

2011 HOUSE TRANSPORTATION

HB 1171

2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

HB 1171
01/21/2011
Job # 13218

Conference Committee

Committee Clerk Signature *Jeanette Cook*

Explanation or reason for introduction of bill/resolution:

This is a bill relating to proof of motor vehicle liability insurance.

Minutes:

Attachment #1

Representative Gruchalla, District 45 introduced HB 1171 and explained that this is a simple bill that will save the taxpayers of North Dakota some money.

Representative Owens: This bill puts the responsibility on the person who violated the statute to prove that they are in compliance and have liability insurance. This is similar to what we do now with our drivers' licenses.

Mike Reitan, Assistant Chief of the West Fargo Police Department spoke in favor of HB 1171. See attached testimony # 1.

Representative Delmore: If you do research on What if they don't have a current card?

Mike Reitan: Normally they will accept your word. Sometimes that they may call the agent to check out

Representative Delmore: If you do research on people that don't carry liability insurance, they are also not our safest drivers. What if they don't have a current card? I've never not had liability insurance, but I have forgotten to put it in right away, I will have old cards, but not the current one. What happens if I don't have the one with the current coverage?

Mike Reitan: Normally by practice, the officer will accept your word. If you have an old card, he can go back to his car and call the number on the card to verify. With the driver's license we can use a computer system to verify a license, but with insurance it is not that easy.

Representative Delmore: Some of us have worked on this issue for some time because of our concern about people driving without liability. They are a danger on the road.

Representative Heller: In your testimony an e-mail suggests that there be an amendment added to this bill. What do you think about that?

Mike Reitan: I am not opposed to an amendment, but would like the bill to stay focused on putting the responsibility on the driver to provide the proof of insurance. We believe that our officers are neglecting to write these tickets because it is so labor intense.

Chairman Ruby: With this bill you would issue the ticket right away. They would have to show the proof within what time period?

Mike Reitan: If we follow what currently happens with a driver's license, and they provide proof before the court date, the charge is dismissed.

Chairman Ruby: If it is dismissed, when you look up someone's driving record would it show up on there as a dismissal?

Mike Reitan: I'm not sure.

Chairman Ruby: Or is it completely cleared?

Mike Reitan: I would assume that it would be completely cleared, but I am not certain.

Chairman Ruby: I think that we should check that to make certain that it is cleared. We wouldn't want it to mark their record just because they didn't have their card with them.

Representative Owens: The other day we had an instance where you couldn't call in and check on licenses because of the power outage at the capitol. If someone is picked up without their license, and the officer can't verify that they indeed do have a license, what would happen?

Mike Reitan: The officer would interview the person who has been stopped to get name, DOB, address, and driver's license number. The citation may be issued. The driver will have a period of time to provide the proof and correct the citation. It would probably not appear on their record.

Representative Owens: It does not, because I have forgotten my wallet before. Is that what you are asking to do now with the insurance, because you can't go back and check it, you want to issues the citation? Then you want to place the requirement on the driver to prove they have insurance, and take the responsibility off the law enforcement to track them down, so they can focus on other things.

Mike Reitan: Yes, that is the intent. We would like to put the responsibility on the driver. If the driver provides proof of insurance, the citation would be dropped, and it would not appear on the record.

Representative Gruchalla: Have you ever figured out the amount of money it would cost to run one of these down?

Mike Reitan: I don't know exactly how much it would cost. An average officer makes \$32 an hour, and it may take two to an unlimited number of hours. It is definitely a financial burden on our city to prosecute these types of violations.

Representative Gruchalla: That is not counting the courts time or the state's attorney's time?

Mike Reitan: That is not counting the attorney time.

Representative Vigesaa: What if they had no cards, but could tell you the name of their agent and company, maybe even the phone number; would you have the officer verify that via a cell phone call?

Mike Reitan: Yes, that has been our standard practice. If we have the ability to make contact with the insurance agent to verify the insurance, that is what the officers do.

Representative Delmore: Once you verified by a telephone call that the driver has insurance would they still get a ticket and need to send a copy of the card?

Mike Reitan: If we have proof, we will not issue a citation.

Representative R. Kelsch: But, that is you from West Fargo, not Bismarck, Mandan, Grand Forks, or Minot. So, in essence, this bill makes you guilty until you prove yourself innocent. You may say that is going to be your policy, it probably not going to be the same policy everywhere. Would that be correct?

Mike Reitan: I cannot answer for other departments. But, if the 20 days is removed here, and the citation is issued, there would be the cure of presenting the proof of insurance. Then it would be cured. The individual would have the charge dismissed, and it would not appear on their record.

Representative Onstad: As a driver what are the several things that we are required to carry in a vehicle?

Mike Reitan: The registration, proof of insurance, and driver's license. There is not currently a clear definition of what the proof is in the statute. Is it a card from the insurance company or just a name and number of the insurance company?

There was no further support for HB 1171.
There was no opposition to HB 1171.

