



## MOTOR VEHICLE FINANCIAL RESPONSIBILITY

Since 1927 states have been trying to find a solution to the problem of motorists who do not maintain adequate financial responsibility. That was the year Massachusetts became the first state to require the purchase of motor vehicle liability insurance. Since then, all other states have adopted some form of financial responsibility law to try to address the problem. Despite these laws, there are still uninsured motorists, uninsured motorists continue to be involved in accidents, and victims of uninsured motorists continue to go uncompensated. This has resulted in a number of attempts in recent years to try to improve South Dakota's motor vehicle financial responsibility law. These attempts have prompted questions about what other states are doing. This issue memorandum will review South Dakota's law and examine what other states have been doing to try to solve the problem of uninsured motorists.

### South Dakota's Financial Responsibility 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 damage to or destruction of property in an accident. These minimum requirements have not changed since 1985 and are comparable to minimum requirements set in other states.

(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 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. Two persons are 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.

### **Enforcement of South Dakota's Law**

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. However, a law enforcement officer may not stop a driver just to check for proof of financial responsibility. The officer may only check for compliance with the financial responsibility law if there has been an accident or if the driver of the vehicle has been stopped for some other offense. The written evidence may be a copy of an insurance policy or bond, a certificate of self-insurance or of maintaining a deposit with the state treasurer, or an insurance identification card. An identification card must contain the insurance policy number, name of insurer, the effective date of coverage, and the date of expiration. 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, for whatever reason, 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, to the court written evidence 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.

Since 1987 there has been an average of just over 14,000 citations a year for failure to maintain financial responsibility. In fiscal year 1998, there were 15,256 citations for failure to maintain financial responsibility. There were also 11,483 dismissals. In fiscal year 1998, just over 3,600 persons pled guilty or were convicted at trial for failure to maintain financial responsibility. This was down a bit from previous years when about 4,200 persons a year pled guilty or were convicted for this violation.

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. The suspension of license could go up to a year. A guilty person is required to appear in court and the sentences have varied on a case-by-case basis. However, a typical penalty for a first-time offense has been a fifty-dollar fine and a thirty-day driver's license suspension. The law does give the court authority to issue a work permit to the person during the suspension if the person establishes "proof of financial responsibility for the future." This can be done by one of the four methods to prove financial responsibility. The difference being that "proof of financial responsibility for the future" must be maintained for a period of three years. Failure to maintain this will result in the Department of Commerce

and Regulation suspending a person's driver's license and the person's motor vehicle registration.

If a person chooses to maintain "proof of financial responsibility for the future" through the use of a motor vehicle liability insurance policy, the insurance is more costly because the insurance company is required by law to notify the Department of Commerce and Regulation any time the policy is cancelled or not renewed.

### **Motor Vehicle Liability Laws in Other States**

All states have laws that set the minimum amounts of insurance or other financial security drivers must have to pay off 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. These various liability laws can be divided into five types.

(1) *Financial Responsibility* – These laws establish minimum requirements of financial responsibility in terms of amounts applicable to death or injury of one person, death or injury of more than one person, and property damage (for example: South Dakota's 25,000/50,000/25,000). Financial responsibility laws can be further divided into security-type laws and future-proof type laws. The security-type laws require that, following report of an accident, each driver or owner of the vehicles involved show his or her ability to pay damages that may be charged in subsequent litigation or negotiation arising out of the accident. The future-proof type laws require a similar showing of financial responsibility be made by persons who have been convicted on certain serious traffic offenses or have failed to pay a judgment against them for

damages arising out of an accident. South Dakota had a security-type law prior to 1987. South Dakota also has maintained a future-proof type law for persons wishing to drive after a conviction of certain serious traffic offenses, after a judgment resulting from a traffic accident, or after a conviction for failure to maintain financial responsibility. Alabama, Mississippi, New Hampshire, Tennessee, and Wisconsin are states that have only a financial responsibility type law.

(2) *Compulsory Insurance* – Compulsory insurance laws require that a motorist maintain financial responsibility at all times. Liability insurance covering bodily injury, property damage, or both is required. Forty-five states, including South Dakota, have this type of law.

(3) *No-fault Insurance* – Under no-fault insurance, the owner of a vehicle looks to the owner's own insurance company for reimbursement for damage sustained in an accident rather than having to go to court and prove that the other party caused the accident. These laws provide some relief from the problem of uninsured motorists. Under this insurance, accident victims can collect benefits from their own insurance companies, regardless of whether the other party has insurance. Most no-fault laws are compulsory and cover only bodily injury and not vehicle damage. Minnesota and North Dakota are neighboring states with compulsory no-fault insurance.

