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DESCRIPTION

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10/3/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1263

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1263

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/27/03

Tape Number	Side A	Side B	Meter #
2	x		0.00-18.7
4	x		12.0-14.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Kelsner opened the hearing on HB 1263.

Rep. Frank Wald, District 37, introduced this bill which deals with comparative negligence. For the record, he submitted copies of a letter he wrote to the Attorney General and the Attorney General's reply. (See attached)

Rep. Kasper: Please clarify what this bill will do.

Rep. Wald: The bill will, hopefully, correct so that if you have an accident in which only two parties are involved and the damage is under \$5000, the party most at fault pays the total bill.

Rep. Wald introduced Charles Johnson, General Counsel of the North Dakota Insurance Dept. who offered favorable testimony in support of HB 1263. (See attached)

Rep. Froseth: Who determines the percentage of fault? Is it on the police report?

Johnson: It's a matter of judgment, based on the adjusters and insurance companies. They make their decision based on police reports, the facts, there is no one person who makes the call.

*La Costa Rickford*  
Operator's Signature

*10/2/03*  
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1263

Hearing Date 1/27/03

**Rep. Froseth:** Where is the binding effect of that percentage of fault? The insurance companies report?

**Johnson:** It becomes binding when two insurance companies are involved, if they agree. If they are not in agreement, they can go to arbitration. Ultimately, it can go to court.

**Rep. Nottestad:** So in the case when you'd have to subrogate your own insurance company and they deal with the other insurance company, how does that work?

**Johnson:** The companies negotiate between themselves. We are trying to eliminate disputes.

**Rep. Kasper:** What happens when a policyholder disputes a decision?

**Johnson:** I don't believe so, the insurance companies make the decision.

**Chairman Keiser:** If two persons are involved in an accident, it's defined as two persons, regardless of what else happened along the way. If the amount is under \$5000, then it gets paid by the person who is most at fault, 51% or more. What the language of the bill also does is say that with 51% or more at fault, the property damage less than \$5000 will be paid automatically but health issues are exempt from this section of the code.

**Johnson:** That's correct.

**Chairman Keiser:** And if an innocent third party is involved, they will be exempted and can come back and sue or get a reaction from the two insurance companies, based on accountability of responsibility.

**Johnson:** That third person should be able to recover 100% of their damages against the person who is most at fault up to \$5000.

**Chairman Keiser:** And if the person most at fault is uninsured? Would the person 49% at fault be liable?

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House Industry, Business and Labor Committee  
Bill/Resolution Number HB 1263  
Hearing Date 1/27/03

**Johnson:** Then that third person doesn't recover. If you'd rather see a prorated situation, the language in the last paragraph should be modified or struck.

**Kent Olson**, Executive Director of the ND Professional Insurance Agent's Association, testified in support of HB 1263. What is changing in the statute is the definition of a person, dealing with property damage. This bill clarifies those situations where a play on words can affect the settlement of a claim.

**Pat Ward**, representing State Farm Insurance, offered testimony in support of HB 1263 and suggested some amendments. (See attached) He stated that the exemption from fault is not always fair. These amendments are ostensibly housekeeping items.

**Rep. Wald:** Occasionally the adjuster representing the company most at fault, if they know you are not carrying collision insurance, there's no subrogation available to you. That's when they say, "Well, you're 30% at fault so you are on your own". That's the abuse that happened, OK?

As there was no one else present who wished to testify in opposition to HB 1263, the hearing was closed.

Prior to the scheduled afternoon hearings, Chairman Keiser called for committee work on HB 1263. Rep. Tieman is favorably disposed to Mr. Ward's suggested amendments that clarifies the intent of the legislation, specifically the physical property and however personal damages are not available.

**Rep. Froseth** moved to adopt the amendments. **Rep. Ekstrom** seconded the motion.

**Chairman Keiser** stated that he has difficulty with the third party injury aspect of this bill and cannot support the bill unless those third party injuries are prorated. Innocent third party would be negatively impacted. **Rep. Dosch** stated that it's likely that there will be instances when

Page 4  
House Industry, Business and Labor Committee  
Bill/Resolution Number HB 1263  
Hearing Date 1/27/03

parties are found equally liable for damages. He suggested that further amending ought to be done in order to make this tighter, perhaps deleting lines 19-22.

