

Members present:

Chairman Jeffrey
Vice Chairman Robinson
Assemblyman Bennett
Assemblyman Bremner
Assemblyman Chaney
Assemblyman Horn

Assemblyman Sena
Assemblyman FitzPatrick
Assemblyman Rusk
Assemblyman Tanner
Assemblyman Weise

Guests present: See attached list

A quorum being present, Chairman Jeffrey called the meeting to order at 3:12 p.m.

AB 493: Mr. Ovid Moore, State Farm Insurance Agent from Las Vegas, told the committee that this bill would enable people to receive payment for loss of income due to an accident, but it would eliminate claims for persons being out of work or nervous because of being involved in an accident even though they were not really physically injured during the accident. Chairman Jeffrey pointed out the areas of change in the bill to the members of the committee. Dr. Robinson asked Mr. Moore if the changes in the bill were to become law, if there would be a reduction in premium rates. Mr. Moore stated that he didn't believe so, but that it would help to stabilize the rates.

Mr. Weise asked what effect the change from 85% of lost wages to 70% would have on people collecting under their insurance. Mr. Moore stated that most people now are receiving the \$175 maximum benefit and due to the increased wages most people are earning, changing it would not have a very large effect as most claimants would still be receiving the \$175 maximum payment. There was no testimony in opposition to the bill.

AB 494: Chairman Jeffrey stated that he had introduced this bill which would allow people to elect a higher deductible on their no fault coverage. He stated that this would, in effect, make the people who elected to do so self-insured up the amount of that deductible. Dr. Robinson asked what part of your policy would be affected by this raised deductible. Mr. FitzPatrick answered that it would only have an effect on the loss of income and medical expenses portion of the no fault coverage. Chairman Jeffrey stated that he felt that premiums should be reduced if this bill were passed because there would be a significant reduction in pay outs by the insurers.

Mr. Jack Lehman of the Trial Lawyers Association was first to speak in opposition to the bill. He said that he felt this bill would not be beneficial to the consumer because most people were not aware of the intricacies of insurance coverage and if they applied for insurance and were told that their premium would be lower if they opted for a higher deductible, they might buy the higher deductible not realizing, until involved in an accident, what they were actually getting for their money.

He said he felt the initial cost savings to the consumer might ultimately be seen in the burden which would be put upon the county hospitals who could end up treating people who had no coverage.

In answer to a question posed by Mr. Weise, Mr. Donald Heath, Insurance Commissioner, stated that currently the Property Casualty Regulation No. 18 sets the present \$100 deductible under authority of NRS 698.350. He stated that he was not sure the bill was necessary since the commissioner already had the ability to change the deductible by regulation. He stated that the deductibles could be set at any level which was justified in the regulation hearings. He stated that though the deductible might reduce the amount paid out under this coverage, he did not think one could necessarily believe that it would drive the rates down by effecting this program. He said with the current inflationary spiral, about the best that could be done would be to work for stability in rates. Mr. Lehman pointed out that there is currently a \$100 deductible in the law, but there are no other provisions for other levels of deductible.

Mr. David J. Guinan, member of the Nevada Trial Lawyers Assoc., was next to speak and stated that in 1973 when the no-fault concept was being introduced, he was working for the Council Bureau and drafted the bills and regulations proposed at that time. He stated that the original idea for the \$100 statutory deductible level was due to the fact that it was thought that it should be kept low to provide the best possible coverage for those people who, otherwise, would elect to have a lower premium, and really most needed the coverage because of their financial status. He also stated that currently the no fault insurance is primary and if a person elected to be, in effect, self-insured by having a high deductible, it could preclude recovery of payments through other forms of insurance such as group policies.

Mr. FitzPatrick asked Mr. Guinan if he didn't think that making no fault reparation effective toward the excess of coverage under other compensation plans would be the best alternate method. Mr. Guinan stated that he was not an actuary, but that that might result in an increase in rates for other types of insurance coverage. Mr. Moore interjected at this point that coverage under automobile insurance had always been primary and that if the benefits were changed as suggested to being excess over other plans, he felt that this would open up a very complex situation and people would not have any idea of where to start to apply for recovery.

