakota, however, only cover bodily injuries and do not cover property damages caused by an uninsured or an underinsured motorist.

Some states require a person to produce evidence of insurance upon registering a vehicle and a few states require a person

to certify that the vehicle is covered by liability insurance at the time of vehicle registration. Thirty-one states, including South Dakota, require an insured to provide evidence of insurance at the time of an accident or when a vehicle is stopped for a traffic violation. Thirty states, including South Dakota, require evidence of insurance to be physically present at all times in the vehicle.

States also have required that insurance companies assist in the enforcement of these mandatory laws. At least fifteen states require insurance companies to notify the state if a person cancels or does not renew an insurance policy. Upon such notification, the state warns the person that coverage must be maintained. In a handful of states, insurance companies are asked to verify the existence of insurance at the time a specific accident occurred. In ten states insurers are given lists of randomly selected auto registrations or lists of motorists involved in accidents and asked to verify the existence of insurance. Nine states require an insurer to submit its entire list of automobile liability policies to the state so the state can use the lists to verify registration applicants' declarations that insurance is in effect. These various requirements can become costly for the states and for insurance companies to administer. Utah has contracted with a third-party vendor to electronically process insurance and motor vehicle registration records to identify uninsured motor vehicles. This process costs around one million dollars per year and thus far has not significantly impacted the uninsured motorist percentage in that state.

Penalties for not complying with compulsory liability laws include fines, jail time, license or registration revocation, confiscation of license plates, and vehicle

impounding. Some states revoke or suspend drivers' licenses and others revoke or suspend vehicle registrations. A few states confiscate license plates if a person cannot provide proof of insurance.

The wide variety of motor vehicle financial responsibility laws suggests that there is no ideal solution to the problem of uninsured motorists. Some laws are more costly to administer than others, and each type of law has its strengths and pitfalls. The working group found that there does not appear to be a pattern of the more costly methods impacting the uninsured rate any more than less costly methods. No matter the type of law, each state still has its share of uninsured motorists.

The American Association of Motor Vehicle Administrators is currently conducting a study on what states have done to decrease uninsured motorists and the successes of these programs. However, that study is at least a year away from completion.

Extent of the Problem in South Dakota

The work group found that, based upon known studies, the uninsured motorist population of the state is between 6% and 6.8%. These studies are based on accidents involving a bodily injury. Although it has been conjectured that the percentage of uninsured is higher than that, the work group found no other source of information showing a statistic that differed from this range. All known studies consistently show South Dakota to be among the lowest in percentage of uninsured motorists. At 6% the state ranks 49th nationally. If the 6.8% rate is accurate, the state ranks 47th nationally. The same study shows the national average of uninsured motorists to be 12.9%. The results of that study are shown in the following table.

**ESTIMATED
UNINSURED MOTORIST POPULATIONS
1996**

Alabama	27.5%	Montana	10.1%
Alaska	16.1%	Nebraska	7.8%
Arizona	15.2%	Nevada	14.2%
Arkansas	8.9%	New Hampshire	10.0%
California	21.4%	New Jersey	14.7%
Colorado	34.0%	New Mexico	30.2%
Connecticut	8.9%	New York	6.4%
Delaware	9.7%	North Carolina	6.6%
Dist. of Columbia	23.6%	North Dakota	8.2%
Florida	20.9%	Ohio	13.6%
Georgia	13.2%	Oklahoma	18.1%
Hawaii	8.3%	Oregon	13.0%
Idaho	8.6%	Pennsylvania	8.4%
Illinois	13.7%	Rhode Island	15.0%
Indiana	12.7%	South Carolina	n/a
Iowa	10.4%	South Dakota	6.8%
Kansas	8.0%	Tennessee	18.5%
Kentucky	10.8%	Texas	n/a
Louisiana	8.8%	Utah	9.5%
Maine	4.0%	Vermont	9.6%
Maryland	11.3%	Virginia	12.3%
Massachusetts	n/a	Washington	15.4%
Michigan	11.7%	West Virginia	8.5%
Minnesota	13.7%	Wisconsin	11.3%
Mississippi	25.1%	Wyoming	8.6%
Missouri	13.9%	TOTAL	12.9%

Notes: 1) The above figures are computed using the ratio of Uninsured Motorist (Bodily injury) claim frequency to Bodily Injury Liability claim frequency.

2) Massachusetts, South Carolina, and Texas data are not available because NAII is not a personal auto statistical agent in these states.