Rep. Tieman will draft these suggestions into the amendment before the committee takes further action on this bill. A voice vote carried the motion to adopt the proposed amendments.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1263

House Industry, Business and Labor Committee

Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
3	X		3,995-4545

Committee Clerk Signature *Elizabeth R. Fin*

Minutes: **CHAIR KEISER:** Opened committee work on 1263. Rep. Tieman is carrying the bill. Rep. Tieman reviewed the amendments. Chair Keiser reminded the committee that in order to reach the intended end, lines 19-22 would need to be deleted.

Rep. Klein moved to amend (both the amendments from Rep. Tieman and the deletion of lines 19-22). 2nd by Rep. Severson. Voice vote. Amendments adopted. No discussion.

Rep. Nottestad moved DO PASS AS AMENDED. 2nd by Klein.

**VOTE: 14 YES 0 NO 0 ABSENT**

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*10/2/03*  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1263

House Industry, Business and Labor Committee

Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
2		X	490-800

Committee Clerk Signature *Elizabeth Pfeiffer*

Minutes: Chair Keiser: Opened discussion on 1263.

Rep. Severson moved to reconsider HB 1263. Seconded by Rep. Boe. Voice vote. Motion carries.

Rep. Tieman: Restated amendment to delete lines 20-23.

Rep. Klein moved to adopt amendment. 2nd by Rep. Tieman. Voice vote. Amendment adopted.

Rep. Nottestad moved to recommend DP as amended. Seconded by Rep. Tieman.

Vote: 14 Yes 0 No 0 Absent and not voting. Carrier: Tieman

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10/3/03  
Date

38264.0101  
Title.0200

Adopted by the Industry, Business and Labor  
Committee  
February 4, 2003

VR  
2/5/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1263 IRL 2-06-03

Page 1, line 13, after "indirect" insert "physical property"

Page 1, line 18, after the second "injury" insert ", however, damages for personal injury are not available under this section"

Renumber accordingly

Page No. 1

38264.0101

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10/3/03  
Date

Date: 1-28-03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1243

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DP as Amended

Motion Made By Nottestad Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep.Boe	✓	
Rep. Severson, Vice-Chair	✓		Rep. Ekstrom	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep. Kasper	✓				
Rep. Klein	✓				
Rep. Nottestad	✓				
Rep. Ruby	✓				
Rep. Tieman	✓				

Total (Yes) 14 No 0

Absent \_\_\_\_\_

Floor Assignment Tieman

If the vote is on an amendment, briefly indicate intent:

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10/3/03  
Date

REPORT OF STANDING COMMITTEE (410)  
February 6, 2003 10:20 a.m.

Module No: HR-23-1816  
Carrier: Tieman  
Insert LC: 38264.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

HB 1263: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1263 was placed on the Sixth order on the calendar.

Page 1, line 13, after "indirect" insert "physical property"

Page 1, line 18, after the second "injury" insert ", however, damages for personal injury are not available under this section"

Renumber accordingly

38264.0201  
Title.0300

Adopted by the Industry, Business and Labor  
Committee  
February 10, 2003

VR  
2/11/03

HOUSE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1263 IBL 2-12-03

Page 1, remove lines 20 through 23

Renumber accordingly

Page No. 1

38264.0201

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Date

Date: 2/11/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1262

House INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DP as amended

Motion Made By Nottestad Seconded By Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Tieman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 12, 2003 8:29 a.m.

Module No: HR-27-2358  
Carrier: Tleman  
Insert LC: 38264.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**  
HB 1263, as engrossed: Industry, Business and Labor Committee (Rep. Kelsor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1263 was placed on the Sixth order on the calendar.

Page 1, remove lines 20 through 23

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-27-2358

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Date

2003 SENATE TRANSPORTATION

HB 1263

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10/3/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1263

Senate Transportation Committee

Conference Committee

Hearing Date 3-<sup>20</sup>~~20~~-03

Tape Number	Side A	Side B	Meter #
1		X	390-1238
2		X	2090-2203
Committee Clerk Signature <i>Mary K. Moulton</i>			

Minutes:

**Chairman Senator Thomas Trenbeath** opened the hearing on HE 1263 relating to automobile accident damage liability.

**Charles Johnson** (General Counsel, ND Insurance Department) See attached testimony in support of HB 1263.

**Kent Olson** (ND Professional Insurance Agents) Testified in support of HB 1263. Gave a short history of the original bill which was drafted about 10 years ago. (Meter 960) A problem arose with what a party was. This clarifies a two person accident.

