

1999 DRAFTING REQUEST**Bill**Received: **02/3/99**Received By: **nelsorp1**Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**

By/Representing:

This file may be shown to any legislator: **NO**Drafter: **nelsorp1**

May Contact:

Alt. Drafters: **kahlepj**Subject: **Drunk Driving - penalties
Insurance - auto**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Bar to noneconomic damages recovery if do not have insurance or if operating a motor vehicle while under the influence of an intoxicant

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /P1 | nelsorp1 02/24/99 | gilfokm 03/1/99 | martykr 03/1/99 | _____ | lrb_docadmin 03/1/99 | | |
| /1 | nelsorp1 04/29/99 | gilfokm 04/29/99 | jfrantze 04/30/99 | _____ | lrb_docadmin 04/30/99 | lrb_docadminS&L 05/3/99 | |

FE Sent For (05/3/99 .
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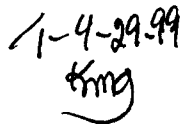
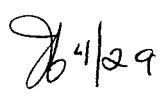
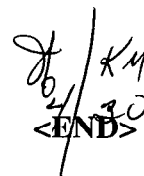
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| /? | nelsorp1 | ****NOTES /p1-2-26-99 kmg | <i>3</i> <i>LM1</i> | <i>LM 3</i> <i>LM 1</i> | | | |

FE Sent For:

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Section #. 904.11 of the statutes

904.11 Liability insurance. Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

History: Sup. Ct. Order, 59 W (2d) R1, R97 (1973); 1991 a. 32.

Section #. 804.01 (2) (b) of the statutes

804.01 (2) (b) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial.

History: Sup. Ct. Order, 67 W (2d) 585, 654 (1975); 1975 c. 218; 1985 a. 236; Sup. Ct. Order, 130 W (2d) xx; Sup. Ct. Order, 141 W (2d) xxi; 1993 a. 486; Sup. Ct. Order No. 95-03, 191 W (2d) xix (1995); 1997 a. 35, 133.

CROSSROADS

The Auto Accident Compensation Project

VOLUME 7

ISSUE 12

DECEMBER 1998

◆ CALIFORNIA COURTS INTERPRET NO PAY-NO PLAY LAW AS APPLIED TO SURVIVORS

BY GUILA PARKER

In November 1996, California voters approved a "no pay-no play" initiative known as Proposition 213. Now called the "Personal Responsibility Act", this law prohibits uninsured motorists from collecting non-economic damages (pain and suffering, emotional distress, etc.) arising from an auto accident.

Should the Personal Responsibility Act apply to limit the recovery of an uninsured motorist's survi-

vors in a wrongful death action? That is the issue taken up by two California Courts of Appeal this year. The rulings were contradictory.

In the case of Horwich vs. The Superior Court of Los Angeles County, the Court of Appeals ruled that the restriction on recovery of non-economic damages did not apply to survivors of an uninsured motorist.

In this case, Benjamin Horwich was involved in an accident with Melissa Acuna. Ms. Acuna

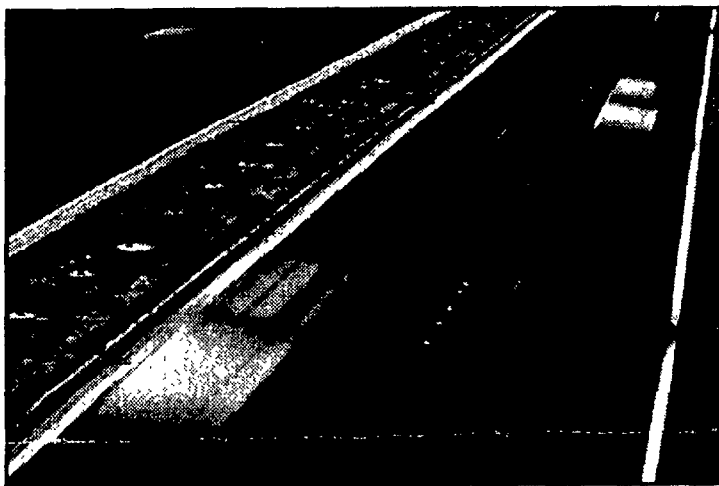
was killed. Her parents brought a wrongful death action against Mr. Horwich, alleging his negligence caused the crash. In his answer, Mr. Horwich asserted the Personal Responsibility

Act as an affirmative defense, to preclude the Acunas from collecting non-economic damages.