(4) *Unsatisfied Judgment Funds* – A few states 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, the legal

procedures for releasing the funds and the restrictions on the kinds of cases that qualify have limited the effectiveness of these funds. North Dakota has such a fund that has been functioning for a number of years and is supported by an annual one-dollar fee on all motor vehicles. Establishing such a fund in South Dakota has been proposed and discussed in the past but has not been adopted.

(5) *Uninsured and Underinsured Motorists* – These laws generally require insurance companies to offer, as part of their basic liability policy, coverage against potential damage by motorists who are not insured. These laws, while doing nothing to reduce the number of uninsured motorists, do provide a way for individual drivers to deal with the financial consequences of accidents with hit-and-run or uninsured drivers. Nineteen states, including South Dakota, require uninsured motorist coverage. In other states, insurers are required to offer the coverage but the insured does not have to purchase it. A handful of states, including South Dakota, require underinsured motorist coverage as part of a liability policy.

The attached chart, compiled by the Insurance Information Institute, provides a state-by-state overview of minimum auto liability limits and the measures used to enforce compulsory liability laws. For each state the insurance required by state law is listed.

The chart indicates when persons are required to produce evidence of insurance or financial responsibility in the various states. Eighteen states require a person to produce evidence of insurance upon the registration of the vehicle. A few states like Montana and Oregon require a person to certify that a vehicle is covered

by liability insurance at the time of registering the vehicle rather than produce evidence. 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 maintained at all times in the vehicle.

States 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 a 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 just over 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 applicant's declarations that insurance is in effect. These various requirements can become costly for the states and for insurance companies to administer.

Penalties for not complying with compulsory liability laws include fines, jail time, license or registration revocation, confiscation of license plates and, in Florida and Louisiana, vehicle impounding. It is interesting to note that, while Florida and Louisiana have very stringent enforcement policies, their minimum liability coverages (10/20/10) are among the lowest in the nation. Seventeen states revoke or suspend drivers' licenses and 18 revoke or suspend vehicle registrations. At least

eight states confiscate license plates if a person cannot provide proof of insurance. Four states have used roadblocks to identify uninsured drivers and to inform drivers of the increased odds of getting caught.

The wide variety of motor vehicle financial responsibility laws suggests that there is no ideal solution to the problem of uninsured motorists. Each type of law has its strengths and pitfalls and no matter the type of law each state still has its share of uninsured motorists. Insurers and regulators have tried to determine the number of uninsured drivers but there is a wide range of estimates depending on what method is used to collect data. The Insurance Information Institute estimates that 17 percent of Americans drive without insurance. In New Hampshire, a state that does not have a compulsory insurance law, a study was conducted to assess the need for compulsory auto insurance and determined that 9.5 percent of the drivers were uninsured. On the other hand, North Carolina, which has a compulsory insurance law and one of the strictest and swiftest enforcement programs, still had at least 3.4 percent of its drivers uninsured according to the National Association of Insurance Commissioners. These two states have vastly different laws yet have uninsured

motorist numbers below what might normally be expected.

Opponents to compulsory laws continue to maintain that these laws cannot be enforced well enough to remove uninsured drivers from the road, are costly to administer, and result in increased insurance premiums for responsible drivers.

### **Conclusion**

Financial responsibility laws, compulsory insurance laws, no-fault insurance laws, laws establishing unsatisfied judgment funds, and laws mandating uninsured and underinsured motorists coverage are among the various types of laws which have been established by the states in an attempt to solve the problems caused by uninsured motorists. Some laws are more costly to administer than others. The cooperation of the insurance and motor vehicle departments in each state, insurers, and state and local law enforcement agencies is an important factor in the effectiveness of any type of law. Nevertheless, despite the type of law or combination of laws and the level of enforcement of those laws, there appears to be no perfect solution to the problem of uninsured motorists.

