

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

1295

2001 HOUSE TRANSPORTATION

HB 1295

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1295

House Transportation Committee

Conference Committee

Hearing Date January 26, 2001

Tape Number	Side A	Side B	Meter #
1	x		4,382
		x	130
Committee Clerk Signature <i>Lauren L. Zink</i>			

Minutes: Rep. Weisz - Chairman opened the hearing on HB 1295; A BILL for an Act to amend and reenact section 26.1-40-15.1 of the North Dakota Century Code, relating to underinsured and uninsured motor vehicle insurance.

Rep. Keiser: I am George Keiser, District 47. This bill is primarily addresses a loophole in the current insurance coverage law for driving automobiles in our state. What we attempt to do is to redefine underinsured motor vehicles. The loophole is this, that a driver as one example -- is driving a car owned by another party with their permission. So there are in effect potentially two policies covering any accident which might occur - one on the original car owned by someone else and the policies which would follow that driver. There is also, if I am the innocent third party in the action and I am damaged -- like you I can collect on the uninsured motorist vehicle insurance. So I will have coverage where in those rare instances in this state where you might be involved in an accident where the coverage is either nonexistent or where whether it is inadequate. What this bill would required is that for both of the original insurance policy limits

to be address in the solution or resolution of the claim before going against my uninsured motorist liability insurance as the third party. That is what this bill really intends to do; to clarify the law so that third party - the innocent party isn't having the claim coming against their insurance prematurely.

Rep. Weisz - Chairman ( 4690 ) If I understand correctly, you are basically taking both policies and the sum together to be able to apply against the coverage?

Rep. Keiser: The first policy kicks-in as it should and then the second policy kicks-in before it gets transfer to you the third party.

Pat Ward: I am Patrick J. Ward of the Zuger, Kirmis and Smith Law firm. I have prepared testimony but I want to point out that attached to my prepared remarks is a legislative history of the uninsured and underinsured motorist law in North Dakota. A copy of Mr. Ward's presentation is attached.

Rep. Hawken; (5233) Would you clarify what the law is about --- If you are going to drive a car, what is your legal responsibility for insurance?

Pat Ward: The statute has certain minimum insurance requirements -- it will require you to have strong enough -- it can be adjusted -- but my understanding is that at the present time it is 25 - 50 for bodily injuries and liability. In other words \$25,000 per person, \$50,000 per accident. So if you had an accident and there was more than 2 individuals none would be entitled to a full \$25,000. That is the minimum required by law.

Rep. Hawken: Is there any way to enforce whether or not you have insurance?

Pat Ward: There are ways, if the police catch you driving they site the driver -- there are penalties for driving without adequate insurance but enforcement is still a problem.

Pat Ward: ( cont'd ) You can buy additional insurance. Mr. Ward continued to review several types of coverages and various examples of coverage and amounts.

Rep. Price: (5556) Medical costs are going up dramatically, how do we sit with 25 and 50 in compared with other states?

Pat Ward: I think that is a small amount but I think it is pretty standard. There is a representative of the Insurance Department here and he may have more on that.

Rep. Carlson: Basically, if I understand this your are clarifying this to go to the original intent of the bill when it was originally written? Years ago?

Pat Ward: That is correct.

Rep. Carlson: If I read this other line, a judges ruling is basically what put us in -- where we want to review this?

Pat Ward: There is at least one judge who has read the statute to not require the policies to be bundled together and allow an individual to collect almost double the amount from the liability policy; and, then still proceed in a law suit against their underinsured motorist carrier. Which essentially would rewrite the system into a excess type system which clearly the from the legislative intent from '89 session and would be a different type coverage and much more expensive; the compromise which was reached was for a more modest system that we have.

Rep. Carlson: (5924 ) Is it typical in other areas to bundle these types of coverages of two individuals together?

Pat Ward: I believe that it is. There are some states that have a different system by statute but in states who do it like our it is common to bundle them.