The Acunas admitted that Melissa was uninsured; however, they challenged the contention that the

no pay-no play law applied to their cause of action.

The Superior Court agreed with Mr. and Mrs. Acuna. Mr. Horwich petitioned for review and the Court of Appeals upheld the lower court's decision. Mr. Horwich argued that a wrongful death action is subject to any defense which could have been asserted against the decedent. The court disagreed, stating that "In some situations, that is a correct statement





No Pay/No Play Tort Reform

Version: 1 (06/11/98)

Policy Position

No Pay/No Play is a colloquialism for legislative measures which restrict the tort recovery rights of motorists who operate motor vehicles when intoxicated or under the influence of controlled substances, use their vehicles in the commission of serious criminal acts, or violate a state's compulsory motor vehicle insurance law. NAII supports enactment of No Pay/No Play legislation when: (1) other uninsured motorist countermeasures have failed or proven politically unacceptable; and (2) the NAII-affiliated companies writing personal auto insurance business in that state agree that No Pay/No Play is an appropriate legislative initiative. Ultimately, NAII support for a No Pay/No Play proposal would be determined after consultation with its member companies which transact auto insurance in the state.

NAII's support is contingent on a state already having a compulsory auto liability insurance law in effect. Furthermore, NAII's support, should that be determined, may be contingent on the No Pay/No Play proposal embodying provisions which assure that the law, when implemented, will not generate retribution against the insurance rating process, will not increase the cost of vehicle insurance, will not be violative of constitutional principles, will not distort civil recovery or accident compensation principles, and will not create excessive governmental burdens.

Accordingly, NAII might oppose a No Pay/No Play proposal which contained provisions causing any or all of the following:

- a motor vehicle insurance rate freeze, rate rollback, or other nonactuarially justified insurance rate adjustment;
- a prohibition on the recovery of economic damages by uninsured motorists against tortfeasors;
- an impairment or frustration of insurance company contractual rights relating to subrogation;
- tort prohibitions applicable to persons other than the owner or operator of the motor vehicle; or
- the enactment of a compulsory motor vehicle insurance law in a state which currently administers a financial responsibility law and enforcement system.

right to sue by insurance

cause? ability of person paying loss to sue

Rationale

In states which mandate the purchase and maintenance of motor vehicle liability insurance as a condition of owning and registering a vehicle or of obtaining an operator's license, circumstances may warrant the application of sanctions (e.g., penalizing, restricting or removing the driver's license privilege, suspending the vehicle registration, imposing monetary fines, or limiting one's recovery rights in tort liability actions) against those motorists who continue to operate a motor vehicle without liability insurance meeting minimum state requirements. This is especially true in states where other legislative and regulatory measures have failed to produce a meaningful reduction in the uninsured motorist population.

No Pay/No Play reinforces the concept that driving is a privilege rather than a right. No Pay/No Play may also be an appropriate sanction to apply against those motorists who use the motor vehicle to cause intentional property damage or bodily injury, vehicular offenses that appear to be increasing. The efficacy and equity of the tort liability system are predicated on the assumption that all tortfeasors may be financially accountable for their negligence. Uninsured motorists violate that principle by not maintaining insurance yet holding a "judgment-proof" status under the civil justice system. Under current tort system rules, uninsured motorists can collect from the system, yet by not maintaining liability insurance, they do not contribute to it.

In some states, the cost of motor vehicle insurance may be adversely affected by the frequency or severity of crashes involving drunk drivers, felons, and uninsured motorists. No Pay/No Play could be evaluated as a possible auto insurance cost containment measure.

History & Update

This policy position reflects the consensus of opinion that emerged at NAII's Automobile Insurance Committee, Nonstandard Auto Committee, and Laws Committee. The principles embodied in the policy position are intended as general guidelines to be used by NAII in evaluating "No Pay/No Play" proposals.