**Senator Trenbeath** asked what happens when three persons are involved.

**Kent Olson** said that he didn't think the statute would apply.

The hearing on HB 1263 was closed.

**Senator Trenbeath** stated that there was no opposition to the bill, the ND Insurance Department liked it, and the insurance agents liked it.

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Date

Page 2

Senate Transportation Committee

Bill/Resolution Number HB 1263

Hearing Date 3-20-03

Senator Nething moved a Do Pass. Seconded by Senator Espgaard. Roll call vote 5-0-1.

Passed. Floor carrier is Senator Trenbeath.

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**REPORT OF STANDING COMMITTEE (410)**  
March 21, 2003 1:11 p.m.

**Module No: SR-51-5453**  
**Carrier: Trenbeath**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**  
**HB 1263, as reengrossed: Transportation Committee (Sen. Trenbeath, Chairman)**  
**recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).**  
**Reengrossed HB 1263 was placed on the Fourteenth order on the calendar.**

4

2003 TESTIMONY

HB 1263

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10/3/03  
Date

1263

Attachment 1



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Francis J. Wald  
District 97  
433 Seventh Street East  
Dickinson, ND 58601-4525

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0380

COMMITTEES:  
Appropriations, Vice Chairman

March 7, 2002

Wayne Stenehjem  
Attorney General  
Capitol Building  
Bismarck, ND 58505

Dear Wayne:

I need your opinion and legislative intent on 32-03.2.1 NDCC.

This is what happened as communicated to me:

Party "A" drove through a "Yield" sign and struck Party "B"'s vehicle. Party "A" was cited by the local police for "Failure to Yield". After the collision impact, Party "A"'s vehicle veered off and struck a post.

The insurance adjuster for Party "A"'s insurance company is taking the position that since a third party is now involved (the post), the contributory negligence statute becomes operative. The damages to Party "B"'s vehicle are less than \$5,000. The insurance company offered a 70/30 settlement.

The position that a "post" becomes a third party (vehicle) appears ludicrous at best. Your opinion, however, is requested.

Sincerely,

Rep. Francis J. Wald  
Box 926  
Dickinson, ND 58602

La Costa Rickford  
Operator's Signature

10/2/02  
Date

**LETTER OPINION  
2002-L-23**

April 24, 2002

The Honorable Francis J. Wald  
House of Representatives  
433 7th St E  
Dickinson, ND 58601-4525

Dear Representative Wald:

Thank you for your letter regarding comparative fault in motor vehicle accidents. The general comparative fault rule in N.D.C.C. § 32-03.2-02 does not apply to a "two-party motor vehicle accident" when one person is more than fifty percent at fault and the total property damages sought by an injured party exceeds a specific threshold. N.D.C.C. § 32-03.2-02.1. Apparently, there is some confusion within the insurance industry on whether the exception applies if, as a result of a two vehicle accident, one of the vehicles causes damage to property owned by a third person who has not contributed to the accident.

Your letter indicates that some insurance companies argue that the exception does not apply because the accident involves three parties, namely the two drivers and the innocent third-party owner of the property damaged by one of the vehicles. For reasons discussed in this letter, I conclude the position of those insurance companies is erroneous because it confuses a "party" to a lawsuit for damages with a "party" to a motor vehicle accident. The exception applies to motor vehicle accidents where two parties are at fault for the accident, even if the accident results in damage to an innocent third person.

The North Dakota Legislature enacted the present comparative negligence law, North Dakota Century Code Chapter 32-03.2, in 1987. It reads:

Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property unless the fault was as great as the combined fault of all other persons who contribute to the injury, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of

LETTER OPINION 2002-L-23  
April 24, 2002  
Page 2

fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, failure to avoid injury, and product liability, including product liability involving negligence or strict liability or breach of warranty for product defect.

N.D.C.C. § 32-03.2-02 (emphasis added). The "two-party motor vehicle accident" exception to the above general rule was enacted in 1993 and amended in 1995:

Notwithstanding section 32-03.2-02, in an action by any person to recover direct and indirect damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:

1. The party seeking damages is seeking property damages resulting from a two-party motor vehicle accident;
2. The party seeking damages is seeking to recover direct physical property damages of not more than five thousand dollars and indirect damages not to exceed one thousand dollars; and
3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

N.D.C.C. § 32-03.2-02.1 (emphasis added).

