



SENATE INTERIM
COMMITTEE ON CIVIL JUSTICE

**Report
on
Uninsured
Motorists &
Tort Reform
Savings**

76th Legislature
October 1998

EXECUTIVE SUMMARY

The Senate Interim Committee on Civil Justice was appointed by Lt. Governor Bob Bullock in October 1997 to study the current civil liability system with an emphasis on the automobile liability insurance system and the effects of past tort reforms on insurance rates. The Committee heard testimony on April 23, 1998, from Elton Bomer, the Commissioner of the Texas Department of Insurance, and from various interested parties regarding the number of uninsured motorists in Texas. The Committee also met on April 28, 1998, to hear testimony on the impact of previous tort reforms on insurance rates and on the Texas business climate.

Uninsured Motorists

The Texas Department of Insurance (TDI) estimates that between 17 percent and 26 percent of Texas drivers do not carry liability insurance as mandated by state law. Texas passed the Motor Vehicle Safety Responsibility Act in 1981 to reduce the number of uninsured drivers, which had been steady at around 25 percent for several years. The law requires minimum bodily injury and property damage liability coverages for all vehicles in operation and requires drivers to show proof of financial responsibility when requested by a peace officer, at the time of an accident, when obtaining or renewing vehicle registration, when obtaining or renewing a driver's license and for vehicle inspections.¹

The passage of the legislation resulted in a sharp decrease in the number of uninsured motorists from 26.9 percent in 1981 to 8.5 percent in 1982. The number rose to 21.4 percent by 1987 and has hovered between 20 percent and 27 percent ever since. The ineffectiveness of the mandatory liability

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Requirement to show proof of insurance for registrations, inspections and drivers' licenses was added to the law in 1991.

provisions stems from the ability of some motorists to circumvent the law by either showing fraudulent documentation of coverage or purchasing policies for the specific purposes of obtaining registrations, inspections and licenses. These drivers then cancel their policies and remain uninsured until verification is required once again.

Many uninsured drivers simply cannot afford the costs of liability insurance coverage. Some are high-risk drivers or low-income drivers who are unable to purchase insurance in the standard market. The standard insurance market in Texas is that segment of the market which is rate-regulated and written at rates within 30 percent above or below the benchmark rate established by the Commissioner of Insurance. Approximately 20 percent to 25 percent of the Texas market is not regulated with respect to rates. These unregulated companies are often the only option for motorists who live in low-income areas.

The Committee focused on alternative systems that would potentially lower the number of uninsured motorists by either increasing enforcement of mandatory coverages, lowering insurance rates through changes in the tort system, or a combination of these two methods. The Committee studied various enforcement mechanisms for failure to carry automobile insurance, which included: increased fines, vehicle impoundment, license tag seizures, license suspensions and verification of insurance coverages through either databases containing named insureds or random verifications of insurance via mail. Changes to the tort system studied included lowering insurance coverages by enacting "no-fault" systems which restrict the ability to sue for non-economic damages for all drivers or a "no pay, no play" provision which would restrict access to non-economic damages by uninsured drivers only.

Tort Reform Savings

In 1993 and 1995, the Texas Legislature enacted numerous civil justice

reforms, popularly known as "tort reforms," the broad intent of which was to reduce litigation costs and the size of excessive litigation judgments. Additionally, the 75th Legislature enacted HB 1988 to ensure that Texas consumers and businesses realized the benefits of the savings tort reforms were intended to produce. This legislation charged the Commissioner of Insurance with adopting rate reductions for certain lines of insurance that reflect the savings generated from tort reform.

As a direct result of tort reform legislation, mandated across-the-board reductions in insurance rates have resulted in a total savings of more than \$1.5 billion for the years 1996-1998. Additionally, on October 2, 1998, Insurance Commissioner Elton Bomer announced that the projected tort reform savings for 1999 are currently estimated at \$697.9 million, which surpasses the 1998 savings of \$656.4 million. The 1999 rate reductions will take effect January 1, 1999. *When the projected 1999 savings are included, the total tort reform savings since 1996 surpasses \$2.2 billion.*

The largest share of tort reform savings is reflected in rates for private passenger automobile liability insurance. Total savings for this line of insurance, including 1999 estimates, are \$851.2 million. Savings for general liability insurance, which provides coverage for business, totals \$622.4 million since 1996, which includes the 1999 projected savings. Other lines of commercial insurance, such as products liability, commercial auto, and multi-peril lines have also seen significant savings since 1996.

A comprehensive report by the Texas Department of Insurance and the LBJ School of Public Affairs in February of 1998 found the impact of the 1995 civil justice reforms to be "significant." The report found that the reforms, both individually and cumulatively, have reduced the settlement value of liability claims and created notable savings for insurers.