Date of Board Ratification

September 18, 1998

Annotations & Cross References

Several states have enacted measures which incorporate the concept of "No Pay/No Play:"

California Civil Code, Sections 3333.3 and 3333.4 (commonly referred to as Proposition 213);

Louisiana Revised Statutes, 32:866; enacted in 1997 as HB-2513; and

New Jersey Public Law 1997, Chapter 151; enacted in 1997 as SB-2223.

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5834

leg. next session

June/July 1998

Vol. 6, No. 25

LOWERING AUTO INSURANCE RATES: THE CONTINUING SAGA

By Kelly Fox

Enforcement of compulsory insurance laws is a major problem.

Forty-six states introduced some kind of auto insurance legislation in 1997. Every state has financial responsibility laws and most have compulsory liability insurance laws. However, enforcement of compulsory insurance laws is a major problem in virtually every state.

There are many different enforcement procedures ranging from fines to confiscation of license plates and licenses. Enforcement of these laws tends to be expensive and resources are limited. The number of uninsured motorists reportedly has been as high as 50 percent in some states and has been blamed for rising insurance premiums. Some feel that people who are insured are subsidizing those who are uninsured.

Two ways states are trying to reduce premiums and the number of uninsured drivers are "no pay, no play" and "choice."

State Actions

No Pay, No Play. "No pay, no play" laws prohibit uninsured motorists involved in an accident from seeking noneconomic damages, such as pain and suffering. This concept was first introduced in 1994. Michigan, California, Louisiana and New Jersey have enacted "no pay, no play" legislation. Since that time a handful of states have proposed bills. Colorado, Hawaii, Maryland, Mississippi, Missouri, Pennsylvania and Texas considered legislation in 1997 with almost every bill containing notable differences from each other.

California's Proposition 213, passed in November 1996, bars uninsured motorists who are more than 50 percent at fault and drunk drivers from seeking noneconomic damages from an auto accident. The constitutionality of this initiative was challenged in court. Two different challenges went before two different state courts of appeal and were both upheld as constitutional. Similar legislation passed in New Jersey. Michigan passed legislation in 1996 with one notable exception: Drunk drivers are not precluded from suing for noneconomic damages. Michigan and New Jersey's laws have not been challenged to date.

Average Liability Premium for Private Passenger Cars

| | |
|----------------|--------|
| Alabama | 279.11 |
| Alaska | 452.40 |
| Arizona | 506.79 |
| Arkansas | 299.38 |
| California | 496.02 |
| Colorado | 475.52 |
| Connecticut | 600.93 |
| Delaware | 556.34 |
| D.C. | 545.84 |
| Florida | 440.73 |
| Georgia | 309.34 |
| Hawaii | 740.97 |
| Idaho | 271.23 |
| Illinois | 336.27 |
| Indiana | 324.43 |
| Iowa | 241.43 |
| Kansas | 252.96 |
| Kentucky | 345.25 |
| Louisiana | 535.88 |
| Maine | 291.49 |
| Maryland | 478.89 |
| Massachusetts | 720.96 |
| Michigan | 358.44 |
| Minnesota | 421.65 |
| Mississippi | 314.76 |
| Missouri | 331.91 |
| Montana | 272.03 |
| Nebraska | 243.88 |
| Nevada | 514.62 |
| New Hampshire | 379.37 |
| New Jersey | 639.52 |
| New Mexico | 405.61 |
| New York | 578.22 |
| North Carolina | 310.88 |
| North Dakota | 198.40 |
| Ohio | 317.89 |
| Oklahoma | 298.69 |
| Oregon | 380.91 |
| Pennsylvania | 447.02 |
| Puerto Rico | 378.00 |
| Rhode Island | 611.59 |
| South Carolina | 401.83 |
| South Dakota | 231.17 |
| Tennessee | 287.67 |
| Texas | 494.95 |
| Utah | 346.98 |
| Vermont | 284.33 |
| Virginia | 346.86 |
| Washington | 459.92 |
| West Virginia | 399.62 |
| Wisconsin | 297.03 |
| Wyoming | 223.10 |

Source: National Association of Insurance Commissioners, 1994.

NATIONAL CONFERENCE OF STATE LEGISLATURES

Executive Director, William T. Pound

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Denver, Colorado 80202 303 830.2200

Washington Office: 444 N. Capitol St., N.W., Suite 515 Washington D.C. 20001 202 624 5400



Louisiana requires uninsured motorists to pay \$10,000 in property and \$10,000 in out-of-pocket medical expenses before seeking damages from another party. The constitutionality of Louisiana's law has been challenged in court. No decision has been rendered.