AB 492: Mr. Ovid Moore stated that he felt that the no fault laws had to be changed this session and that when no fault was instituted the idea was to get to get money to the injured parties as soon as possible. He stated that the number of liability claims in Nevada are 35-40% higher than in other states which have no fault provisions.

He said that one of the prime reasons for the higher incidence of claims here in Nevada was because the roads were not made for the great increase in traffic experienced with the growth boom in the State, especially in Washoe and Clark counties. He also pointed out that the committee must keep in mind the fact that most of the people who now carry insurance on their automobiles are those who are most financially responsible.

He stated that he felt the current threshold is far too low considering it had not been changed since 1973 and inflation since that time had had such a drastic effect on costs relative to this area. He stated he felt this bill would help to rectify that inequity.

Mr. Moore stated that with the current threshold you actually have as many claims now, due to inflation, as you did prior to no fault law. And, prior to no fault people bought medical benefits and loss of income coverage separately, now they must wait until no fault benefits run out before suit can be filed. He added that under this bill the medical and loss of income would be taken care of and then the claimant would have the ability to recovery under the tort system via suit.

Mr. Bill Thomason, Nevada Independent Insurance Agents, stated that he supported the bill for the same reasons as Mr. Moore and that with the rates going up, it was about time for someone to try to stabilize or reduce the rates because many people simply cannot afford to be insured; resulting in the statistic that up to 40% of the people in the state are uninsured. He said that he felt almost any injury currently results in expenses in excess of \$750 and what we are doing with the current law is financing law suits. He said he felt this would take much of that problem out of the courts and insurance companies would be able to get a better feeling of what they would have to be providing in Nevada. He stated that this passing might have the effect of bringing more companies into Nevada and thus making the situation better for all concerned.

In answering a question from Mr. Weise, Mr. Thomason said that in 1973 he could write a full coverage policy, on the average, for around \$125 to \$300 and now that same policy would not be available for less than \$350 to start.

Peter Newman, Nevada Trial Lawyers Association, stated that the no fault program in Oregon had been in effect for some nine years and that during that time their rates had not been raised, except for a cost of living increase from time to time. And, although their plan offers somewhat less, and is based upon no threshold, that would compare to an 80% increase in rates in Nevada over only the last four years. Mr. Bremner pointed out that there are several other factors involved which might not be apparent on the surface, but would compensate for some of the differences state to state.

Next to speak was Mr. Virgil Anderson, AAA, who stated he agreed with Mr. Thomason's remarks. He told the committee that they insured some 36,000 cars in Nevada. He said in the first 4 years of no fault the bodily injury cases decreased about 36% and therefore, it resulted in a reduction of premiums; however, due to erosion by inflation and court decisions which have severely impacted the tort system in Nevada, to the point there is no savings anymore, unless a bill of this type or a verbal threshold bill is passed, their company forecasted nothing other than ever increasing premiums. He also pointed out that in reference to Mr. Newman's remarks the consumer price index has increased by about 10% per year, and the increases in rates in his company had been less than that rate of increase, but unless some relief is provided under the threshold, by this bill or some other approach or with respect to correcting the stacking decisions which have been handed down, Nevada motorists would be paying more for their insurance coverage in the future. He explained that stacking is the application of uninsured motorist coverage and also basic reparation benefits (no fault) to multi-car policy holders by giving those owners more coverage on an accident than they would have gotten had they only had one vehicle covered.

Mr. Richard Garrod, Farmers Insurance Group, stated that he agreed with Mr. Anderson's comments in support of the bill. He gave the committee some average loss statistics from his companies experience in the recent past. He stated that the average loss through their main company was, for 1978, \$4,261 for bodily injury claims and \$3,230 was the average loss through their secondary company. In basic reparation benefits their average settlement figure was \$943 in the primary company and \$1,318 in their secondary company.