In announcing the 1999 tort reform savings, Commissioner Bomer said, "Pure

and simple, tort reform legislation has created a tremendous savings for Texans.” According to TDI, tort reform legislation has been effective in reducing the number of lawsuits and resulted in more reasonable insurance settlements. The commissioner cites fewer frivolous lawsuits and multi-million dollar verdicts, coupled with tougher claims-handling practices as benefitting both consumers and insurers.

Conclusion

Uninsured Motorists

The Committee finds that alternative enforcement mechanisms, such as those used by Illinois, have proven to be the most effective systems in lowering the number of uninsured motorists in other states. The Illinois system of randomly verifying insurance coverage for approximately 10,000 vehicles per week coupled with other enforcement changes reduced the uninsured rate from 17 percent to 4.4 percent in that state. The system is administered by a nine-person staff and costs approximately \$1.5 million annually at a rate of \$1 per registered vehicle verified (Illinois has a total of six million registered vehicles compared to about 15 million in Texas). Texas could adopt a similar system at relatively low cost to enhance the current system of verifying coverage when obtaining or renewing registrations, inspections and licenses.

While changes to the tort system could lower the cost of insurance and therefore increase affordability, comparisons of rates between “no-fault” and tort liability states have not shown significant differences in premium rates. This may be due to the fact that a “pure” no-fault system (no ability to sue and thus no coverage for non-economic damages) has never been enacted in the United States. Not enough reliable information is currently available to determine the potential impact of a “pure” no-fault system on premium rates

and the civil justice system. In addition, many modified no-fault systems have resulted in higher rates due to an overutilization of the health care system for the purposes of exceeding low monetary thresholds blocking access to the tort system.

The Committee recommends that the Legislature give serious consideration to including a mandatory rate decrease if any no-fault legislation is enacted in the future. Because the correlation between no-fault systems and decreased insurance rates is relatively unknown, the Committee recommends that an optional restriction on the recovery of non-economic damages under uninsured motorist/underinsured motorist (UM/UIM) coverage be made available to consumers to enable the Department of Insurance to track changes in loss ratios for UM/UIM coverages. This information would then be available to future legislatures considering no fault legislation or other changes to the tort liability system.

Tort Savings

The Committee recommends the Legislature carefully evaluate the likely effects of any future tort reforms and consider, once again, mandating the pass-through of potential savings by insurance companies to consumers. However, the Legislature should recognize that the commissioner may not be able to impose mandated rate reductions on unregulated companies such as county mutuals and Lloyds companies without specific statutory authority. As the percentage of the markets for these unregulated companies continues to increase, it becomes more difficult to ensure consumers share any savings resulting from tort reforms.

COMMITTEE RECOMMENDATIONS

RECOMMENDATION ONE:

Enhance current automobile insurance verification system with a system that randomly verifies a certain number of registered vehicles weekly through the mail.

The current system for verifying proof is ineffective because it gives motorists advance notice of when they should obtain coverage for verification purposes. Drivers can circumvent this system by providing either fraudulent documentation or purchasing insurance and canceling coverage after verification has been rendered. Verification through the mail can be requested for a previous date thereby preventing the purchase of insurance for verification purposes only.

Verification of coverage would still be required when requested by a peace officer, when a motorist is involved in an automobile accident, and when obtaining or renewing vehicle registrations, inspections and drivers' licenses.

RECOMMENDATION TWO:

Provide Texas drivers the option of purchasing uninsured/underinsured motorist coverage (UM/UIM) which excludes coverage for non-economic damages. If this recommendation is enacted, legislation should require insurance companies to submit necessary data as required by the Commissioner of Insurance to accurately compare loss ratios between UM/UIM coverages with and without coverages for non-economic damages.

Currently, UM/UIM covers bodily injury and property damage arising from an accident caused by a hit and run driver or an uninsured/underinsured driver up to the policy limits of the coverage. The bodily injury coverage includes

damages for economic damages such as medical bills and lost income, and for non-economic damages including pain and suffering, disfigurement and permanent or partial disability. UM/UIM coverage is not required by state law.

Excluding non-economic damages from UM/UIM coverage should have the direct effect of lowering the premium rate for this type of coverage. An optional system such as this would give the Legislature necessary, more reliable cost data for evaluating possible tort liability changes in the future.

RECOMMENDATION THREE:

Require all insurers writing automobile insurance business in Texas to conform their proof of insurance cards to a standardized form promulgated by the Commissioner of Insurance.

The standardization of insurance cards will help prevent the fraudulent verification of insurance coverage. Most current cards are easy to duplicate or alter. The Commissioner of Insurance should promulgate a card that is difficult to counterfeit yet not cost-prohibitive for consumers.