Proponents of "no pay, no play" legislation argue that the inability to sue for noneconomic damages will provide an incentive to uninsured drivers to purchase insurance. A study of the results of California's Proposition 213 prepared by the RAND Institute found a 5 percent reduction in premiums, about \$40 per driver and \$440 million across the state. The savings were derived from eliminating noneconomic costs to uninsured drivers and reducing costs in claims handling and attorney fees. Critics point out that uninsured motorists typically cannot afford to buy insurance thereby precluding a class of individuals from seeking noneconomic damages. This practice, it is argued, is discriminatory and unjust.

Auto Choice. "Auto choice" legislation gives motorists the choice of keeping their traditional auto insurance that allows compensation for noneconomic damages or changing to an absolute no-fault plan, which does not allow for compensation. Individuals who opt for no-fault insurance are not able to recover nor are they liable to others for noneconomic damages. Reportedly, the incentive for the latter is a significant reduction in premiums and quicker compensation for economic damages.

Currently, a few states offer auto choice insurance, including Kentucky and New Jersey. Last year, Congress considered legislation to offer auto choice insurance nationwide. This legislation did not pass, but did provide a debate over the merits of no-fault insurance.

Stephen Carroll of the RAND Institute provided testimony to the Joint Economic Committee of the Congress last March and outlined the institute's findings regarding choice automobile insurance. The institute found that such an auto insurance plan can substantially reduce the costs of insurance for those who choose absolute no-fault insurance and will not significantly affect those drivers who remain within the traditional tort system.

Critics of the choice system argue that strict no-fault insurance, used in several states, has resulted in increased premiums. Critics argue that this system will provide greater profits to insurance companies while limiting recovery to individuals. It is a system that critics believe makes good drivers pay for bad drivers.

Finding workable solutions to lowering auto insurance rates and resolving the on-going problem of uninsured and underinsured motorists continue to perplex lawmakers. As a result, more and more attempts such as "no pay, no play" and auto choice will continue to surface as traditional strategies fail.

Selected Reference

Carroll, Stephen. "Effects of an Auto-Choice Automobile Insurance Plan on Costs and Premiums." Santa Monica, Calif.: RAND, March 1997.

Contacts for More Information

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brenda.trolin@ncsl.org

Stephen Carroll
The Institute for Civil Justice at RAND
(310) 393-0411

"Auto choice" gives motorists the choice of keeping their traditional insurance or changing to a no-fault plan.

WISCONSIN INSURANCE ALLIANCE

44 EAST MIFFLIN STREET • SUITE 305
MADISON, WISCONSIN 53703-2800
(608) 255-1749
FAX (608) 255-2178

Memorandum

Eric Englund
President

Jack Bast
Chairperson
Badger Mutual Insurance
Mark Afable
Vice-Chairperson
American Family Insurance
Charles Stern
Secretary/Treasurer
Wisconsin Mutual Insurance

Members:

American Family Insurance
American Standard Insurance
Badger Mutual Insurance
Baraboo Mutual Fire Insurance
Capitol Indemnity Corporation
Church Mutual Insurance
CUNA Mutual Insurance Group
Dairyland Insurance
1st Auto & Casualty
General Casualty Insurance
Germantown Mutual Insurance
GRE Insurance Group
Heritage Insurance
IDS Property Casualty Insurance
Integrity Mutual Insurance
Jewelers Mutual Insurance
Manitowoc Cty. Mutual Insurance
Maple Valley Mutual Insurance
Milwaukee Insurance Group
Northwestern National Casualty
Old Republic Surety Company
Partners Mutual Insurance Company
Progressive Northern Ins. Cos.
Retail Lumbermens Mutual Insurance
Rural Mutual Insurance Company
Secura Insurance
Sentry Insurance
Sheboygan Falls Insurance
Society Insurance
United Wisconsin Insurance
Viking Insurance Company
Waukesha Co. Mutual Insurance
Wausau Insurance Companies
WEA Insurance Group
West Bend Mutual Insurance
Wilson Mutual Insurance
Wisconsin American Mutual
Wisconsin Assoc. of Mutual Ins. Cos.
Wisconsin Mutual Insurance