Pat Heinert, Sheriff of Burleigh County Deputy in Bismarck: (His testimony is neutral on HB 1171.) Deputy Chief Reitan is absolutely correct in his analogy of what is going on. In my opinion, we are just moving the burden of proof from law enforcement to prove there is insurance to the courts to prove there is insurance. We are still going to provide twenty days for them to appear and provide a copy of their insurance, but the courts will have to dismiss the case. The way it is now, if our officers issue a warning ticket, they bring that proof of insurance to our department by some means, and it goes away right there. We do

nothing more with it. If we don't get that in twenty days, then we proceed with the criminal report through the state's attorney's office and issue the warrant or the summons to appear.

Representative Delmore: With the shift do you think that the courts have more clout than your department might?

Pat Heinert: Our officers issue a warning ticket when they stop someone without an insurance card. That is how we operate in my agency. The driver then has the time frame to bring it in. They are told on the side of the street that they have twenty days to respond, or we will be issuing a criminal complaint with the courts, and they will have to appear. I don't see a differentiation between the two in my mind.

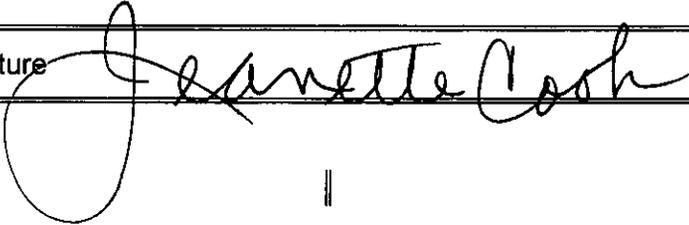
There was no further testimony on HB 1171, and the hearing was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

HB 1171
01/28/2011
Job # 13640

Conference Committee

Committee Clerk Signature 

Minutes:

Representative Owens moved a DO PASS ON 1171.

Representative Onstad seconded the motion.

Representative Owens reviewed the bill. The system currently is set up so that the driver has a certain amount of time to bring proof of liability insurance. If you didn't in that amount of time, then law enforcement would have to chase the driver down and then write you a citation. This puts the responsibility back on the individual to provide the proof of liability. The citation is issued automatically right away, like with the driver's license.

Representative Weisz: I am going to resist this motion. It is still up to you to prove that you have liability insurance. You have twenty days to give evidence that you have it. Now we are automatically issuing a citation that basically says that you don't have liability insurance. Then you have to go to the court and prove that you do. I am not comfortable with making that shift. It is not that you have done something illegal; it is just that you don't happen to have the card with you. If you ignore the twenty days and let it go beyond, we have a fairly stiff penalty for not having liability coverage.

Representative Gruchalla: This isn't a huge shift. Most of the time people have proof with them. This will increase the number of people that carry insurance, about 20-23% of the people don't carry any insurance. The current way is expensive and time consuming for law enforcement to try to chase these people down to get proof of insurance. This way the burden of proof is on the individual. I think this will be a good way to conserve tax dollars. I think it is a good bill.

Chairman Ruby: Will it cause more people to have a violation on their record, and then the dismissal?

Representative Gruchalla: No, it will be just as discussed before; it will be just like the driver's license is now. The citation will be dismissed when the proof is provided.

Representative Delmore: Why is there not a time in here? Does it refer to another section of law that states that?

Representative Gruchalla: Currently it is twenty days you have to prove insurance, unless you are in an accident. It is only three days now for an accident.

Representative Delmore: Even though it is not listed in the bill?

Representative Gruchalla: Correct.

Representative Weisz: I would disagree with that, because I assume it would be whatever time period is put on the citation when the court appearance is listed. The proof would have to be produced by then, or you would be in court. The twenty days is gone. It would be whatever the citation says.

Representative Gruchalla: Representative Weisz is correct. On a normal citation of the court they want you to set the court date within twenty days, but it could be longer. You would have to take care of it prior to whenever the court date is set.

Representative Owens: I agree with Representative Weisz about the court date.

Representative Louser: Does this new proposed language reflect what is now required for a drivers license?

Chairman Ruby: Yes, it mirrors that.

A roll call vote was taken. Aye 11 Nay 1 Absent 1

The motion passed.

Representative Frantsvog will carry HB 1171.

Date: 1-28-11

Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1171

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Owens Seconded By Onstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Representative Delmore	X	
Vice Chairman Weiler	X		Representative Gruchalla	X	
Representative Frantsvog	X		Representative Hogan	X	
Representative Heller			Representative Onstad	X	
Representative R. Kelsch					
Representative Louser	X				
Representative Owens	X				
Representative Sukut	X				
Representative Vigesaa	X				
Representative Weisz		X			

Total (Yes) 11 No 1

Absent 2

Floor Assignment Frantsvog

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

18-604

REPORT OF STANDING COMMITTEE

HB 1171: Transportation Committee (Rep. Ruby, Chairman) recommends **DO PASS**
(11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1171 was placed on the
Eleventh order on the calendar.

2011 SENATE TRANSPORTATION

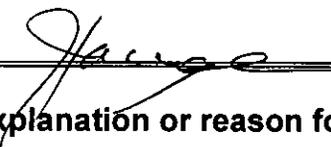
HB 1171

2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1171
March 24, 2011
15970

Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to proof of motor vehicle liability insurance.