At the request of the committee, Mr. Anderson and Mr. Garrod were asked to find out from their companies how many of the claims paid were in excess of \$5,000. They stated that they would return this information to the committee as soon as it could be obtained. Mr. Weise also asked then to determine, if possible, how much money would be saved in attorneys' fees if they didn't have to go to court on 50% of their cases (those eliminated if they raise the threshold). Mr. Garrod stated that though the information from their office in Oregon seems to indicate that the Oregon program is working, he had no first-hand statistics to give to the members.

Daryl Capurro, Nevada Motor Transport Association, stated that the industry he represents is virtually 100% insured and they cannot even operate without supplying proof of insurance and if their insurance lapses or is cancelled for any reason, they must supply proof within 30 days of renewal or other coverage. Mr. Capurro also said that, in effect, his industry is paying the premiums for the portion of the public which is going without insurance and their premiums over the past year or two have doubled and even tripled. He also said that it is becoming more and more difficult to find a company which will write transport insurance in the state. He stated that he didn't feel the original intent of the no fault was simply to reduce premiums, but to get benefits

to the people when they needed them most. Mr. Capurro said that he did support the bill because he felt the change was needed and that if something wasn't done this session then it might just be better, in effect, to do away completely with the no fault concept and go back totally to the tort system and forget any first party benefits, and await court settlement in these cases.

Mr. Bob Rose, attorney from Las Vegas, was first to speak in opposition to the bill and stated that he had represented both the plaintiffs and defendants in cases involving damages and that though he is a member of the Trial Lawyers Association, he was speaking on his own behalf to give the committee some background. He reiterated the aims and shortcoming previously brought out regarding no fault as it has been in Nevada. He stated that one of the reasons the rates are so high in Nevada is because approximately 60% of the people are paying for all the damages of the 100% of drivers.

He stated that he felt this bill was moving in the wrong direction, and that moving toward the Oregon plan or eliminating no fault all together might be a better way to go. He stated that the reason he felt that way was that if this bill were to pass it would take away an individuals right to sue for noneconomic detriment (pain, suffering, embarrassment and inconvenience and perhaps periodic disability). He stated that the higher the threshold is raised, the more that right is being abridged. He stated that legislation should be of the type which would treat similar situations in a similar manner, and this bill would not do that at all. He gave some brief examples of how that would happen. He also stated that the majority of the public is not well enough informed to make good judgment decisions when opting for higher deductibles relative to this type of insurance coverage and he did not feel this bill would be in the best interest of the public. He also noted that if this bill were passed, Nevada would have the highest threshold of any state. A brief discussion followed with no conclusions.

Next to speak was Jim Crockett, representing himself and Nevada Trial Lawyers Assoc., who stated that when someone buys auto insurance they buy liability and no fault and then can elect to buy collision and comprehensive coverage to supplement that. He stated that currently an injured party is allowed to collect basic reparation benefits, out of pocket costs for medical and loss of wages, up to a total of \$10,000 (100% of medical and up to \$175 per week in lost wages). He said that large, serious injury, claims are rarely contested since they are so obvious; however, the damage resultant from a smaller accident is sometimes more difficult to detect and much less visible. He said that the reason he felt the higher threshold is being proposed is because everyone is fearful that they will be faced with a large lawsuit brought by someone who is not really seriously injured. He stated that there is one fact which can't be changed not matter how many laws are passed, and that is that auto accidents

or any other types of accidents, cost money, some of which is paid by insurance, some by the state and some by out of pocket disbursements by the individual or merchant involved. He said that based upon raising the limit, premiums should go down and they probably could do so or should be able to do so. This is similar, he said, to what was stated at the inception of no fault, but it didn't happen, in fact, the rates have increased due to inflated factors and the losses have continued to be borne by the injured parties involved and the injured parties will continue to carry the burden of loss regardless of what level the threshold is placed at. He stated that he felt the reason the insurance companies were in favor of the bill was that they wished to eliminate all claims under \$5,000 from the courts (and as pointed out by Farmers, the average claim was under that figure) and by removing the symptom, the cause would disappear, and he pointed out, that is not true. He stated that the severity of the injury is not going to change simply because the injured party will not be allowed to sue and whatever he may save on his insurance premiums is going to cost him more in another area. After a brief discussion regarding attorney's fees and costs relative to prosecution of injury claims, Mr. Crockett stated that he felt this bill would only magnify the problems in a system which is full of problems already. Mr. Crockett and Mr. Anderson agreed to supply the committee with some statistics on the percentage of cases which actually go to court presently, therefore, requiring an attorneys fee to be paid from the settlement, and which are settled voluntarily.