Associate Members:

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Farmers Insurance
Liberty Mutual
Rockford Mutual Ins. Co.
State Auto Ins. Cos.
State Farm Insurance
USF&G Insurance

TO: Representative Bonnie Ladwig
DATE: January 19, 1999
FROM: Eric Englund
RE: No Pay - No Play

In follow-up to our meeting in your office on 1/14/99 enclosed are the following:

- 1) An article from the Connecticut Insurance Law Journal written by Jeffrey O'Connell analyzing and supporting No Pay – No Play.
- 2) A 2/9/98 Bulletin from the National Association of Independent Insurers outlining the issue and the status of this legislation in other states.
- 3) Additional background information.

During the course of our meeting, a question was raised regarding the definition of "non-economic" damages. We have done some research on this matter and find a statutory definition in the statutes at section 893.55(4)(a).

Most importantly, this is an issue that appears to merit introduction and a public hearing. The public response will be fascinating. I know that we have in our membership a number of individuals who support the concept... but are not sure how it will work in the "real world". We look forward to seeing a real live Bill draft which will help us better understand the translation of the concept to reality.

We look forward to working with you on this project.

Enclosure: As identified above.

cc: American Family Insurance – Lee Fanshaw, Owen Schwerdtfeger.

Companies, Allstate Insurance Companies, State Farm Insurance Companies, Louisiana Farm Bureau Insurance Companies, and LAFAC.

Operating with a deadline of March 5, 1997, the Task Force instructed the Actuarial Subcommittee to review the various proposals submitted, select and prioritize the five proposals which provided the greatest estimated actuarial savings, and issue a report on its findings. Although the Task Force referred approximately 43 proposals to the subcommittee for actuarial assessment, the Actuarial Subcommittee analyzed ten proposals. "No pay, no play" was one of the proposals analyzed and was legislatively implemented in Act 1476, the Omnibus Premium Reduction Act of 1997.

Two provisions of Act 1476 are pertinent herein. The first is La.R.S. 32:866, a newly enacted statute, which provides, in pertinent part:

(A)(1) There shall be no recovery for the first ten thousand dollars of bodily injury and no recovery for the first ten thousand dollars of property damage based on any cause or right of action arising out of a motor vehicle accident, for such injury or damages occasioned by an owner or operator of a motor vehicle involved in such accident who fails to own or maintain compulsory motor vehicle liability security.

It is this proviso which has been dubbed as "no pay, no play." Succinctly stated, if a motorist fails to pay for liability coverage to protect others, he cannot "play" in the legal system, at least to the collection of his first \$10,000 damages.⁴

⁴ Certain exceptions are recognized in La.R.S. 32:866(A)(3).

The limitation of recovery provisions of this Subsection do not apply if the driver of the other vehicle:

(a) Is cited for a violation of R.S. 14:98 as a result of the accident and

H.B. NO. 2513

ENROLLED

(d) At the time of the accident, is in furtherance of the commission of a felony offense under the law.

B. Each person who is involved in an accident in which the other motor vehicle was not covered by compulsory motor vehicle liability security and who is found to be liable for damages to the owner or operator of the other motor vehicle may assert as an affirmative defense the limitation of recovery provisions of Subsection A of this Section.

C. If the owner of a motor vehicle, who fails to own or maintain compulsory motor vehicle liability security, institutes an action to recover damages in any amount, regardless of whether such owner or operator is at fault, and is awarded an amount equal to or less than the minimum amount of compulsory motor vehicle liability security, then such owner or operator shall be assessed and held liable for all court costs incurred by all parties to the action.

D. Each person who applies for a driver's license, registers a motor vehicle, or operates or owns a motor vehicle in this state is deemed to have given his consent to be subject to and governed by the provisions of this Section. All persons who apply for the issuance or renewal of a driver's license, motor vehicle title, or motor vehicle registration shall sign a declaration on a form developed by the Department of Public Safety and Corrections pursuant to rule and regulation that the person acknowledges and gives consent to the requirements and provisions of this Section and that the person will comply with all provisions of this Section and the Motor Vehicle Safety Responsibility Law. Proof of whether the person obtained or signed such declaration is irrelevant to the application of this Section.