Minutes:

Written Testimony

Senator G. Lee opened the hearing on HB 1171.

Representative Gruchalla, District 45, introduced HB 1171. About 25% of ND vehicles are not covered by liability insurance. This law change is an attempt to lower that percentage. This law change will require the driver to produce proof of insurance when in an accident or when stopped for a violation. If the proof is not shown the driver is issued a citation and signs a promise to appear with a court date. He has 20 days to prove insurance. As stated in the bill, the driver or his insurance agent can simply send or fax in documentation that the vehicle was insured at the time of the accident or stop. See attached written testimony #1.

Mike Reitan, Assistant Chief, West Fargo Police Department testified in support of HB 1171. This bill is meant to increase compliance with the requirement of motor vehicle operators and owners to maintain motor vehicle liability insurance. He also provided two documents to help illustrate through a flow chart and time line the process that is used to address an individual who cannot produce proof of insurance during a traffic stop. The flow chart was actually prepared by North Dakota Legislative Council staff for the Transportation Committee in 2005. The time line is an attempt to depict the length of time necessary to complete this transaction. This process stops as soon as the driver produces proof of insurance. He also included written comments from area chiefs in support of HB 1171. See written testimony and attached information #2.

Senator Nodland asked if you have your insurance card in your vehicle and you are stopped is that all you have to show the officer. Does that qualify for proof of insurance under this bill?

Chief Reitan replied yes. It is your proof that you have insurance and when you produce that with your driver's license and registration card you are totally in compliance.

Senator Nodland asked if you don't have the card or proof of insurance that is when you are issued a citation.

Chief Reitan said that currently it happens that way. The officers can usually tell by their conversation with the vehicle driver if there is reason to believe that the motorist is not covered by insurance. He gave an example of a situation and questions the officer would typically ask.

Senator Mathern asked a question concerning the flow chart. When the person admits they don't have insurance and it says arrest, does that mean they go to jail.

Chief Reitan replied that some agencies have an arrest policy on a Class B misdemeanor while others have a cite and release policy.

Senator Mathern second question is what if the automobile I am driving is not my automobile?

Chief Reitan replied that if the driver has insurance on their own vehicle, that insurance would protect them as they drive. Even if they are issued the citation, they have 20 days to provide that proof of insurance and the charge would be dismissed against them.

Senator Sitte asked what the cost of a ticket is if they have insurance and if they don't have insurance.

Chief Reitan replied that under current statute if they have not produced the proof of insurance after the twenty days, the complaint is signed, we find them, we serve them, they appear in court, they could receive a fine up to \$1000 as a Class B misdemeanor but the first fine is \$150 minimum and the second fine within eighteen months is a \$300 minimum. There are times when they appear in court with current insurance and the court dismisses the charge.

Senator Lee asked how many people are not carrying liability in his jurisdiction.

Chief Reitan said that insurance carriers are saying that about 25% of ND drivers are not carrying liability insurance. Chief Reitan said that he has seen some figures as low as 8%. The point he wants to make is that the current system is too cumbersome and they have officers that are not enforcing it. He believes that with HB 1171 his officers will do a better job of enforcing this.

Senator Lee asked if there was a greater risk in the new proposal that it could clog up the court system to a greater degree.

Chief Reitan replied that it may increase the traffic in the court system but personally he didn't believe it would be a substantial amount. Ultimately the goal is to get them to come in with that insurance card and show that they now have insurance.

Opposing Testimony

Pat Heinert, Sheriff of Burleigh County, testified in opposition to HB 1171. He said first of all, comments have been made on how many people are driving without liability insurance, and he has found no factual base to determine those numbers. He has heard numbers across the board. His records show that in 2010 they issued 187 complaints for no liability insurance after they issued the twenty day warning ticket. He said that they did not track how many warning tickets they issue but after talking with the command staff from their patrol division they speculated it was well in excess of 1000 warning site tickets. So that would put them in the 15 -20% range. He said that he has issues with the bill. First, if you don't have the proof in insurance you are assumed to be driving without insurance and they can issue a Class B misdemeanor citation. If they are not a Burleigh or Morton County resident they are required to post a bond and cannot be released in the field. Second, once they are issued the citation and it is processed through their system and sent it on to the state, they enter it onto your driving record as an issued citation and await the conviction. When the proof of insurance is proven, someone has to be responsible enough to get the proof of liability to the State Attorney's office to get a dismissal written so the citation is dismissed properly and their record is cleared. He said these are the reasons they opposes this bill.

Senator Oehlke asked if the 20 days was just more for convenience in giving the individual the ability to get the information to them.

Sheriff Heinert said that is exactly why the law was written. He gave some history on when the law about the warning ticket came into effect. He said they use to give citations on site.

Senator Oehlke asked if there was any other form of proof of insurance that they would accept other than that card. He said if there is a copy of my policy in the glove compartment can you accept that.

Sheriff Heinert replied that under HB 1171 you will need a current card unless they can contact your insurance carrier.

