

SUBJECT: Recovery of noneconomic, exemplary damages by uninsured motorist

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Smithee, Averitt, Counts, Driver, G. Lewis, Shields

1 nay — De La Garza

2 absent — Duncan, Dutton

WITNESSES: None

BACKGROUND: Texas law requires drivers either to be covered by auto liability insurance or to have proof of sufficient cash to pay for damages they cause others while driving. It is a misdemeanor punishable by a fine of at least \$175 and not more than \$350 to operate a motor vehicle without proof of financial liability. Repeat offenses are misdemeanors punishable by fines of at least \$350 and not more than \$1,000. If a court determines that a first-offender lacks the resources to pay the full fine, it can be reduced to less than \$175.

DIGEST: CSHB 164 would prohibit a driver without liability insurance who is in a motor vehicle accident from obtaining noneconomic damages or exemplary damages in a civil lawsuit for bodily injury, death or property damage.

A person whose right to recovery derives from an injury to the uninsured motorist would also be barred for damages, including a claim for wrongful death or loss of consortium or companionship. An exception would be made so that exemplary damages could be awarded under the Texas Constitution's "wrongful death" provision (Art. 16, sec. 26) if the surviving spouse or heir proved that the death resulted from a willful act, an omission or gross neglect.

Insurers would be required to notify policyholders of the prohibitions from obtaining noneconomic or exemplary damages when a policy was issued or terminated. The Department of Public Safety (DPS) would be required to post notice of the provisions at each department facility at which in-person applications for license issuance or renewals are made. Driver's education

instructors would be required to notify each student in writing of the provisions of this act. The notice could be included in course materials or given separately.

Noneconomic damages would refer to compensation to the driver for a loss other than a pecuniary loss, including damages for pain and suffering, mental anguish, loss associated with disfigurement and loss of companionship and consortium.

The bill would take immediate effect if approved by two thirds of the membership of each house and would apply only to actions that accrued on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 164 would put teeth into the mandatory auto liability insurance laws and could increase the number of motorists who carry insurance by restricting the ability of uninsured motorists to receive noneconomic and exemplary damages from an accident. Law breakers should not be able to recover noneconomic and exemplary damages from persons who are obeying the insurance laws. CSHB 164 would not limit the economic damages someone can recover, only noneconomic and exemplary ones. Exemplary damages could be awarded in "wrongful death" cases as outlined in the Constitution.

CSHB 164 could lead more drivers to obey the insurance laws and reduce the cost of insurance for the law abiding. Estimates of the portion of drivers without liability insurance range from 16 percent to 25 percent. One insurance company estimates that CSHB 164 could reduce policy costs by about \$30 a year.

CSHB 164 would ensure that drivers are made aware of the consequences of driving without liability insurance by requiring insurance companies, the DPS and driving course instructors to provide notice.

**OPPONENTS  
SAY:**

CSHB 164 raises serious constitutional issues because it could deny fair access to the courts for persons who do not have liability insurance. Persons who do not have auto liability insurance should not be forced to give up their rights to recover noneconomic and exemplary damages.

Some drivers do not have auto insurance because they cannot afford it. This bill would penalize these persons who often must make choices about providing food and shelter for their families and purchasing auto insurance.

Rather than force persons to give up a right to recover damages, the penalties for driving without insurance could be increased.

**NOTES:** The committee substitute added provisions relating to rights to recovery under the Constitution and to notification of policyholders, students and license applicants.