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**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.**

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## ENFORCEMENT OF COMPULSORY AUTO LIABILITY INSURANCE LAWS

State	Insurance Required (a)	Minimum Liability Limits (b)	Insured Required to Produce Evidence of Insurance (c) at:			Insurer Verification of Insurance (See Footnote e)	Penalties for Non-Compliance (First Offense)
			Registration	Time of Accident	All Times in Vehicle		
AL	FR only	20/40/10	No	No (d)	No	None	None
AK	BI & PD Liab	50/100/25	No	No (d)	No	2	Registration suspension/revocation (f)
AZ	BI & PD Liab	15/30/10	No (h)	Yes	Yes	1,2,4	\$250 fine
AR	BI & PD Liab	25/50/15	Yes	No	No	None	\$250 fine; registration suspension, confiscation of plates (f)
CA	BI & PD Liab	15/30/5	Yes	Yes	Yes	2	\$1,350 fine
CO	BI & PD Liab, PIP	25/50/15	No	Yes	No	4 (j)	\$100 fine
CT	BI & PD Liab, UM, UIM	20/40/10	Yes	Yes	Yes	1,4	Registration/license suspension/revocation, confiscation of plates, vehicle impoundment, \$110-\$250 fine
DE	BI & PD Liab, PIP	15/30/10	No	Yes	Yes	3	\$150 fine; registration suspension, confiscation of plates (f)
DC	BI & PD Liab, UM	25/50/10	Yes	No	No	1,3	\$100 fine or maximum 30 days in jail
FL	PD Liab, PIP	10/20/10	Yes	Yes	Yes	1,4	60-day license revocation, vehicle impoundment for subsequent offense, confiscation of plates in Dade, Broward, and Hillsborough counties (f)
GA	BI & PD Liab	15/30/10	No	Yes	Yes	1	60-day license suspension
HI	BI & PD Liab, PIP	20/40/10	No	Yes	Yes	None	\$1,000 fine
ID	BI & PD Liab	25/50/15	No	Yes	Yes	3	\$75 fine (f)
IL	BI & PD Liab, UM	20/40/15	No	Yes	Yes	3	60-day registration suspension (f)
IN	BI & PD Liab	25/50/10	Yes	No	No	2	90-day license suspension, \$150 reinstatement fee
IA	BI & PD Liab	20/40/15	No	Yes	Yes	None	\$100 fine
KS	BI & PD Liab, PIP, UM	25/50/10	No	No	No	2	\$100 fine (f)
KY	BI & PD Liab, PIP	25/50/10	Yes	Yes	Yes	1	\$50 fine, up to 90 days in jail (f)
LA	BI & PD Liab	10/20/10	Yes	No (d)	No	1,4	Up to \$500 fine, confiscation of plates (f), vehicle impoundment

State	Insurance Required (a)	Minimum Liability Limits (b)	Insured Required to Produce Evidence of Insurance (c) at:			Insurer Verification of Insurance (See Footnote e)	Penalties for Non-Compliance (First Offense)
			Registration	Time of Accident	All Times in Vehicle		
ME	BI & PD Liab, UM	50/100/25	No	Yes	Yes	None	\$100-\$500 fine, 30-day license and registration suspension
MD	BI & PD Liab, PIP (g), UM	20/40/10	Yes	No	No	1,3	\$150 fine (f)
MA	BI & PD Liab, PIP, UM	20/40/5	Yes	No	No	1	\$500 fine (f)
MI	BI & PD Liab, PIP	20/40/10	Yes	No	No	None	\$200 fine (f)
MN	BI & PD Liab, PIP, UM, UIM	30/60/10	No	Yes	Yes	1,3	License and/or registration revocation for 6 months (f)
MS	FR only	10/20/5	No	No	No	None	None
MO	BI & PD Liab	25/50/10	Yes	Yes	Yes	3	License and registration revocation (f)
MT	BI & PD Liab	25/50/10	No	Yes	Yes	None	\$250 fine or not more than 10 days in Jail (f)
NE	BI & PD Liab	25/50/25	Yes	Yes	Yes	None	\$500 fine (f), license and registration suspension
NV	BI & PD Liab	15/30/10	No	Yes	Yes	4	\$100 fine (f)
NH	FR only	25/50/25	No	No (d)	No	None	None
NJ	BI & PD Liab, PIP, UM	15/30/5	No	Yes	Yes	1,4	\$300 fine, community service, 1-year license suspension
NM	BI & PD Liab	25/50/10	Yes	No	No	3	\$100 fine (f)
NY	BI & PD Liab, PIP, UM	25/50/10*	Yes	Yes	Yes	4 (i)	1-year license revocation
NC	BI & PD Liab	25/50/15	No	No	No	1,4	60-day registration suspension (f)
ND	BI & PD Liab, PIP, UM	25/50/25	No	No (d)	No	None	\$150 fine, registration revocation, license suspension (f)
OH	BI & PD Liab	12.5/25/7.5	No	Yes	Yes	None	90-day license suspension, \$75 reinstatement fee
OK	BI & PD Liab	10/20/10	Yes	Yes	Yes	1	Less than \$500 fine, less than 6 months jail (f)
OR	BI & PD Liab, PIP, UM	25/50/10	No	Yes	Yes	3	License suspension and/or revocation (f)
PA	BI & PD Liab, Med	15/30/5	No	Yes	Yes	1	License and registration suspension, confiscation of plates (f)
RI	BI & PD Liab UM	25/50/25	No	No	No	3	\$500 fine, confiscation of plates