Mr. Crockett stated that he had never heard any of his clients who were suing for damages ask to have the threshold raised, but he had heard them say that they wanted their premiums brought more in line. He also pointed out that disability, whether permanent total, permanent partial, temporary total or temporary partial disability, is all considered to come under the heading of non-economic detriment because its difficult to place a dollar figure on the loss. They then discussed how it was possible for many people to be damaged and have the costs run under \$5,000 and still be partially or considerably disabled without being able to file suit under the higher threshold.

In answer to a question from Dr. Robinson, Mr. Crockett stated that under current law if a person owns a car and is without insurance and is in an accident which is his fault he currently cannot collect no fault benefits from the other driver; however, if the uninsured person is driving a borrowed car, which is insured, he would be covered under that vehicles no fault provisions. He stated that the other person involved in the accident would be covered under the no fault provisions of his own car policy. In answer to another question from Dr. Robinson regarding what would happen if that person's injuries ran over the \$5,000 limit, Mr. Crockett stated that that person might unli-matley have to sue his own company for recovery.

Mr. Thomason stated, in answer to a question from Mr. Rusk, that he believed the percentage of uninsured motorists prior to no

fault was approximately the same as it is now.

Mr. FitzPatrick asked Mr. Crockett if he didn't feel that the determination of disability was taken care of in the bill on page 2 lines 7 through 10. Mr. Crockett stated that it was difficult to predetermine losses due to disability because many people didn't realize right away how extensive their injuries were and sometimes took six months or so to have the injury give them enough trouble to have it taken care of. Mr. FitzPatrick said that he didn't understand how Mr. Crockett could condemn the bill until it had become law and been tried for a period of time. Mr. Crockett stated that verbal thresholds were very hard to work with because it causes a great deal of litigation between the no fault insurance carriers and their own insured. Mr. Crockett stated that even though disability is noneconomic detriment, eventually there has to be a settlement amount assessed.

Mr. Crockett stated that he wanted to clarify the point on the stacking decision referred to by Mr. Anderson. He stated that the decision in the Cook v. Safeco case, which Mr. Anderson was talking about, was that if the insurer charged the person buying the no fault insurance for coverage on each vehicle he owned then he was allowed to collect benefits under each separate policy, but if the insurer took into consideration the total number of cars insured and charged the owner for only one no fault premium then the owner is only covered under one policy benefit.

Mr. Lehman stated that there was a bill in the Senate which would put into effect a plan similar to the Oregon plan, which he felt had been working from his information sources, and he stated he felt that would be a good solution to the problems being discussed here. He stated that he felt Mr. FitzPatrick's idea of making no fault payments secondary was excellent. However, he stated that raising the threshold to \$5,000 was going to take substantial benefits away from people in general. He stated that what it would do is put injured people at the mercy of insurance adjusters, doctors and employers. He stated that there are doctors who never find anything wrong with the patients who are referred to them for examination, because the doctors get a large portion of their business from referrals by these companies who do not wish to pay benefits. He stated what this bill would do, in effect, is to put 95% of the people of Nevada at the mercy of their insurance company, and he did not feel that was in their best interests. He stated that the only reason the attorneys get involved now is because the insurance companies have not responded to the needs of these people, and because they get a percentage of the settlement, and he stated that if you raise it to \$5,000, the attorneys won't be getting involved at all in most cases.