AS INTRODUCED

(Internet Version)

1997 SESSION HOUSE BILL 292-LOCAL

limiting the damages which may be received by an uninsured motorist from an insured motorist's automobile liability coverage.

SPONSORS: Rep. Belvin, Hills 14

REFERRED TO: Commerce

ANALYSIS

This bill excludes noneconomic damages from the damages which may be received by an uninsured motorist from an insured motorist's automobile liability coverage.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1 New Section; Limitation on Noneconomic Damages. Amend RSA 264 by inserting after section 24-b the following new section:

264:24-c Limitation on Noneconomic Damages.

I. Any person who knowingly operates a motor vehicle without insurance or other form of proof of financial responsibility, as provided in RSA 264:21, shall not recover noneconomic damages for accidental bodily injury caused in whole or in part by the negligence of another person arising out of the operation of a motor vehicle.

II. For the purposes of this section, "noneconomic damages" shall mean any loss other than economic loss and includes but is not limited to pain, suffering, inconvenience, mental anguish, and other noneconomic damages otherwise recoverable under the laws of this state.

2 Effective Date. This act shall take effect January 1, 1998.

1 LONGER TOLERATE THE ABUSE OF THE PRESENT LIABILITY INSURANCE
2 SYSTEM BY THOSE WHO FAIL TO HAVE IN EFFECT A COMPLYING POLICY AS
3 REQUIRED UNDER SECTION 10-4-705 OR 10-4-706 OR BY THOSE WHO
4 BREAK THE LAW AS DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1).

5 (e) THE GENERAL ASSEMBLY, BY PASSING THIS SECTION, DOES NOT
6 ALTER THE RIGHT OF ANY PERSON TO RECOVER ECONOMIC LOSSES IN A
7 TORT ACTION AS CURRENTLY ALLOWED BY LAW.

8 (2) EXCEPT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, IN
9 ANY ACTION, BASED ON NEGLIGENCE, TO RECOVER DAMAGES RELATED TO
10 THE OPERATION OR USE OF A MOTOR VEHICLE, AN INJURED PERSON SHALL
11 NOT RECOVER NONECONOMIC DAMAGES TO COMPENSATE FOR PAIN,
12 SUFFERING, INCONVENIENCE, PHYSICAL IMPAIRMENT, DISMEMBERMENT,
13 DISABILITY, DISFIGUREMENT, OR OTHER NONPECUNIARY DAMAGES IF ANY
14 OF THE FOLLOWING APPLIES:

15 (a) SUCH INJURED PERSON'S INJURIES WERE IN ANY WAY
16 PROXIMATELY CAUSED BY THE INJURED PERSON'S COMMISSION OF ANY
17 FELONY, OR IMMEDIATE FLIGHT THEREFROM, AND THE INJURED PERSON
18 HAS BEEN CONVICTED OF, OR PLEAD GUILTY OR NO CONTEST TO, THAT
19 FELONY.

20 (b) SUCH INJURED PERSON WAS CONVICTED OF, OR PLEAD GUILTY
21 OR NO CONTEST TO, OPERATING SUCH MOTOR VEHICLE WHILE DRIVING
22 UNDER THE INFLUENCE AT THE TIME OF THE ACCIDENT IN VIOLATION OF
23 SECTION 42-4-1301, C.R.S.;

24 (c) SUCH INJURED PERSON WAS THE OPERATOR OF, OR A
25 PASSENGER IN, AND WAS THE OWNER OF A MOTOR VEHICLE INVOLVED IN
26 THE ACCIDENT AND SUCH MOTOR VEHICLE WAS NOT INSURED AS

← Drunk driving convicted for that incident
pain and suffering damages
if have injury, regardless
of insurance.

← People without the minimum
insurance

* Only cover the driver
against at fault - no insurance
in vehicle has no insurance
recovery for P&S, but
can recover for P&S
against the owner.