State	Insurance Required (a)	Minimum Liability Limits (b)	Insured Required to Produce Evidence of Insurance (c) at:			Insurer Verification of Insurance (See Footnote e)	Penalties for Non-Compliance (First Offense)
			Regis- tration	Time of Accident	All Times in Vehicle		
SC	BI & PD Liab, UM	15/30/5	Yes	Yes	Yes	1,3	Less than 30 days jail, registration suspension (f)
SD	BI & PD Liab, UM, UIM	25/50/25	No	Yes	Yes	None	1-year license suspen- sion (f)
TN	FR only	25/50/10	No	No	No	None	None
TX	BI & PD Liab	20/40/15	Yes	Yes	No	None	\$75 fine; license and registration suspension (f)
UT	BI & PD Liab, PIP	25/50/15	No	Yes	Yes	4	License and/or registra- tion loss (f)
VT	BI & PD Liab, UM, UIM	25/50/10	No	Yes	Yes	None	Less than \$100 fine (f)
VA	BI & PR Liab, UM	25/50/20	No	No	No	2,3	None
WA	BI & PD Liab	25/50/10	No	No	No	None	\$480 fine
WV	BI & PD Liab, UM	20/40/10	Yes	Yes	Yes	1	90-day license suspension, registration revocation (f)
WI	FR only, UM	25/50/10	No	No	No	None	License and/or registration revocation (f)
WY	BI & PD Liab	25/50/20	No	Yes	Yes	None	\$250-\$750 fine

## FOOTNOTES

- (a) FR - Financial responsibility only. Insurance not compulsory.  
Compulsory Coverages:  
BI Liab - Bodily injury liability PD Liab - Property damage liability PIP (Personal Injury Protection) Mandatory in No-Fault states. Includes medical, rehabilitation, loss of earnings and funeral expenses. In some state PIP includes essential services (such as child care).  
UM - Uninsured motorist PD - Physical Damage  
Med - First party (policyholder) medical expenses UIM - Underinsured motorist
- (b) The first two numbers refer to bodily injury liability limits and the third number to property liability, For example, 20/40/10 means coverage up to \$40,000 for all persons injured in an accident, subject to a limit of \$20,000 for one individual, and \$10,000 coverage for property damage.
- (c) Evidence is proof of valid insurance. The form of evidence varies by state and may take the form of an insurance policy, binder, certificate of self-insurance, surety bonds, or certificate of deposit. Many states require insurance identification cards issued by the insurer. Self-certification, where the driver is required to identify the insurer and policy number in writing rather than in person, is not included.
- (d) Insured must provide evidence of insurance at some point after the accident to the Department of Insurance, other state agency, or law enforcement officer. Deadlines vary among the states.
- (e) 1. Insurer must notify Department of Motor Vehicles or other state agency of cancellation or nonrenewal.  
2. Insurer must verify financial responsibility or insurance after an accident or arrest.  
3. Insurer must verify randomly selected insurance policies upon request.  
4. Insurers must submit entire list of insurance in effect, which may be compared with registrations at a state agency. Also known as a computer data law.
- (f) Penalties are provided for in the law but may not be mandatory for first offenses.
- (g) May be waived for the policyholder but is compulsory for passengers.

- (h) Proof of insurance must be presented within 30 days of registration.
- (i) Pilot program; full program effective January 1, 2000.
- (j) Law enacted but not implemented due to administration problems.

\*50/100 if injury results in death.

Insurance Information Institute, 12/98

Sources: Alliance of American Insurers, American Insurance Association, National Association of Independent Insurers, state departments of insurance and motor vehicles