The term "party" under the general comparative fault law, N.D.C.C. §32-03.2-02, thus carries two meanings. The statute provides that "a party" may request the court apportion fault among "each person, whether or not a party." In this context, "party" refers to a litigant. The statute later provides, "When two or more parties are found to have contributed ...." In this instance, "parties" refers to those persons who are in part responsible for the cause of the accident.

LETTER OPINION 2002-L-23  
April 24, 2002  
Page 3

Parallel to N.D.C.C. § 32-03.2-02, the term "party" likewise carries two meanings within the exception to the comparative fault law contained in N.D.C.C. § 32-03.2-02.1. In reference to "the party seeking damages," as in N.D.C.C. § 32-03.2-02, the term "party" refers to a litigant. In reference to a "two-party motor vehicle accident," however, I believe "two-party" refers to those persons who are in part responsible for the cause of the accident. It is reasonable to conclude that the term "party" in the exception was intended by the Legislature to have the same meaning as the term as used in N.D.C.C. § 32-03.2-02.<sup>1</sup>

Section 32-03.2-02.1, N.D.C.C., was passed to eliminate disputes over apportioning fault in smaller motor vehicle accidents. See Hearing on H.B. 1217 Before the Senate Transportation Comm. 1993 N.D. Leg. (Feb. 25) (committee minutes of comments by Representative Frank Wald). As an example, if one motor vehicle causes an accident by failing to observe a yield sign, striking a second vehicle and then striking a nearby pole or a home or a parked car, the accident is a two-party motor vehicle accident. The exception to the comparative fault law applies, assuming that the damages do not exceed the threshold and one party is over fifty percent at fault. The negligence of two parties has contributed to the cause of the accident so the accident is a two-party motor vehicle accident. While the innocent owner of the property may be a party in a lawsuit for damages resulting from the accident, if the owner did not contribute to the cause of the accident, the owner is not a party at fault for the accident.

I am aware that the 1995 bill amending N.D.C.C. § 32-03.2-02.1, as originally introduced, would have replaced "two-party automobile accident" with "motor vehicle accident." 1995 H.B. 1397 (as introduced). If the replacement language had remained in the final bill enacted by the Legislature, then the situation described in your letter probably would not have occurred. Nevertheless, the fact the Legislature preserved the limitation in N.D.C.C. § 32-03.2-02.1 to "two-party" accidents does not change the fact that the law, both before and after the 1995 amendments, applies when there are two contributing parties to the accident and does not include as a "party" to the accident (as opposed to the litigation) any innocent bystanders whose property is damaged in the course of an accident.

<sup>1</sup> N.D.C.C. 32-03.2-01 defines fault:

As used in this chapter, "fault" includes acts or omissions that are in any measure negligent or reckless towards the person or property of the actor or others, or that subject a person to tort liability or dram shop liability. The term also includes strict liability for product defect, breach of warranty, negligence or assumption of risk, misuse of a product for which the defendant otherwise would be liable, and failure to exercise reasonable care to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

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Operator's signature

10/3/03  
Date

LETTER OPINION 2002-L-23  
April 24, 2002  
Page 4

Responsibility for property damages resulting from a motor vehicle accident under the comparative fault law is straightforward and uncomplicated. If one party is at fault, that party is responsible for all property damage caused by the accident. If two parties are at fault, the party who is more than fifty percent at fault is responsible for all property damages caused by the accident if the recovery sought does not exceed the threshold amount. N.D.C.C. §32-03.2-02.1. If three or more parties are at fault, each party is responsible "for the amount of damages attributable to the percentage of fault of that party ...." N.D.C.C. § 32-03.2-02.

It is my opinion that the term "party" as used in the phrase "two-party motor vehicle accident" in N.D.C.C. §32-03.2-02.1 refers to a person whose negligence contributes to the cause of an accident. It does not refer to an innocent bystander who has not contributed to the cause of an accident, even though the person suffers property damage as a result of the accident. If, in a two vehicle accident, one of the vehicles strikes a property owner's house, fence, tree, or other object, both the property owner and the less-at-fault driver would be a "party" entitled to recovery for minor direct property damage under N.D.C.C. §32-03.2-02.1 unless some degree of fault for the accident were attributed to the property owner.

