

SUBJECT: Creating a motor-vehicle liability insurance verification program

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Smithee, Seaman, Gallego, B. Keffer, Taylor, Van Arsdale
0 nays
3 absent — Eiland, Bonnen, Thompson

SENATE VOTE: On final passage, April 22 — voice vote

WITNESSES: For — None
Against — Richard Geiger, Association of Fire and Casualty Companies of Texas

BACKGROUND: The Motor Vehicle Safety Responsibility Act (Transportation Code, ch. 601) contains provisions with which Texas motorists must comply to ensure financial responsibility in case of accidents. Sec. 601.051 prohibits motorists from operating vehicles without establishing financial responsibility through liability insurance or other means. Insurance Code, art. 5.06-1 specifies liability coverage against uninsured or underinsured motorists.

DIGEST: CSSB 422 would add subchapter N to Transportation Code, ch. 601, creating a sampling program to verify and enforce compliance with financial responsibility requirements, and would repeal a defense to prosecution for noncompliance. The bill also would allow insureds to waive coverage for noneconomic and exemplary damages, as defined by the bill, and would standardize proof-of-insurance cards.

Financial responsibility requirements. Beginning in 2005, the Texas Department of Transportation (TxDOT) or its contractor would have to select samples of motor-vehicle registrations at random and could sample names of vehicle owners as well, including violators of financial responsibility laws or motorists whose driver's licenses or vehicle registrations had been suspended during the previous four years. At least 500,000 samples would have to be

chosen by September 1, 2005. The Department of Public Safety (DPS) would have to give TxDOT access to any necessary information. Samples could not be discriminatory based on race, color, religion, sex, national origin, age, marital status, disability, economic status, or geographic location. TxDOT by rule would have to set sampling frequency and methods.

TxDOT would have to request from the selected vehicle owners information about their vehicles and their methods of establishing financial responsibility. Owners would have to state whether they were in compliance with state law as of the verification date, defined as the date when TxDOT mailed requests. TxDOT would have to set procedures for implementing the verification process, including forms, mailing, and the information to be requested. Insured motorists could be required to disclose names and addresses of insurers, policy numbers, and coverage expiration dates. Surety bond filers could be required to disclose names and addresses of bonding companies and bond identification numbers and expiration dates. Depositors of cash, cashier's checks, or securities and self-insured motorists could be required to provide copies of certificates issued by the comptroller, local county judges, or DPS, respectively.

An owner would have to respond within 30 days after the verification date and would have to include a signed statement affirming the information's veracity. TxDOT or its contractor could conduct verification investigations by providing owner information to insurance companies, sureties, or appropriate government officials. These entities would have 30 days from receipt of the information to respond to TxDOT as to whether financial responsibility had been established for the vehicle as of the verification date. Insurers that failed to comply would be subject to an administrative penalty. TxDOT would have to examine DPS records to verify assertions of self-insurance.

Owners would incur \$250 in civil penalties if they acknowledged not having established financial responsibility, failed to respond on time, or otherwise were found by TxDOT not to have been in compliance. TxDOT would have to mail warning notices to owners giving them 30 days from the mailing date to provide evidence of financial responsibility. Failure to comply would mean termination of vehicle registration. Warning notices would have to include clear and reasonably complete statements of owners' legal rights and responsibilities, in both English and Spanish.

TxDOT would have to recover its implementation and administrative costs from civil penalty collections. Any amounts collected in excess of costs would be deposited into general revenue.

Owners whose vehicle registrations were terminated would have to pay any outstanding civil penalties plus registration and any other applicable fees before registration could be reinstated. TxDOT would have to reinstate registrations without penalty payments if owners presented evidence of financial responsibility in compliance with state law that was in effect both on the verification date and the application date for reinstatement.

Violations would not attach liens to vehicles. A person who did not own a vehicle when a fine or penalty was assessed would not be liable to pay it. Tax assessor-collectors and TxDOT could not refuse to register vehicles because of violations by previous owners. Exceptions would not be made for people who received vehicle titles as gifts from previous owners or for a person who received a vehicle from a family member, unless TxDOT determined that the transfer was in good faith.

Presenting false or invalid evidence of financial responsibility to a peace officer, court, or officer of the court would be punishable by a fine of between \$500 and \$750. A peace officer who issued a citation for displaying invalid evidence would have to confiscate it for presentation in court.

Owners could not allow others to operate their vehicles in Texas unless financial responsibility had been established and proper evidence obtained. Doing so or operating one's own vehicle out of compliance would be a misdemeanor punishable by a fine of between \$350 and \$500, instead of \$175 to \$350, as under current law. Proof that the owner or operator properly had established financial responsibility at the time of the alleged offense would be a defense to prosecution. The same defense would apply to owners required to maintain proof of financial responsibility as high insurance risks because of accidents, judgments, convictions, pleas, forfeitures, or suspensions or revocations of driver's licenses or vehicle registrations. Courts could reduce fines below \$350 for first-time offenders who were unable to pay. The bill would delete a provision enhancing fines by between \$350 and \$1,000 for repeat offenders.