GO TO SIDE B FOR CONTINUATION OF HB 1295 TESTIMONY. ( 5990 )

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Kent Olson: I am the Executive Director of the North Dakota Professional Insurance Agents Association which are property and casualty agents around the state with about 200 members. They sell basically, auto insurance. One of the questions we always get as insurance agents for property and casualty insurance is what am I paying for -- why do I have to buy underinsured and uninsured insurance motorist coverage. This includes my Dad who always asks do I have to buy uninsured and underinsured motorist coverage. It is one of the most important one you can buy because it protects you, me, the passengers from the at fault other party -- so you have to have the high limits. We support this bill because it clarifies. It doesn't allow for stacking or for making money outside of your actual compensatory injuries. This clarifies it and we support it.

Rep. Schmidt: ( 246 ) In regards to the question Rep. Price asked - is 25 - 50 -- are there a lot of 25 -50 policies written?

Kent Olson: Even tho' it is low -- it may appear to be artificially low - - remember that we may have visitors to our state from L. A. County for example, 5-10 and 3 thousand. So if somebody from L.A county runs into you and is at fault -- your 25 - 50 will trigger.

**APPEARING OPPOSITION TO HB 1295:**

Sonna Anderson: I am an attorney practicing in Bismarek. I am a registered lobbyist for the North Dakota Trial Lawyers Association. Representing the Trial Lawyers, I speak in opposition to HB 1295. A copy of her prepared remarks are attached.

Rep. Jensen: ( 875 ) Would you repeat the code numbers -- the section?

Sonna Sanderson: Sure 26.1 - 40 -15.4.

Rep. Weisz - Chairman Current law states that say that it can't exceed what the level is of the uninsured policy is - right? Say if they are insured for \$100,000 and is the owners vehicle had \$50,000 the insurance would kick-in for \$50,000 -- So the difference between the two so the sum of these polleles leaves nothing left for the uninsured to kick-in?

Sonna Anderson: No, I believe that it kicks-in to whatever damages are left uncompensated. I could be wrong on that.

Rep. Weisz - Chairman what is the problem with requiring that first party to kick-in?

Sonna Anderson: Say that in the case that has been suggested, if I am the victim in the example -- I haven't seen Mr. Traynor letter so I don't know if it is the exact same case -- but if I had \$100,000 uninsured coverage and in that case if there was several victims -- so there is more than the -- I believe there was 5 victims so nobody got the \$100,000 because there was only \$400,00 to be divided so they each got only \$80,000. So when it came to the drivers insurance policy and again one of the victims claimed the \$400,000 out of that either because that was divided among several people. When they compared the drivers vehicle -- it was the owners that came up to the \$80,000 and they had \$100,000 coverage under their own- so they could make a claim against their policy -- to at least have it considered. However, if they get \$80,000 from the owners policy and \$80,000 from the drivers policy. If you add those together you get \$160,000 coverage they have gotten; but still may not compensate them for their damages. They may still have damages which exceeds their compensation. They aren't able to look at the insurance policies.

Rep. Weisz - Chairman but if the underinsured is only \$100,000 to start with and you just said that they collected from their owners policy \$80,000 they are going to cross over the \$100,000 anyway so it wasn't going to compensate them for personal damages they incurred--I am still not

clear on how-- say how not bundling the two how are you getting over that limit the unissued costs? I am just taking your example -- maybe we could make it a little simpler? We don't have to bring in a lot of different parties here. If you have a \$100,00 underinsured policy --the owners policy is for \$75,000, there's an accident and a person's damages exceed \$100,000, they collect \$75,000 from their policy, correct? And how much are they going to collect from the underinsured? The full hundred grand or the 25 from the underinsured, the difference between the two?

Sonna Anderson: I don't know -- I can't answer that.

Larry Maslowski: I am the Senior Analyst from the Insurance Department. I believe the answer to your question is the difference in limits simply the trigger. Whether you can make a claim against the coverage you carry. So if you had \$25,000 liability insurance and \$100,000 underinsured motorist and your damages are let's say even \$200,000. You should be able to collect your \$75,000. The difference here is you don't trigger your underinsured. And, you should be able to justify damages due for \$100,000.