Senator Mathern gave an example of a woman who lived across the line who was put in jail for not having proof of insurance.

Sheriff Heinert said that can happen because out judicial district allows us to release in the field without bond a resident of Morton or Burleigh County but if you are a resident of other counties we have to require bond and if they don't have bond, take them to jail until they can get bond. He stated that currently we don't do that because we issue warning tickets and if they produce insurance, no charge is ever found. The main emphasis of HB 1171 is that we are changing from issuing them a warning ticket and allowing them 20 days to present proof of insurance before we issue the warrant of arrest or in our county a summons complaint to appear to issuing it immediately at the scene.

Senator Sitte wondered if they admit guilt would they currently be arrested.

Sheriff Heinert replied yes.

Keith Witt, Bismarck Police Department testified in opposition to HB 1171. He stated that the intent of the bill is good because there are too many people driving without liability insurance but as Chief of the Bismarck Police Department his concern is that of enforcement. See written testimony #3

Senator Nething asked if he testified in the House against this bill.

Chief Witt said that he wasn't available to be there.

Senator Lee closed the hearing on HB 1171.

Committee Work

Senator Lee opened discussion on HB 1171.

Senator Oehlke said that in his insurance business experience he would say that the 25% estimate for people in ND not carrying liability insurance is way too high. He agreed more with the local Bismarck Sheriff who used their figures to come up with a 10-15 % range that may be uninsured. He said that he had not experienced any problems with the allowance of 20 days to prove you have insurance. He also has not had law enforcement complaining to him about that issue.

Senator Sitte was shocked to hear that someone could be driving through Burleigh or Morton County and has no proof of insurance and they could be put in jail. That same person might actually have insurance but the way it is being enforced there is no way we could pass HB 1171.

Senator Lee reminded the committee that they had all gotten an e-mail from Mike Reitan who testified in support of the bill. He recognized the concerns of Sheriff Heinert and Chief Witt. He is suggesting changing the violation from a criminal offence to an infraction with an equivalent fee penalty.

Alex Kelsch, the intern explained what he had found.

Discussion followed on decreasing the offense to an infraction.

Senator Oehlke said that personally, he would be inclined to not make any changes to the law.

Senator Sitte agreed with Senator Oehlke. She stated that reducing it to an infraction might not be severe enough.

Senator Lee continued that it does diminish the argument of Mr. Reitan's wanting to see that everyone has insurance. Reducing the penalty doesn't help that issue. He said that he would not be in favor of the reduction of the offense.

Senator Lee closed the discussion.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1171
March 25, 2011
16020

Conference Committee

Stange

Explanation or reason for introduction of bill/resolution:

Minutes:

Committee Work/Action

Senator G. Lee opened discussion on HB 1171. He summarized the previous discussion and the proposal for an amendment from Assistant Chief Reitan that would make the offense of not having proof of insurance an infraction rather than a Class B misdemeanor. He stated that if the issue was to get everyone in compliance to have liability insurance lowering the penalty may not be supportive of that.

Senator Sitte moved a **Do Not Pass**.

Senator Nething seconded the motion.

Roll call vote: 4-2-0. **Motion passed.**

Senator Sitte is the carrier.

REPORT OF STANDING COMMITTEE

HB 1171: Transportation Committee (Sen. G. Lee, Chairman) recommends DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1171 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1171

Transportation Committee

House Bill 1171

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Good Morning

Chairman Ruby, Vice Chair Weiler and members of the Committee, for the record my name is Mike Reitan, Assistant Chief of the West Fargo Police Department. I am testifying today in support of House Bill 1171.

The bill before you today is meant to increase compliance with the requirement of motor vehicle operators and owners to maintain motor vehicle liability insurance. Under subsection 2 of section 39-08-20 of the North Dakota Century Code as currently written the West Fargo Prosecutor has determined a driver has up to 20 days to provide proof of insurance before they may be charged with driving without liability insurance. The time between the driving offense and the lapse of 20 days creates a situation where the individual has had an extended period to continue driving without insurance.

During a vehicle stop an officer will typically ask for the driver's license, the registration card and proof of insurance. If the person does not have their driver's license or registration card they may be issued a citation. The citation is dismissed if the driver later provides proof of the driver's license or registration card to the officer or to the court. Not so with the proof of insurance.

If the driver does not have proof of insurance they are asked a series of questions to determine if in fact they have insurance. It could be as simple as do you have insurance? A no response can result in an arrest for driving without liability insurance. A yes response and information about the agent and insurance company typically ends with a warning to make sure the insurance information is in the vehicle. A yes response and vague information about insurance company and agent has the potential to begin the 20 day clock.

The officer may issue a warning ticket or other paperwork instructing the driver to produce the insurance information within 20 days. The paperwork will have an address to which the information should be sent. The officer or agency must then track the warning ticket and wait for the receipt of the insurance information.