The bill would repeal Transportation Code, sec. 601.193, which recognizes valid documentation at the time of an alleged offense as being a defense to prosecution for driving without proper evidence of financial responsibility or for failing to maintain such evidence as required because of an accident or judgment or other order.

TxDOT, in cooperation with DPS and the Texas Department of Insurance, would have to evaluate the verification program and its effectiveness in increasing financial responsibility. The evaluation would have to include annual computations of the number of drivers not in compliance and the annual impact on the rate for uninsured motorist insurance coverage. TxDOT would have to report its findings to the governor, lieutenant governor, and House speaker by February 1, 2011.

Uninsured/underinsured motorist coverage. CSSB 422 would define “exemplary damages” as synonymous with punitive damages, meaning any damages awarded as a penalty or punishment. “Noneconomic damages” would mean damages other than exemplary damages or compensation for monetary loss, including damages for physical pain, mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship or society.

Insured vehicle owners with uninsured/underinsured motorist coverage could waive coverage for recovery of noneconomic and exemplary damages resulting from bodily injury, sickness, or disease, including death. If they so chose, the statutory limits of liability no longer would apply to their coverage for damages resulting from bodily injury, sickness, or disease, including death. The insurance commissioner by rule could adopt minimum liability limits applicable to those damages. Coverage waivers would not affect insureds’ rights to sue responsible parties for noneconomic and exemplary damages. To be valid, written rejections of coverage for noneconomic and exemplary damages would have to include written notices from insurance companies, acknowledged in writing by insureds, disclosing the amounts of potential coverage available, types of damages covered, and amounts of premiums saved due to rejection. Payments to insureds who had made such waivers could not include amounts attributable to noneconomic and exemplary damages.

Proof-of-insurance cards. The insurance commissioner by rule would have to set standards for the appearance and form of cards showing vehicle liability insurance. The cards would have to be inexpensive and difficult to alter, duplicate, or counterfeit.

Effective dates. The bill would take effect September 1, 2003, except for the provisions relating to financial responsibility requirements, which would take effect January 1, 2005. Changes to uninsured/underinsured motorist coverage would apply to policies delivered, issued, or renewed on or after January 1, 2004.

**SUPPORTERS
SAY:**

At least 20 percent of Texas motorists are uninsured, by some estimates, and about the same percentage of drivers involved in automobile accidents have no liability coverage. Uninsured motorists drive up premiums for law-abiding citizens, especially low-income Texans. CSSB 422 would help lower insurers' costs of uninsured motorist claims for damages not incurred by drivers.

The bill would implement portions of a recommendation in the comptroller's 2003 e-Texas report, *Limited Government, Unlimited Opportunity*. The bill is patterned after Illinois' program, which reduced the uninsured segment of that state's motorists from 17 percent in 1990 to just under 5 percent today.

CSSB 422 would use widely accepted sampling techniques to assess where Texas really stands in terms of uninsured drivers. The extent of the uninsured motorist problem in Texas is not known fully because no comprehensive accounting of uninsured motorists has been made. Sampling techniques could be effective in determining these numbers. If the number of uninsured motorists were known and those drivers could be identified, Texas motorists could have more accessible and affordable insurance.

Current law requires proof of financial responsibility for about 15 million vehicles in Texas, but proof is documented only when a motorist is stopped by a police officer, changes or renews title, registration, or driver's license, or complies with inspection requirements. Drivers can avoid the insurance requirement by buying policies for as briefly as a month, then canceling them after presenting requisite proof, or by renewing driver's licenses on the Internet, where no evidence of financial responsibility is required.

CSSB 422 would give law enforcement agencies greater access to information about the number of uninsured motorists. Higher fines would provide greater incentives for compliance and would increase deterrence of driving without insurance. Fees and surcharges are not necessary to fund the program and would turn it into a revenue “cash cow.” A uniform proof-of-insurance card also would help fight the growing problem of counterfeiting.

Allowing insureds to opt out of full uninsured/underinsured motorist coverage for noneconomic and exemplary damages could lower premiums for drivers who only want to recover actual monetary losses sustained in accidents involving uninsured motorists. Under this waiver provision, insureds would be protected by the insurance commissioner setting minimum liability limits and retention of their right to sue for these damages. Furthermore, strict notice and disclosure requirements would protect insureds from relinquishing higher liability limits without their knowledge and consent.

A large portion of uninsured motorists are low-income people who also lack health insurance. Medicaid, the state-federal health insurance program for the poor, elderly, and disabled, pays more than \$60 million a year for medical expenses incurred by uninsured motorists, according to the Health and Human Services Commission. Increasing Medicaid recipients’ level of automobile liability coverage by 50 percent could save the state more than \$30 million a year in Medicaid payments, according to the comptroller.

While some vehicle owners might be identified mistakenly as uninsured motorists during the startup phase of the program, they could correct these mistakes easily by sending in proof of insurance or other forms of financial responsibility documentation, or by correcting any errors in registration information. Many of these errors would be due to motor vehicles that were not registered or titled to the current owners, despite laws requiring owners to hold title and registration.