Sincerely,

Wayne Stenehjem  
Attorney General

js/vkk

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10/2/03  
Date

Attachment 2

HOUSE BILL NO. 1263

**Presented by:** Charles E. Johnson  
General Counsel  
North Dakota Insurance Department

**Before:** Industry, Business and Labor Committee  
Representative George Kelsner, Chairman

**Date:** January 27, 2003

TESTIMONY

Mr. Chairman and members of the committee:

Good morning. My name is Charles Johnson, General Counsel with the North Dakota Insurance Department.

House Bill No. 1263 attempts to clarify N.D. Cent. Code § 32-03.2-02.1, an exception to the North Dakota comparative negligence law.

The main law provides that if two or more persons contribute to the cause of the accident, the amount of damages caused by the accident are pro-rated between the parties based on their percentage of fault.

The exception provides that in a two-party accident, the party more than 50 percent at fault must bear the cost of all of the damages of the other party, provided the damages are \$5,000 or less.

Some questions have arisen concerning the interpretation and the application of the exception. The uncertainty involves three scenarios:

First, does the exception apply if two vehicles collide, after which one or another proceeds to cause damage to other property, such as a parked vehicle, a house, a pole, or a fence.

That is, is such an accident a two-party accident, or a three party accident, since the third party suffered damages and can sue to recover those damages? Does the damage to the property owned by an innocent bystander make the accident a three-party accident as distinguished from a two-party accident, even though the third party did not contribute to the accident?

Part of the confusion arises because of the use of the word "party" and the technical legal meaning of the word. The bill would change "party" to "person". This bill, hopefully, would make it more clear that such an accident is a two-party accident, so that the exception would apply, at least to the damages suffered by the two vehicles involved in the accident.

The Attorney General addressed this issue in a recent opinion and determined that an accident as described above is a two-party accident, but several insurance companies have taken the position that the Attorney General's opinion is advisory, only, and not binding. We are asking the Legislature to provide us with some direction as to this issue.

Second, if one of the persons involved in the accident suffers bodily injury along with property damage, does the accident still fall within the exception? Some insurers argue that the exception does not apply. The Insurance Department thinks that the exception should apply to the property damages, but not to the personal injury. Again, we are asking the Legislature to decide whether or not the exception should apply to settling the property damage claim even though one of the persons involved in the accident also suffers bodily injury.

Lastly, the third situation is similar to the first, but involves the question as to whether the innocent bystander that suffers property damage should collect all of his damages from the person more than 50 percent at fault in causing the accident, or whether that innocent bystander should collect his damages pro-ratably from each of the two parties that contributed to the cause of the accident, based on the percentage of fault.

It should be noted that there is a possible negative effect to requiring the third party to collect 100 percent of his damages from the party most at fault, if the party is not insured

and is otherwise judgment proof. The third party would not be able to recover for any of his damages. If the third party collected pro-ratably from each of the two at-fault parties, he could at least recover for part of his damages.

As noted, we are seeking some direction from the Legislature as to how to handle the calls that we receive concerning these issues. We are hopeful that passing this bill will resolve those issues and would ask for a "Do Pass".

Thank you. I'll be happy to answer any questions you might have.

Attach 3

Testimony of Patrick Ward In Support of HB 1263

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. I represent State Farm Insurance Company. We oppose HB 1263 as drafted, but think it can be fixed.

Section 32-03.2-02.1 of the North Dakota Century Code carves out an exception to the comparative fault rules for property damage accidents involving damage of not more than \$5,000. It provides that if there is a two-party motor vehicle accident, the person who is more than 50% at fault has to pay 100% of the damages. Under our comparative fault statute, the damages are apportioned according to the fault attributable to each person.

This statute came about because of allegations that some insurance adjusters were frequently assigning some percentage of fault, even to non-negligent persons. My deceased former partner, Tom Smith, opposed this legislation on the basis that if the problem being addressed was inappropriate damage assessments by claims adjusters, it could be addressed through the unfair claims practices statute. This section does create a windfall for persons who are not 50% or more at fault. For example, in a \$5,000 property damage accident, a person 49% at fault would be responsible for \$2,450 of the damage under a comparative fault statute. However, the other driver who is slightly more at fault, has to pay the entire \$5,000 for that car and whatever damage

he has to his own car. If the other driver has insurance, the insurance company is responsible to pay that amount.