If no insurance information is received within 20 days the officer is required to submit a report to the prosecutor for a drafting of the complaint. The officer will spend 30 minutes to an hour gathering the data and completing the report. The prosecutor spends 15 to 30 minutes reviewing the report and drafting the complaint. Once drafted, the complaint must be served upon the driver and a warrant issued for their arrest. When the offender lives in the community an officer will go to the home to deliver the complaint. If the offender lives elsewhere the complaint may be sent to the local jurisdiction for service. When the person is arrested and held in a jail outside our jurisdiction we are required to have the person transported to appear before our Municipal Judge. At times this has

Transportation Committee

House Bill 1171

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

involved sending a squad car and officer to as far away as Minot. From the time of the traffic stop until the driver actually appears in court a substantial amount of time can pass.

Reviewing our records less than half of my patrol officers have issued a warning ticket to show proof of insurance. When asked why they indicate the extra steps required to issue and track the warning ticket; write a report and submit it to the prosecutor; locate the driver and serve the complaint; and ultimately arrest the person on a warrant is not a good use of their time. I have enclosed comments from three other Chiefs.

From Fargo Chief of Police

From: Keith Ternes **Sent:** Thursday, January 06, 2011 1:15 PM
To: Michael D. Reitan
Subject: RE: Financial Note for current driving without liability insurance

Mike,

I wholeheartedly support the change you are suggesting to the "liability insurance" statute. It seems to me the law should require people to carry proof of insurance in their vehicle in the same manner as having your vehicle's registration card. This "20-day" issue makes enforcement of the statute much harder than it needs to be – to the point of discouraging officers from pursuing this violation – which isn't ideal especially in the aftermath of a traffic crash.

I'll be happy to provide you with the necessary numbers if you (or the other chief's you included in your e-mail) want to pursue what you're proposing.

Keith

From Keith Witt, Bismarck Chief of Police

From: Witt, Keith A.
Sent: Thursday, January 06, 2011 9:49 AM
To: Michael D. Reitan
Subject: RE: Financial Note for current driving without liability insurance

Mike,

I did run this by some of our resident experts. They expressed a concern that if someone simply doesn't have their insurance card with them, does that establish probable cause that they don't have liability insurance and are in violation of a criminal traffic offense? The person may have insurance, just not have the proof present at the time. Maybe an amendment to the effect of "that a twenty day period is to be given unless probable cause exists that the person does not have liability insurance at the time of driving". Then, if the person admits to the officer they don't have insurance, there would be probable cause of a violation.

Transportation Committee
House Bill 1171
Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Maybe another alternative would be to have a separate non-criminal statute simply requiring the carrying a current card. I don't know if it is procedurally possible, but if someone has a card to present the officer, the person could be cited with this statute and at the end of 20 days if they don't provide proof, it upgrades to a criminal violation.

Just some thoughts on this.

In terms of the cost analysis, we don't seem to have that much problem here the way our system on this is working that we could show that much cost.

Thanks for working on this.

Keith

From Scott Thorsteinson, Chief of Police Wahpeton

From: Scott Thorsteinson **Sent:** Thursday, January 06, 2011 3:28 PM
To: Michael D. Reitan
Subject: Re: Financial Note for current driving without liability insurance

Mike,

In my opinion, the current part of the statute that allows 20 days to provide proof of liability insurance makes the verification process very unwieldy and time-consuming. It puts the burden on law enforcement to track down those people that (inevitably) fail to show up with the required proof because they simply have none to provide and hope to avoid negative legal consequences through the time-honored technique of avoidance. If a motorist unable to provide proof of insurance is immediately cited at the scene of a traffic stop or crash, they are then sufficiently motivated to take the steps necessary to get the charge dismissed.

As far as actual costs go, each long form complaint issued by the city attorney costs the citizens approximately \$30-\$50 for city attorney staff time, with the expense for PD staff time likely in this same \$30-\$50 range, depending on how easy it is to locate and serve the miscreant.

Scott T.

Searching for some national statistics I found a news release from 2006 that was put out by the Insurance Research Council. According to a recent Insurance Research Council (IRC) Study, the estimated percentage of uninsured motorists increased nationally from 12.7 percent in 1999 to 14.6 percent in 2004. However, the magnitude of the uninsured motorists problem varied widely from state to state.

I respectfully request your passage of House Bill 1171. Thank you for your time today and I will answer any questions you may have.

Transportation Committee
House Bill 1171
Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

HB1171 Testimony

Rep. Ed Gruchalla, Dist. 45

About 25% of ND vehicles are not covered by liability insurance. This law change is an attempt to lower that percentage. When you are involved in a crash with a vehicle that does not have coverage, YOUR insurance has to pay for your damage. This lack of coverage affects all of our rates.

A recent Transportation interim study attempted to address this issue to no avail. The optimum fix discovered was to require your insurance company to notify Motor Vehicle when your insurance was dropped. Motor Vehicle would in turn notify Drivers License and suspend your Driver's License. The procedure proved to be too costly to make the computers work together and became a victim of DBFN.

This Law change will require the driver to produce proof of insurance when in an accident or when stopped for a violation. If the proof is not shown the driver is issued a citation and signs a promise to appear with a court date. (20 days) As stated in the bill, the driver or his insurance agent can simply send or fax in documentation that the vehicle was insured at the time of the accident or stop.