King

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 ^{Gen. Act.} AN ACT relating to: limits on recovery for injuries from a motor vehicle
2 accident.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.047 of the statutes is created to read:
4 **895.047 Recovery for motor vehicle injuries limited.** (1) In this section:
5 (a) "Motor vehicle" has the meaning given in s. 340.01 (35), but does not include
6 all-terrain vehicles or snowmobiles.
7 (b) "Motor vehicle insurance policy" means a policy of insurance that insures
8 the motor vehicle named therein and the purchaser of the motor vehicle when using ^{insurance policy}
9 any motor vehicle with the express or implied permission of the owner, against loss
10 from the use of the motor vehicle within the United States of America or the
11 Dominion of Canada.

8
9
10
11

1 (c) "Noneconomic damages" has the meaning given in s. 893.55 (4) (a).

2 (2) (a) Except as provided in sub. (4), any individual who operates a motor
3 vehicle that he or she knows or should have known is not covered by ^{any} a motor vehicle
4 insurance policy with liability limits of at least those listed in par. (b) may not recover
5 noneconomic damages for his or her accidental bodily injury or death caused by the
6 negligence of another person and arising out of the operation of the motor vehicle.

7 (b) The minimum liability limits for the motor vehicle insurance policy,
8 exclusive of interest and costs, shall be \$25,000 because of bodily injury to or death
9 of one person in any one accident and, subject to that limit for one person, \$50,000
10 because of bodily injury to or death of 2 or more persons in any one accident, and
11 \$10,000 because of injury to or destruction of property of others in any one accident.

****NOTE: I took this language from s. 344.33 (2).

12 (3) Any individual whose operating privilege is revoked under s. 343.305 (10)
13 or who is convicted of operating a motor vehicle in violation of s. 346.63 (1), a local
14 ordinance in conformity with s. 346.63 (1) ^{or} a law of a federally recognized American
15 Indian tribe or band in this state in conformity with s. 346.63 (1), ^{leave} s. 346.63 (2) ^{cannot}
16 940.09 (1) (a), (b), (c) or (d) or ^{or} s. 940.25 (1) (a), (b), (c) or (d) may not recover
17 noneconomic damages for his or her accidental bodily injury or death caused by the
18 negligence of another person and arising out of the operation of the motor vehicle if
19 the injury and the conviction or revocation arose out of the same incident.

20 (4) Any individual prohibited from recovering noneconomic damages under
21 sub. (2) who was operating a motor vehicle owned by another person may recover ~~the~~
22 ^{those} noneconomic damages for accidental bodily injury or death ~~that he or she was~~
23 ~~prohibited from collecting under sub. (2) from the owner of the motor vehicle who did~~
24 not provide a motor vehicle insurance policy with liability limits of at least those

A (a) The owner of the motor vehicle

1 listed in sub. (2) (b) covering the motor vehicle ^{that} the individual was operating at the
2 time of the ^{his or her} injury ^{or death}

R (b) The individual would have recovered noneconomic

History: 1973 c. 90, 243; 1975 c. 147 s. 54; 1977 c. 293, 1979 c. 102 ss. 43, 236 (3), (4); 1981 c. 284.

SECTION 2. Initial applicability.

4 (1) This act first applies to injuries or deaths occurring on the effective date of
5 this subsection.

SECTION 3. Effective date.

7 (1) This act takes effect on the first day of the 6th month beginning after
8 publication.

9 (END)

*damages for his or her
accidental bodily injury or death
caused by the negligence of another
person if the individual was ~~not~~
prohibited from doing so under
sub. (2).*



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1999 Bill

1 AN ACT to create 895.047 of the statutes; relating to: limits on recovery for
2 injuries from a motor vehicle accident.

Insert
Am 6

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.047 of the statutes is created to read:
4 **895.047 Recovery for motor vehicle injuries limited.** (1) In this section:
5 (a) "Motor vehicle" has the meaning given in s. 340.01 (35), but does not include
6 all-terrain vehicles or snowmobiles.
7 (b) "Motor vehicle insurance policy" means a policy of insurance that insures
8 the motor vehicle named therein, and the purchaser of the motor vehicle insurance
9 policy when using any motor vehicle with the express or implied permission of the
10 owner, against loss from the use of the motor vehicle within the United States or
11 Canada.

1 (c) “Noneconomic damages” has the meaning given in s. 893.55 (4) (a).