Rich Myers, attorney from Las Vegas and member of the Trial Lawyers Association, stated that he had represented both injured parties and insurance companies in litigation, he stated that although the committee had heard a great deal from special interest groups during the hearing, that he felt Jim Wadhams would be a

good source of reference to the committee in their attempt to find a way to lower rates, because he had been involved in very extensive studies about rates. He stated that there is a very different kind of automobile bill pending in the Senate Commerce committee. It would adopt the Oregon plan and eliminate the threshold entirely, therefore, it would show a great philosophical difference compared with these bills. He said no matter which bill would be passed into law the basic reparation benefits would be greatly changed in this state and he suggested that the committee ask Mr. Wadhams his opinion. He explained that prior to no fault the tort system provided that the wrong-doer be punished and be required to pay for the damage he caused to innocent people. He stated that the insurance companies had promised, in order to have no fault, that it would reduce premiums and he pointed out that it had not done so. He stated that prior to no fault the victim was allowed to sue the person causing the damage plus they had a provision in their own policy called "med pay" which supplied him up to \$5,000 in medical payments regardless of who was at fault in the accident. He also stated that because of the makeup of the work force in the state, most people were also covered under employment related health plans or compensation plans which paid for the time people had to have off when injured, and; therefore, when no fault went into effect many people didn't get anything new by its institution, they only lost the right to sue in some circumstances and ultimately paid more for that.

He stated he felt that these bills being discussed would only aggravate the problem and make the current system more repressive. He stated that 492 would take away the rights of many injured people to sue; that 493 would reduce first party benefits by about 15% and one week's worth of benefits; that 494 would allow people to by deductibles that shouldn't be offered to the people because they would understand what they were buying. He stated that under 492, if passed and a drunk driver were to hit a child and due to the child's recuperative powers he or she recovered without having a lot of medical expenses, the child's parents would not be able to sue until the \$5,000 threshold was exceeded. He said he didn't feel this is really what people thought no fault meant and the change would really have an effect on a great number of people.

In answer to a question from Mr. FitzPatrick, Mr. Myers stated that if he filed a complaint for damages in Clark County today, it would take 12 to 18 months to get it heard. Mr. FitzPatrick stated that he didn't feel many of his clients could wait for that period of time to take something to trial and they if they knew they could get a settlement of up to \$5,000 without going to court, that they would go for that settlement rather than going to court.

Next to address the committee were Jim Wadhams, Director of the Department of Commerce and Donald Heath, Insurance Commissioner. Mr. Heath stated that he did not want to comment on fairness or equity of the bills. He said that he would support the bills from the standpoint that in light of the current no fault laws,

these bills would go a long way toward stabilizing rates, but it should not be thought that passage of the bills would reduce the rates.

In answer to a question regarding the effect of either eliminating or raising the threshold to \$5,000, Mr. Heath deferred to Mr. Haas, actuary for the Insurance division. Mr. Haas stated that if the threshold were eliminated entirely he felt rates would increase and if it were raised to \$5,000, it would probably help stabilize the rates.

Mr. Wadhams pointed out to the committee that it was his feeling that the worst thing that could happen this session, was to leave the current no fault plan without change of some kind. He stated he felt the insurance companies and the lawyers were both talking about the bills' effect on people, they were just looking at the problem from two different perspectives. The committee then discussed with Mr. Wadhams the original bills introduced in the 1973 session and what would happen if no fault were completely eliminated. Mr. Wadhams said that he felt if no fault were eliminated fewer people would be paid for their losses and there possibly might be a reduction in rates. He stated that the current system is the most expensive of all the alternatives. Mr. Heath stated that if someone made him make a decision between the no fault system currently used and a straight tort system, he would have to choose the tort system.

Mr. Bremner stated that there is a bill being drafted now which would offer an alternative to this type of system.

Mr. Wadhams stated that a verbal threshold could be put into AB 492 if you changed the language on page 2, subsection (i) to eliminate [but only if the medical benefits for the injured person exceed [\$750,] \$5,000,]. That concluded their testimony on this subject.

Peter Newman, Nevada Trial Lawyers Association, stated next that he felt that one reason there were so many people uninsured was that the current system is so bad. He stated that if this package of bills were passed it could cut in half the benefits available to people and it would make it five times harder for people to make a claim for pain and suffering. He stated that this would not only take away people's right to sue, it would also take away their right to make any kind of claim which was available to them prior to no fault.