This simple change in procedure will save many tax dollars. Presently if you are asked for proof of insurance and are unable to display it, the Officer may issue a warning and ask that it be provided. If it isn't some agencies will follow up by going to the States Atty., have a warrant drawn up and have a deputy attempt to locate the individual. This may take several attempts and many times the diver will not be located. Other agencies do not have the capabilities or time to follow up and the violation goes uncharged. An estimate of service with several service attempts for one violation was over three hundred of your tax dollars.

This lack of sure and certain enforcement of this statute contributes to the percentage of drivers who remain uninsured.

Members of this esteemed Senate Transportation Committee, this bill may not be the best or final attempt to deal with this ongoing problem; however it will place the responsibility of providing proof of insurance on the driver and will improve compliance with this Statute.

Thank you Mr. Chairman

Senate Transportation Committee
House Bill 1171
Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Good Morning

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I have provided two documents to help illustrate through a flow chart and time line the process that is used to address an individual who can not produce proof of insurance during a traffic stop. The flow chart was actually prepared by North Dakota Legislative Council staff for the Transportation Committee in 2005. The time line is an attempt to depict the length of time necessary to complete this transaction.

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If the driver does not have proof of insurance they are asked a series of questions to determine if in fact they have insurance. It could be as simple as do you have insurance? A no response can result in an arrest for driving without liability insurance. A yes response and information about the agent and insurance company typically ends with a warning to make sure the insurance information is in the vehicle. A yes response and vague information about insurance company and agent has the potential to begin the 20 day clock.

The officer may issue a warning ticket or other paperwork instructing the driver to produce the insurance information within 20 days. The paperwork will have an address to which the information should be sent. The officer or agency must then track the warning ticket and wait for the receipt of the insurance information.

If no insurance information is received within 20 days the officer is required to submit a report to the prosecutor for a drafting of the complaint. The officer will spend 30 minutes to an hour gathering the data and completing the report. The prosecutor spends 15 to 30 minutes reviewing the report and drafting the complaint. Once drafted, the complaint must be served upon the driver and a warrant issued for their arrest. When the offender lives in the community an officer will go to the home to deliver the complaint. If the offender lives elsewhere the complaint may be sent to the local jurisdiction for service.

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When the person is arrested and held in a jail outside our jurisdiction we are required to have the person transported to appear before our Municipal Judge. At times this has involved sending a squad car and officer to as far away as Minot. From the time of the traffic stop until the driver actually appears in court a substantial amount of time can pass.

Reviewing our records less than half of my patrol officers have issued a warning ticket to show proof of insurance. When asked why they indicate the extra steps required to issue and track the warning ticket; write a report and submit it to the prosecutor; locate the driver and serve the complaint; and ultimately arrest the person on a warrant is not a good use of their time. I have enclosed comments from three other Chiefs.

From Fargo Chief of Police

From: Keith Ternes **Sent:** Thursday, January 06, 2011 1:15 PM
To: Michael D. Reitan
Subject: RE: Financial Note for current driving without liability insurance

Mike,

I wholeheartedly support the change you are suggesting to the "liability insurance" statute. It seems to me the law should require people to carry proof of insurance in their vehicle in the same manner as having your vehicle's registration card. This "20-day" issue makes enforcement of the statute much harder than it needs to be – to the point of discouraging officers from pursuing this violation – which isn't ideal especially in the aftermath of a traffic crash.

I'll be happy to provide you with the necessary numbers if you (or the other chief's you included in your e-mail) want to pursue what you're proposing.

Keith

From Keith Witt, Bismarck Chief of Police

From: Witt, Keith A.
Sent: Thursday, January 06, 2011 9:49 AM
To: Michael D. Reitan
Subject: RE: Financial Note for current driving without liability insurance

Mike,

I did run this by some of our resident experts. They expressed a concern that if someone simply doesn't have their insurance card with them, does that establish probable cause that they don't have liability insurance and are in violation of a criminal traffic offense? The person may have insurance, just not have the proof present at the time. Maybe an amendment to the effect of "that a twenty day period is to be given unless probable cause exists that the person does not

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have liability insurance at the time of driving". Then, if the person admits to the officer they don't have insurance, there would be probable cause of a violation.

Maybe another alternative would be to have a separate non-criminal statute simply requiring the carrying a current card. I don't know if it is procedurally possible, but if someone has a card to present the officer, the person could be cited with this statute and at the end of 20 days if they don't provide proof, it upgrades to a criminal violation.

Just some thoughts on this.

In terms of the cost analysis, we don't seem to have that much problem here the way our system on this is working that we could show that much cost.

Thanks for working on this.

Keith

From Scott Thorsteinson, Chief of Police Wahpeton

From: Scott Thorsteinson **Sent:** Thursday, January 06, 2011 3:28 PM
To: Michael D. Reitan
Subject: Re: Financial Note for current driving without liability insurance

Mike,

In my opinion, the current part of the statute that allows 20 days to provide proof of liability insurance makes the verification process very unwieldy and time-consuming. It puts the burden on law enforcement to track down those people that (inevitably) fail to show up with the required proof because they simply have none to provide and hope to avoid negative legal consequences through the time-honored technique of avoidance. If a motorist unable to provide proof of insurance is immediately cited at the scene of a traffic stop or crash, they are then sufficiently motivated to take the steps necessary to get the charge dismissed.