Sampling would be much less intrusive on motorists’ privacy than databases, the integrity of which is suspect. Databases are susceptible to the “false positive” syndrome and vulnerable to “hacking” and inappropriate uses of personal and proprietary information. It would be difficult for the state or contractors to provide enough safeguards to protect vehicle owners or insurance companies from abuse of their privacy or proprietary rights or sale

of their information without their permission. Databases perform better in states with smaller, more homogenous populations than in large, diverse states such as Texas. Insurance companies' compliance with database operations often incur hidden costs that may be passed on to policyholders through higher premiums.

Financial responsibility laws are not to blame for the lack of affordable and available insurance. Insurers' discriminatory practices are more at fault than required proof of insurance. Moreover, motorists have other means available besides insurance to demonstrate financial responsibility. Driving on public roadways is a privilege, not a right, and motorists who shirk their financial responsibility put a heavier burden on those who obey the law.

**OPPONENTS
SAY:**

CSSB 422 would require TxDOT to implement an unproven system with negligible value that likely would not reduce the number of uninsured motorists significantly. The program would be paid for mostly by those who can least afford it — low-income motorists who would pay civil penalties and higher vehicle-registration fees. In effect, drivers identified as uninsured would be deemed guilty until they proved themselves innocent. They would have to surmount bureaucratic hurdles to clear their records or risk suspension of their licenses or registrations. The bill would require no checks to ensure that sampling was done indiscriminately.

Monitoring liability status and enhancing enforcement would not address the fundamental problem that keeps most low-income motorists from buying insurance. The bill would not address affordability issues facing low-income motorists who often must choose between insuring their vehicles and buying groceries or medicine. CSSB 422 only would pressure them to obtain something they often cannot afford without making it more affordable. The bill would do nothing to eliminate or curtail inappropriate insurance underwriting practices, such as credit scoring, that prevent many motorists from obtaining insurance and have nothing to do with their driving records.

The state should not increase enforcement of the proof-of-financial-responsibility law until access to affordable automobile insurance improves. Less intrusive methods are available to increase the number of insured motorists — for example, a “pay-at-the-pump” system of insurance, under which a gasoline tax would fund an insurance pool for all motorists.

The provision for waiving coverage for damages is unclear. It would provide little guidance to the insurance industry and would be difficult to implement, especially in concert with existing law that allows an insured to waive uninsured/underinsured motorist coverage altogether. The proposed waiver would generate minimal, if any, premium savings. Exemplary damages rarely are awarded in automobile accident judgments, and few motorists would want to relinquish their rights to noneconomic damages, even if it meant lower premiums. Doing so would reduce their ability to recover long-term financial losses due to serious injury or permanent disability and would require them to hire attorneys to be made whole.

The government has no compelling interest in requiring consumers to buy a product. Proof of financial responsibility, however well-intentioned, perpetuates the near-monopoly status of the automobile insurance industry. Enhancing enforcement of this unnecessary government sanction is an inappropriate expenditure of tax dollars.

OTHER
OPPONENTS
SAY:

Sampling techniques have been ineffective in accurately determining the number of uninsured motorists. The bill should require creation of a database managed by a contractor under DPS supervision, as recommended by the comptroller. Such systems have been extremely effective in determining the number of uninsured motorists because they allow direct matching rather than the equivalent of “fishing expeditions.” Many of the 19 states that have taken this approach have seen double-digit decreases in their percentages of uninsured motorists. Utah’s database, for example, has a 95 percent match rate. Utah’s law enforcement officers receive specialized instruction in the operation of the database. Databases help identify registration violations quickly. Unlike current practice, database access would allow law enforcement to verify the validity of proof-of-insurance cards and other documentation when stopping drivers.

A fee or surcharge should be added to help defray program costs. Because uninsured motorists contribute to roadway deterioration, all revenue from this program should be dedicated to the State Highway Fund.

The bill would not make policyholder data confidential, nor would it set any penalties for unauthorized disclosure of confidential, proprietary, or otherwise privileged information.

The bill should include more incentives such as “good driver protection” that would reward motorists who have few accidents or moving violations with lower premiums.

NOTES:

The committee substitute would clarify an unclear statutory reference to high-risk motorists in a subsection allowing a defense to prosecution that would be added to sec. 601.195.

According to the fiscal note, CSSB 422 would generate almost \$8 million in general revenue in fiscal 2005 and almost \$17 million through fiscal 2008. The State Highway Fund would net almost \$1.3 million during fiscal 2004-05 biennium and more than \$2.6 million through fiscal 2008.

A related bill, HB 814 by Gutierrez, et al., which would require creation of a monitored database instead of random sampling to verify motorists’ proof of financial responsibility, passed the House on May 5. The Senate Infrastructure Development and Security Committee considered the bill in a public hearing on May 21 and left it pending. During the 77th Legislature in 2001, the Senate passed a similar bill, SB 1329 by Bivins, but it died in the House Calendars Committee. During the 76th Legislature in 1999, the Senate passed a similar bill, SB 1787 by Bivins, but it died in the House Insurance Committee.