Rep. Weisz - Chairman ( 1311 ) I believe you are correct the dollars are the trigger number and has nothing to do with coverage.

Larry Maslowski: Correct.

Rep. Mahoney: ( 1326 ) I am still not real clear on --from the example on what this legislation would change the current law versus the -- where you wouldn't get as much underinsured now? To use the example, \$500,000 of damages, The other coverage is --\$100,000 or whatever of \$7500 or whatever -- how does it restrict -- I am not clear?



Sonna Anderson: I was not involved in that case, I reviewed the case yesterday, so I wrote down -- I will try to explain the case -- the arguments that were used by the plaintiff's attorney was that there were two deaths in the accident -- and he was going to let another injured person -- that injured person, his client received \$80,000 from the owner's policy and \$80,000 from the driver's policy -- and then was making a claim on their own underinsured motorist vehicle coverage. The insurance company argued that the victim had \$100,000 underinsured motorist coverage. The trigger --- the difference was -- just look at the \$80,000 that she received from the owner's policy and compare that to her \$100,000 underinsured motorist coverage. That's what her attorney argued and that's what the judge -- yes, that triggered and allowed her to make a claim on her own underinsured vehicle insurance coverage. What the insurance company argued was that you should take the \$80,000 she got from the owner -- add the \$80,000 she got from the driver -- that makes \$160,000 she got. You compare the \$160,000 to her \$100,000 and she is not able to make any claim against her own insurance policy.

Rep. Mahoney: ( 1497 ) So in other words, the underinsured -- they interpreted to mean that you are going to be guaranteed basically by your underinsured to receive the \$100,000 . Beyond that you are underinsured -- so if you get less than that you are brought up to the \$100,000 damages. If you are over a \$100,000 some other sources you have ---

Sonna Anderson: That's the idea that the insurance company wants. If you get over \$100,000 from any source -- they don't have to kick in and honor their policy that they have issued. And the other argument was -- right now we just compared the driver of one vehicle to the insured's policy. The owner's policy and the insured's policy and you don't add all the other policies together that might be available.

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Rep. Mahoney: The sum of your testimony is basically is that this bill is going to codify their interpretation so that me as a victim will be limited to getting my underinsured's policy -- to whatever my underinsured policy limits are? So if I get what my underinsured policy amount from other source -- I am not going to get anything from my underinsured. The \$100,000 policy limits -- If I get \$120,000 from some other sources even if my damages are \$600,000 I am not going to get anything from my underinsured motorist.

Sonna Anderson: That's right. You aren't going to be able to make a claim on your own policy. There being no other person's wishing to appear to testify either for or against HB 1295, Rep. Weisz - Chairman closed the hearing for receiving any further testimony. ( 1650 ).

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1295 B

House Transportation Committee

Conference Committee

Hearing Date February 2, 2001

Tape Number	Side A	Side B	Meter #
1		x	2,517
Committee Clerk Signature <i>Laura Beth Jantz</i>			

Minutes: Rep. Weisz - Chairman opened the discussions for action on HB 1295.

Rep. Weisz - Chairman reviewed the intricacies of the impact this bill regarding uninsured and underinsured motorist insurance would have. Rep. Mahoney amplified that discussion.

Following discussion, Rep. Price moved a 'Do Not Pass' for HB 1295.

Rep. Mahoney: I second the motion.

On a roll call vote the motion carried. 12 yeas 0 nays 2 absent.

Rep. Schmidt was designated to carry HB 1295 on the floor.

End ( 4336 )

Date: 2/02/01  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1295

House Transportation Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do Not Pass

Motion Made By Rep. Price Seconded By Rep. Mahoney

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Howard Grumbo	✓	
Chet Pollert - Vice Chairman	✓		John Mahoney	✓	
Al Carlson	✓		Arlo E. Schmidt	✓	
Mark A. Dosch	✓		Elwood Thorpe	✓	
Kathy Hawken	✓				
Roxanne Jensen	✓				
RaeAnn G. Kelsch	✓				
Clara Sue Price	✓				
Dan Ruby	✓				
Laurel Thoreson	A				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Schmidt

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

