

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION COMMITTEE

April 18, 2002
2:22 p.m.

MEMBERS PRESENT

Senator John Cowdery, Chair
Senator Jerry Ward, Vice Chair
Senator Gary Wilken
Senator Kim Elton

MEMBERS ABSENT

Senator Robin Taylor

COMMITTEE CALENDAR

SENATE BILL NO. 327

"An Act relating to motor vehicle insurance; and providing for an effective date."

MOVED CSSB 327(TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 327 - No previous action to consider.

WITNESS REGISTER

Senator Dave Donley
Alaska State Capitol
Juneau AK 99801-1182

POSITION STATEMENT: Sponsor of SB 327.

Ms. Sarah McNair-Grove
Property Actuary
Division of Insurance
Department of Community and Economic Development
PO Box 110805
Juneau AK 99811

POSITION STATEMENT: Commented on SB 327.

Mr. Michael Lessmeier
State Farm Insurance
3000 Vintage Blvd. #100
Juneau AK 99801

POSITION STATEMENT: Supported SB 327.

ACTION NARRATIVE

TAPE 02-18, SIDE A

Number 001

#SB327

SB 327-MOTOR VEHICLE LIABILITY INSURANCE

CHAIRMAN JOHN COWDERY called the Senate Transportation Committee meeting to order at 2:22 p.m. and announced SB 327 to be up for consideration.

SENATOR DAVE DONLEY, sponsor of SB 327, said a recent Alaska Supreme Court decision in State Farm Mutual Auto Insurance versus {indisc.] held that uninsured/underinsured motorist coverage includes any punitive damages if the coverage for punitive damages is not specifically excluded under the insured's liability policy.

SENATOR DONLEY said he is very pro-consumer when it comes to insurance and he could understand why a consumer would want a windfall from punitive damages from his or her uninsured/underinsured policy, but no public policy exists for such activity, unless you're planning on successful subrogation. He stated:

The whole intent of punitives is to deter bad action. If your first party insurance is going to pay punitives, there's no deterrence with the exception of successful subrogation.

He said in this case, he agrees with the insurance companies, but his concern, from the consumers' point of view, is that this will raise the cost of coverage.

SENATOR DONLEY said this bill is intended to reverse that case and clearly say that insurance companies don't have to provide punitive damages coverage as part of uninsured/underinsured coverage when they say they are not going to.

Additionally, Section 2 mandates an offer of medical coverage. He believes it is important that people be given the option of purchasing a primary health insurance policy. Medical insurance is very good for people to have and it is good public policy to encourage people to buy it, because it protects them. He said he would be willing to give up the "each renewal" language in the bill as long as the option of health insurance was made with the

initial offer. He added that insurance is the only area where discounting is forbidden because it is important that insurance agents take the time to explain everything to their customers. He hoped they were doing that.

The other provision in the bill deals with expanding comprehensive coverage to include the cost of replacing defective or worn out safety belts in vehicles. Alaska statute mandates the use of safety belts and since equipment wears out, the idea is to allow 50 percent reimbursement for seat belt replacement from the comprehensive insurance. He believes this would be good public policy. He thought the insurance industry would whine about this item not being a true part of comprehensive coverage.

SENATOR DONLEY said some provisions were added about confidentiality of insurance records and they are supported by the industry, but he would defer to the division to explain it. Amendment C.1 clarifies current statutes on "UM" and "UI" coverage. He stated:

Coverage shall be made only when a direct physical contact between the insured and the underinsured motor vehicle has occurred - and this is a problem that was brought to my attention at one point. If you have a chain reaction accident, number 1 here is an uninsured driver, plows into number 2 and number 2 is propelled into number 3. Well, you have no direct physical contact between 1 and 3 and so there has been the argument raised in the past that the uninsured UM/UI doesn't cover you for this because this person had insurance - they hit you - although it wasn't their fault. You don't have a claim against this person, because it really wasn't their fault. Right? They were pushed into you by this uninsured driver. And this is an effort to make it crystal clear - I don't believe that people should be denied the protection of their UM and UI because of this - but just to make it extra clear, that's what the attempt is here - is to help with this chain reaction type argument...

SENATOR ELTON noted the amendments had not been moved, but they were addressed and he had a question about the amendment and the bill.

SENATOR WARD moved to adopt Amendment 1, labeled C.2, and asked for unanimous consent. There were no objections and it was adopted.

SENATOR WARD moved to adopt Amendment 2, labeled C.1.

SENATOR ELTON objected to ask a question. He said he thought the way to fix that problem is addressed on line 19 where it says "may be made only where direct contact between the motor vehicles has occurred." That language will remain in the bill and he wasn't sure how the amendment fixes the situation.

SENATOR DONLEY agreed and said that Mike Ford, Division of Legal Services, could explain it. He said he didn't want any clever insurance lawyer thinking that they can avoid coverage just because they're looking at this problem. He said:

I think they should pay in this circumstance, because I think it's real unfair to deny coverage in this circumstance. I want to make that real clear for the record.

MS. SARAH MCNAIR-GROVE, Property Casualty Actuary, Division of Insurance, said this was the first time she had seen this language and she wanted to look at it before commenting.

SENATOR DONLEY said he would talk to Mike Ford again to see why he thought this was a good fix.

SENATOR ELTON asked if it would be easier to not advance the amendment now.

SENATOR DONLEY said that would be all right.