2 (2) (a) Except as provided in sub. (4), any individual who operates a motor
3 vehicle that he or she knows or should have known is not covered by any motor
4 vehicle insurance policy with liability limits of at least those listed in par. (b) may not
5 recover noneconomic damages for his or her accidental bodily injury or death caused
6 by the negligence of another person and arising out of the operation of the motor
7 vehicle.

8 (b) The minimum liability limits for the motor vehicle insurance policy,
9 exclusive of interest and costs, shall be \$25,000 because of bodily injury to or death
10 of one person in any one accident and, subject to that limit for one person, \$50,000
11 because of bodily injury to or death of 2 or more persons in any one accident, and
12 \$10,000 because of injury to or destruction of property of others in any one accident.

*****NOTE I took this language from s. 344.33 (2)*****

13 (3) Any individual whose operating privilege is revoked under s. 343.305 (10)
14 or who is convicted of operating a motor vehicle in violation of s. 346.63 (1), a local
15 ordinance in conformity with s. 346.63 (1) or a law of a federally recognized American
16 Indian tribe or band in this state in conformity with s. 346.63 (1), 346.63 (2), 940.09
17 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) may not recover noneconomic
18 damages for his or her accidental bodily injury or death caused by the negligence of
19 another person and arising out of the operation of the motor vehicle if the injury and
20 the conviction or revocation arose out of the same incident.

21 (4) Any individual prohibited from recovering noneconomic damages under
22 sub. (2) who was operating a motor vehicle owned by another person may recover
23 those noneconomic damages from the owner of the motor vehicle if all of the following
24 conditions apply:

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2106/lins
RPN:kmg:km

Inus Aal

Under current law, if a person is injured or dies as the result of another person's negligent operation of a motor vehicle, the person may recover for his or her damages. The amount recoverable depends on the amount of negligence that is attributed to each party. Damages that are recoverable include economic damages, including the cost of medical care, loss of income and compensation for expenses incurred as a result of the injury, such as the provision of child care, and noneconomic damages, including compensation for pain and suffering, humiliation, mental distress, loss of mental or physical health, loss of consortium, society and companionship and loss of love and affection.

Under this bill, a person injured ^{or killed} while operating ^{of} a motor vehicle may not recover for his or her noneconomic damages from the person whose negligence resulted in the injury if the ~~injured~~ operator knew or should have known that the ~~motor vehicle~~ ^{he or she was operating} was not covered by a motor vehicle policy with liability limits of at least \$25,000 for bodily injury or death of one person, \$50,000 for bodily injury or death of two or more persons and \$10,000 for injury or destruction of property. These amounts are identical to the minimum insurance requirements for financial responsibility necessary to restore a driver license after being involved in an accident resulting in a judgment of over \$500. If a person operating a motor vehicle owned by another person is prohibited from recovering his or her noneconomic damages from the negligent person because the motor vehicle was not adequately insured, the ~~injured~~ ^{who is} operator may recover those noneconomic damages from the owner of the motor vehicle. ^{insurance}

The bill also prohibits a person ^{who is} injured while operating of a motor vehicle from recovering his or her noneconomic damages if the incident that resulted in the injury ^{or death} also resulted in any of the following:

1. The ~~injured~~ operator's license being revoked for refusing to submit to a test to determine the amount of alcohol in his or her blood. ^{for}
2. The conviction of the ~~injured~~ operator ^{of} any offense related to the operation of a motor vehicle while under the influence of an intoxicant, controlled substance or other drug.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 4/30/99

To: Representative Ladwig

Relating to LRB drafting number: LRB-2106

Topic

Bar to noneconomic damages recovery if do not have insurance or if operating a motor vehicle while under the influence of an intoxicant

Subject(s)

Drunk Driving - penalties, Insurance - auto

1. **JACKET** the draft for introduction

Bonnie Ladwig

in the **Senate** _____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

Done
05-03-99
gmb

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction

Bonnie Ladwig

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511

Williams, Landon

From: Williams, Landon
Sent: Tuesday, July 13, 1999 11:07 AM
To: Rhodes, Judi
Subject: 99-2106/1 as per your request



99-2106/1

Landon T. Williams
Legislative Program Assistant
Legislative Reference Bureau
100 N. Hamilton
(608) 266-3561