Source: National Association of Independent Insurers

Since 1987 there has been an average of just over 14,000 citations a year for failure to maintain financial responsibility. Most of these are dismissed when written evidence of insurance is supplied to the court. Around 4,000 persons a year plead guilty or are convicted at trial for failure to maintain financial responsibility. With currently available information, it is not possible in many cases to isolate penalties meted out for failure to maintain financial responsibility. However, it appears that the typical penalty for a first-time offense has been a fifty-dollar fine and a thirty-day driver's license suspension. On average, the courts are imposing fines of fifty to one hundred fifty dollars and are imposing little or no jail time. The penalties appear to be consistent within a judicial circuit but vary widely among circuits.

The work group also found that over the past three years there have been 2,441 multiple convictions for lack of financial responsibility with a total of 1,122 individuals accounting for these charges. Of these convictions, 899 individuals were convicted twice, 163 individuals were convicted three times, and three individuals were convicted at least seven times. Pennington and Minnehaha counties account for over half of these multiple convictions.

Work Group Focus

The working group spent a considerable amount of time discussing whether a broad-based approach targeting the population at large or a more focused approach aimed at the uninsured drivers would be a more cost effective method to reduce the percentage of uninsured. The group decided the best method would be to focus on the uninsured drivers, not the population at large. The consensus was that the more broad-based approaches

were not cost effective and had a negative impact on drivers who do maintain financial responsibility. For instance, those methods that require proof of insurance before a vehicle can be licensed will result in a less efficient and slower process to obtain licensure, thereby adding to the length of waiting lines. In addition there is a question about the effectiveness of this type of requirement. A person can show proof of financial responsibility on the day of getting his or her vehicle licensed and have that coverage canceled the very next day.

Possible Solutions to the Problem

Better communications between state department computer systems, better education of the public, stiffer penalties for repeat offenders, and better tracking of uninsured motorist conviction data were the main solutions discussed by the working group.

Improved Computer System Links -- Various solutions were discussed by the group, with some action already being taken. As of August 7, 2000, a program that interfaces the databases of motor vehicle registrations and driver licensing has been implemented. The program shows financial responsibility suspensions and flags them for the county treasurer at the time of vehicle registration renewal. This enables the county treasurer to refrain from processing these registrations and instead refer the person to the Office of Driver Licensing.

Public Education -- The group discussed educational options as a course of action with one possibility being a comprehensive educational program aimed at greatly increasing public awareness. This could include posters at

public offices and schools, brochures distributed at the time of vehicle registration, and driver's education enhancements. Possibly an informational video on financial responsibility could be distributed to school systems and driver education programs with the recommendation to add the information to course curriculum.

Information about financial responsibility is already included in the driver's licensing manual and on the Division of Insurance's web page. A link has been established between the Office of Driver Licensing's website and the auto insurance section on the Division of Insurance's website. The Division of Insurance has also implemented Question/Answer news columns on this topic in local newspapers across the state.

Stiffer Penalties -- Options to encourage or enable the judicial system to take more stringent actions with respect to uninsured motorists, especially repeat offenders, were discussed. The work group felt that this was a complex issue as a number of factors need to be considered in determining whether penalties should or could reasonably be increased. For instance, one of the primary reasons people are uninsured is cost. An increase in fines for these people may not be feasible. The work group made no recommendation regarding stiffer penalties.

Better Data Tracking -- The work group felt that additional data regarding multiple convictions for lack of financial

responsibility could be collected and tracked, including more information on the penalties that are being imposed on multiple offenders and the number of multiple offenses by geographic area. The work group felt this would help provide better statistical information that could be used to identify possible solutions to decrease the uninsured motorist population in the future.

Conclusion

There appears to be no perfect solution to the problem of uninsured motorists. Despite the myriad of laws and the level of enforcement of those laws by all fifty states the problem persists. Based on all known studies the uninsured motorist rate in South Dakota appears to be less than 7%. South Dakota's uninsured motorist rate is low when compared to other states. The work group felt that any further efforts to reduce the number of uninsured motorists should focus on the uninsured motorist and should not inconvenience the vast majority of motorists who are insured. The work group's list of possible solutions focuses on improved administrative actions that can be taken to identify and deal with uninsured motorists, especially those motorists who are repeat offenders. A comprehensive educational program to increase public awareness about the requirement for motorists to be financially responsible was also suggested by the group. It is also important to note that the work group did not recommend any changes to South Dakota's financial responsibility law.

This issue memorandum was written by David L. Ortbahn, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