SENATOR WARD moved to withdraw his motion to adopt Amendment 2 (C.1) and asked for unanimous consent. There were no objections and it was so ordered.

SENATOR ELTON said he didn't understand "successful subrogation."

SENATOR DONLEY explained:

In uninsured/underinsured coverage, this first party insurance, you buy this insurance to protect yourself against the losses incurred to you by a third party. If an uninsured driver hits you, you've got insurance for that. Your insurance company pays you. They now have a claim against the person that hit you and that's called a subrogation - where they can sue that person on behalf of your claim that they paid - the court fees they should have paid...

My argument on whether or not your insurance company should pay you punitive damages that you were awarded from that person who hit you is that it doesn't deter

that person at all, because they're not paying it. Your insurance company is paying it. Right? And the only exception to that might possibly be if you want to think that your insurance company now has a claim for the punitive damages they paid you on the court fees that you have..

SENATOR ELTON said that made sense, but it seems if they want to do that because it takes some of the costs out of the system and they are doing that, one of two things could happen: either insurance rates don't rise as quickly or they would drop because those costs disappear from the system.

SENATOR DONLEY said this was a fairly new case that created the problem and:

Hopefully insurance rates won't rise as quickly and hopefully you'll deter people from retrenching in the amount of insurance they're selling too, because one of the dangers, of course, is the market would become so unattractive that they just decide not to participate in the marketplace.

MR. MIKE LESSMEIER, representing State Farm Insurance, said he knew of one company that quit writing excess insurance because of this problem. He noted it would basically require people to pay a premium so they can collect punitive damages from someone else under the guise of punishing them. He said it makes no sense at all because they end up punishing themselves. He maintained:

We think that uninsured and underinsured motorist coverage was created to compensate people from uninsured and underinsured drivers and we need to get back to that. We think this will have a positive effect on losses..

SENATOR WILKEN asked if State Farm or other insurance companies in Alaska track their annual losses or reimbursements due to uninsured motorists.

MR. LESSMEIER replied that he was sure they do. To get a rate approval from the Division of Insurance, they have to justify the rate based on loss experience. He said he would be happy to get information on why their rates have grown for the committee. He indicated:

You look at State Farm last year - lost nationwide \$5.1 billion - the worst loss ever. In Alaska we're not doing much better. We, in [the] automobile insurance market - as I understand it the reason that the cost

continues to go up is because you look at costs of medical that continue to rise and the cost of repairing automobiles has continued to rise. The issue with respect to uninsured and underinsured premium coverage that we have always struggled with, and I know Senator Donley was here when we created this system, is that that coverage has changed and evolved over the years and it's great coverage in Alaska. And Senator Donley has insured that it's great coverage, but there have been things that have been tacked on to that coverage by the courts...the [indisc.] case that created this excess insurance issue - that was a huge payout for State Farm and the simple fact is that frequency of loss and severity of loss are what drive rates. And the experience has not been good..

MR. LESSMEIER said it is impossible to eliminate uninsured motorists. Massive bureaucracies have been created to try to do that, but they can give each individual the ability to choose how much protection they want to insure themselves for. Senator Donley has created a system that he thought was the best in the country, but it doesn't have anything to do with the frequency of loss or the severity.

SENATOR WILKEN said he was interested in those numbers.

SENATOR ELTON asked if the losses are attributable to investment losses or to what they pay out in claims.

MR. LESSMEIER replied that he understands the figure to be just the loss.

SENATOR ELTON asked that a representative of the Division testify on the bill as amended.

MS. MCNAIR-GROVE said that she believed the committee had a letter from the Director of the Division in support of this legislation. The medical expense coverage option is of some concern because that would require a signed waiver on each renewal. She questioned what would happen if the insured forgets to send it back with their check.

SENATOR DONLEY asked her how important that is to the division. He wouldn't oppose deleting on line 24, page 2, "and at each renewal offer".

MS. MCNAIR-GROVE said she didn't believe it would do that. She again questioned what the insurer would do if they don't get a signed waiver on the renewal and whether they would automatically supply coverage.

CHAIRMAN COWDERY asked if the division had any suggestions on the subject of uninsured motorists.

MS. MCNAIR-GROVE said that they don't have a solution; the coverage isn't very expensive, but the cost is increasing every year.

MR. LESSMEIER added that the offer idea is a good thing, but there is probably no way they can have a signed written offer every time.

SENATOR WILKEN asked if, when one signs up for automobile insurance, the agent would ask, "By the way, do you want to buy medical insurance?"

MR. LESSMEIER said when a customer signs up for any automobile insurance, the insurance agent should inform the customer that under Alaska law, he or she has the right to buy uninsured and underinsured motorist coverage at different levels. He thought that people have to sign a waiver if they don't want coverage. He said in the context of that discussion, the insurance agent would tell the customer that he or she has the right to buy additional coverage. That would be part of the initial offer and one would sign one's choice. He said the offer would be made every six months.

SENATOR DONLEY said right now there is no mandatory offering. They are discussing whether the offer should be made initially or at every renewal.

MS. MCNAIR-GROVE commented that just an offer would be fine with the division.

SENATOR WARD moved to pass CSSB 327(TRA) from committee with individual recommendations and the accompanying fiscal note. There were no objections and it was so ordered.

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CHAIRMAN COWDERY adjourned the meeting at 3:03 p.m.