The current statute has caused many problems. These problems recently resulted in an attorney general's opinion which found that the statute applied even if there were more than two parties involved in the accident, such as when one of the vehicles strikes another vehicle or someone's property such as a house or garden decorations as a result of the motion caused by the impact in the accident.

HB 1263 is an attempt to clarify that the exception to comparative fault statute applies even if the accident involves damages to more than two persons where two persons are at fault. The statute also attempts to clarify that the person who happens to have personal injury damages in the accident may also avail himself of this statute for the purpose of recovering his property damage. It should be very clear that does not mean the person can get 100% of their personal injury damages. For that reason, I have suggested some amendments to clarify that personal injury is not recoverable on this basis.

It is our position that this bill should be amended to either eliminate this comparative fault exception from the Century Code altogether, or to make absolutely clear how it applies so that the confusion which has come into play in the past is eliminated.

1/27/03 #4  
Patrick Ward

PROPOSED AMENDMENTS TO HB 1263

Page 1, line 13, after indirect, add "physical property" before damages

Page 1, line 18, replace period with a comma, and add "however, damages for personal injury are not available under this section."

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Operator's Signature

10/3/03  
Date

ENGROSSED HOUSE BILL NO. 1263

**Presented by:** Charles E. Johnson  
General Counsel  
North Dakota Insurance Department

**Before:** Senate Transportation Committee  
Senator Thomas Trenbeath, Chairman

**Date:** March 20, 2003

TESTIMONY

Mr. Chairman and members of the committee:

Good morning. My name is Charles Johnson, General Counsel with the North Dakota Insurance Department.

House Bill No. 1263 attempts to clarify N.D. Cent. Code § 32-03.2-02.1, an exception to the North Dakota comparative negligence law.

The main law provides that if two or more persons contribute to the cause of the accident, the amount of damages caused by the accident are pro-rated between the parties based on their percentage of fault.

The exception provides that in a two-party accident, the party more than 50 percent at fault must bear the cost of all of the damages of the other party, provided the damages are \$5,000 or less.

Some questions have arisen concerning the interpretation and the application of the exception. The uncertainty involves three scenarios:

First, does the exception apply if two vehicles collide, after which one or another proceeds to cause damage to other property, such as a parked vehicle, a house, a pole, or a fence.

That is, is such an accident a two-party accident, or a three party accident, since the third person suffered property damages and can sue to recover those damages? Does the damage to the property owned by an innocent third person bystander make the accident a three-party accident as distinguished from a two-party accident, even though the third person did not contribute to the accident?

Part of the confusion arises because of the use of the word "party" and the technical legal meaning of the word. The bill changes "party" to "person". This bill, hopefully, would make it more clear that such an accident is a two-party accident, so that the exception would apply, at least to the damages suffered by the two vehicles involved in the accident.

The Attorney General addressed this issue in a recent opinion and determined that an accident as described above is a two-party accident, but several insurance companies have taken the position that the Attorney General's opinion is advisory, only, and not binding. We are asking the Legislature to provide us with some direction as to this issue.

A second scenario arises if one of the persons involved in the accident suffers bodily injury as well as property damage. The question is: Does the accident still fall within the exception? Some insurers argue that the exception does not apply. The Insurance Department thinks that the exception should apply to the property damage claim, but not to the personal injury claim. Again, we are asking the Legislature to decide whether or not the exception should apply to settling the property damage claim even though one of the persons involved in the accident also suffers bodily injury. The present wording in the bill does just that.

Lastly, the third situation is similar to the first, but involves the question as to whether the innocent bystander that suffers property damage should collect all of his damages from the person more than 50 percent at fault in causing the accident, or whether that innocent bystander should collect his damages pro-ratably from each of the two parties that contributed to the cause of the accident, based on the percentage of fault.

The bill as originally drafted included wording that would have allowed the innocent

bystander to recover 100% of his damages from the party most (more than 50%) at fault. That language was removed in the House. The Insurance Department does not object to the change, since the House's action makes it clear that the innocent third party bystander must collect his damage proratedly from both parties based upon their negligence in causing the damages.

As noted, we are seeking some direction from the Legislature as to how to handle the calls that we receive concerning these issues. The House has so acted. We are hopeful that with the Senate's concurrence, this engrossed bill will finally resolve those issues that presently cloud the handling of these smaller claims. The Department supports a "Do Pass" for Engrossed House Bill No. 1263.

Thank you. I'll be happy to answer any questions you might have.