As far as actual costs go, each long form complaint issued by the city attorney costs the citizens approximately \$30-\$50 for city attorney staff time, with the expense for PD staff time likely in this same \$30-\$50 range, depending on how easy it is to locate and serve the miscreant.

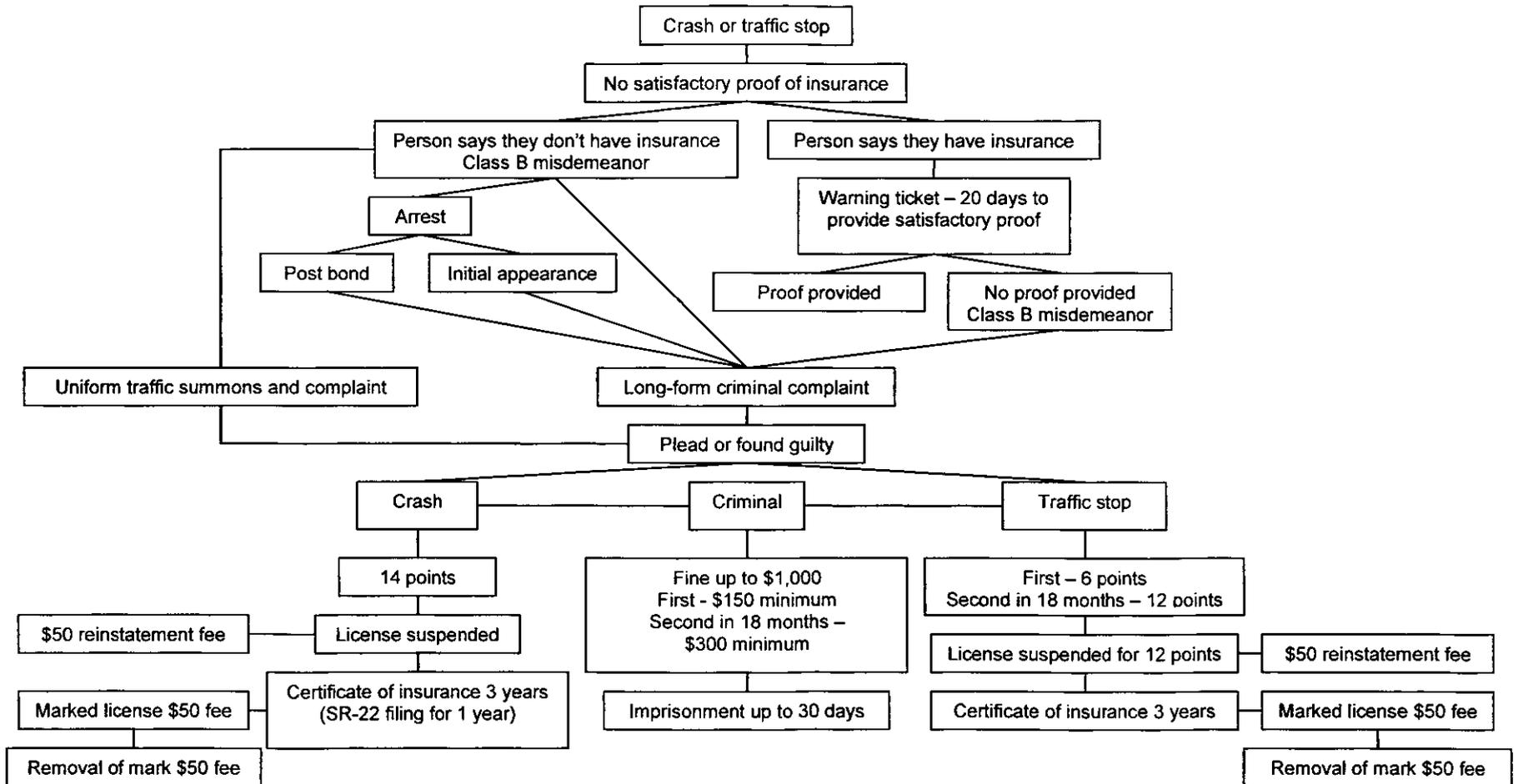
Scott T.

Searching for some national statistics I found a news release from 2006 that was put out by the Insurance Research Council. According to a recent Insurance Research Council (IRC) Study, the estimated percentage of uninsured motorists increased nationally from 12.7 percent in 1999 to 14.6 percent in 2004. However, the magnitude of the uninsured motorists problem varied widely from state to state.

I respectfully request your passage of House Bill 1171. Thank you for your time today and I will answer any questions you may have.