He stated that he felt the committee should wait until they saw the other bills being drafted and studied before they made any kind of decision relative to these bills. The relative merits of the current system, proposed systems and the so-called Oregon plan were discussed.

Mr. David Guinan was next to speak stating that he worked for the Legislative Counsel Bureau in 1973 and drafted four no fault bills at that time. He stated that at that time he was thoroughly in support of the no fault concept, but that the theory had not

worked out in application. He stated that the reason for the bills in this package was because the current no fault laws had not worked and he agreed with Mr. Wadhams that the worst that could happen was nothing. He stated he felt raising the threshold would work a tremendous hardship on a great deal of the motoring public. He stated that he felt the tremendous cost factor was the reason so many people are driving uninsured now and prior to no fault. The difference being, he felt, the right to compensation under the tort system has been greatly restricted. He stated that when people have no fault and work within the system they are protected, but when they don't have no fault, they are effectively left out in the cold. He stated that you have to be aware of the thresholds for both economic and noneconomic damage and that in 492, you are only addressing noneconomic damage and had nothing to do with out-of-pocket costs. He stated that rather than talking about eliminating the right to sue, one should rather talk about eliminating a person's right to compensation for his injuries. He said he felt the \$5,000 threshold in the bill was excessive and would preclude many people from recovery. After a discussion of some of his views with the committee, Mr. Guinan stated that he has come full circle on his views regarding the benefits of the no fault plan and he felt the Oregon plan was a better solution that trying to work with increasing the threshold on the current system.

Mr. FitzPatrick asked Mr. Wadhams what happens when a person who is not insured is involved in an accident. Mr. Wadhams stated that those claims are referred to an assigned claims plan program.

In answer to a question from Mr. Bremner, Mr. Guinan stated that he felt substantively the Senate and Assembly bills in 1973 were similar, except for the monetary limits within them. He stated that the Senate bill was drafted based upon the Uniform Motor Vehicle Accident Reparations Act (UMVARA), which is not in effect in any state. That concluded testimony on this bill package.

Chairman Jeffrey asked if there were any objections to committee introduction for BFR 55-363* regarding real estate holdings by banks. He stated that this BDR had been requested by the Commissioner of Banking and referred to Dr. Robinson. There were no objections to the introduction.

There being no further business to come before the committee, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Linda D. Chandler
Linda D. Chandler
Secretary

ASSEMBLY COMMERCE COMMITTEE

ROLL CALL:

Hearing date: 3/21/ , 1979

CHAIRMAN JEFFREY
VICE CHAIRMAN ROBINSON
MR. BENNETT
MR. BREMNER
MR. CHANEY
MR. HORN
MR. SENA
MR. FITZPATRICK
MR. RUSK
MR. TANNER
MR. WEISE

Present	Absent	Excused
x		
x		
x		
x		
x		
x		
x		
x		
x		
x		

ASSEMBLY COMMERCE COMMITTEE

GUEST LIST

NAME (Please print)	REPRESENTING (organization)	WISH TO SPEAK	
		Yes	No.
Geo Vargas	Amer Ins. Ass'n	✓	
Virgil Anderson	AAA	✓	
Bill Thomason	NIAA	✓	
Stan Warren	Nevada Bell	?	
LS Peaks	ACORN	?	
Barbara Bailey	Nev. Trial Lawyers		✓
Bob Poe	Self	✓	
Rich Myers	Nev. Trial Lawyers	✓	
Jim Crockett	NEV. TRIAL LAWYERS / SELF	✓	
B.S. Smith	AAA		✓
Jeanne Newton	AAA		✓
Peter Durney	Nev. Trial Lawyers		✓
David J. Guinan	NEV TRIAL LAWYERS / SELF	✓	
Knans	NEV. INS DIV		✓
R. Gannad	Farmers Ins Group		
Quint Moore	Self	✓	
David [unclear]	NEV INS DIV	✓	
Jim Wadhams	COMMERCE DEPT		
Alan R. Earl	NTLA	✓	
Jack Lehmann	NITA	✓	
Peter Neumann	Nev. Trial Lawyers	✓	