CRIMINAL PROCEDURE FOR DRIVING WITHOUT LIABILITY INSURANCE

The following chart follows the criminal procedure following a request by law enforcement for satisfactory proof of insurance after a crash or traffic stop. The chart addresses the typical situations that arise and there are caveats that may occur and procedures that theoretically may be followed that are not addressed in the table.



day 1 Traffic stop
warning issued

Traffic stop
citation issued

Driver can provide information at
anytime and case will be closed.
Only record will be of a car stop.
Applies to both warning and citation.

day 20 officer gathers data and begins report

day 22 report forwarded to prosecutor

day 27 complaint authorized/ signed

if driver can be found
they are served complaint and given court date

day 41 driver appears in court/ driver not served or does not appear and warrant is issued

driver appears in court
driver appears for trial/ found guilty

day ?? driver arrested and brought to court/ pleads guilty or not guilty

day 62 driver who appeared day 41 shows for trial/ found guilty or not guilty
driver fails to show for court and warrant is issued

day ?? driver appears in court found guilty or not guilty
(21 days following arrest)

END

END

driver appears in court

Driver shows proof and
is dismissed
Pleads guilty and sentenced
Pleads not guilty/ set for trial

Testimony in Opposition of HB1171

March 24, 2011

Senate Transportation Committee

Testimony of Keith Witt

Chairman Lee and members of the Transportation Committee, I am offering these comments in opposition of HB1171. For the record, my name is Keith Witt and I am Chief of the Bismarck Police Department.

I believe there are too many drivers in North Dakota who drive without liability insurance and I agree with the goal of HB1171, which is to make it easier for officers to enforce the law concerning driving without liability insurance. However, I have concerns with the implementation of HB1171. The way I interpret HB1171 is that it would allow an officer to charge a driver with the offense of driving without liability insurance if the driver was not able to produce valid proof of liability insurance at the time of a traffic stop.

HB1171 pertains to Section 39-08-20 of the North Dakota Century Code which provides that a person driving without a valid policy of liability insurance is guilty of a class B misdemeanor, making it a criminal traffic violation, rather than a simple infraction. An officer must have probable cause to believe that someone has violated a criminal traffic violation, and I don't believe the simple act of not having valid proof of liability insurance at the time of a traffic stop meets the necessary probable cause requirement for a criminal violation.

Under the current language of Section 39-08-20, here are the 3 basic scenarios following current law that may occur when an officer makes a traffic stop and asks the driver for proof of liability insurance:

1. The officer asks for proof of insurance and the driver produces an "insurance card" or some other valid proof, such as a copy of a liability policy. The officer views the proof and determines the liability insurance policy is current and this satisfies the legal requirement.
2. The officer asks for proof of insurance and the driver has no proof and admits to the officer that there is no insurance on the vehicle. At that point, the officer has probable cause of a

violation and can arrest the person and issue them a citation for driving without liability insurance. The rules issued by our Municipal Court in Bismarck is that if the driver is a local resident, they may be released on a signed promise to appear in court. However, if the driver is not a local resident, they are required to post bond for this criminal traffic violation in the amount of \$400.00. If the driver is unable to post bond, they are taken to jail until the next scheduled Municipal Court session.

3. The officer asks for proof of insurance and the driver has no proof of insurance and tells the officer they have insurance but just don't have the proof in the car, or the driver may say he/she is not sure if there is insurance, but will have to check. In those situations the officer issues a written warning ticket, providing the driver 20 days to provide proof of insurance (or 3 days if it involves the investigation of an accident). If the driver subsequently submits the proof within the required time period, that proof is forwarded to the officer and filed in our records system. The driver has then completed the requirement and the issue is resolved. However, if the driver does not submit the proof within the required time, the officer prepares a short report which is forwarded to the prosecutor for drafting of a formal complaint against the driver for violating this statute. A summons and complaint is then issued for the driver to appear in court on the charge.

While the process outlined in #3 above is somewhat cumbersome, it does provide for an effective system to ensure that drivers are required to provide proof of liability insurance and that they may be charged for failing to provide proof. My concern with HB1171 is that if a driver does not have proof of insurance with them, they are in violation of the statute and may be issued a citation and possibly taken to jail. I do not believe that simply not having proof of insurance provides the necessary probable cause. As a result, if this bill does go into effect, I would not change our current policy at the Bismarck Police Department which coincides with current state law. If a driver does not have valid proof of insurance, but does not admit to not having insurance, our policy will remain that an officer will issue a warning ticket and provide the driver a reasonable opportunity to provide that proof of insurance before they are charged. I have serious concerns with placing a person in jail just for not having valid proof of insurance with them in the vehicle as I don't believe it is the right thing to do and I also have concerns of liability in those situations. I believe that arresting someone without proper probable cause creates significant 4th Amendment issues.

While HB1171 would not require us to change our policy at the Bismarck Police Department and we could still provide drivers with a 20 day opportunity to provide the proof of insurance, I am opposed to the removal of the language that is being struck from 39-08-20 as a result of this bill. I have concerns regarding striking of lines 9 and 10 that state "If unable to comply with the request, the person may be charged with a violation of this section". The removal of that language may lead to additional difficulties in prosecution for a violation of this offense.

I appreciate your thoughtful consideration and encourage you to move for a do not pass recommendation for HB1171. I would be glad to answer any questions.