

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1302

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1302
1/23/2017
27205

- Subcommittee
 Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Property & casualty insurance covered loss.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing of HB 1302.

Representative Schobinger~District 40: Introduces HB 1302. We don't need replacement cost, it's the actual cost. My understanding is that they can pay the lesser value. I have some amendment that I can share with the committee.

0:12

Rep Laning: One of the discussions we had related to someone not, (inaudible), but maybe parts, (inaudible), is there anything in this bill to prevent something like that?

Rep Schobinger: We would hope that current laws, the investigation would catch that. That is our job.

Rep Ruby: Explain why is replacement cost more expensive than actual cash value.

Rep Schobinger: I buy a brand new mobile home. The second I take that out, the home depreciates a bunch. I get it home, it burns down & I have a replace cost policy of \$110,000 on it. \$110,000 is what the value is. I have an actual cash value policy & the adjuster says, it cost you \$110,000 but when you took it off the lot, cash value became \$80,000. That is the number that replaces it.

Rep Ruby: (Inaudible).

Rep Schobinger: It would apply to home, steel buildings, they cost you one thing to put it up but over time it depreciates. The cash value always goes down but the replacement value stays the same.

Rep Ruby: (inaudible).

Rep Schobinger: There is a difference between what we call replace cost & guaranteed replacement cost. Replacement cost is the number that is on that policy. Some companies have what is called a guaranteed replacement cost, which means, what it actually takes to replace it, they will pay.

Chairman Keiser: (Inaudible).

Rep Schobinger: The value of the building?

Chairman Keiser: Yes.

Rep Schobinger: The valued policy law in ND is that these things don't apply, then that is the number that stands.

Chairman Keiser: (Inaudible).

Evan Mandigo~Insurance Agents of ND: Attachment 1.

11:00

Rep Laning: Most of the conversation was about replacement value, but I could foresee in the event that the insured would try to go the other way now, you have actual cash on a new policy. In that case, I assume that he would receive actual cash value? Would there be an argument that we would want a replacement value, how would you (inaudible).

Mandigo: The insured option is a retroactive at the time of the event of the decision. It has to be done just before or at the time the policy issued because the premium paid is based on a number. If the insured gets buyer's remorse & the building is destroyed in the first 90 days, it not the time (inaudible). You have 2 choices but we don't want that choice to be made for the client when they have paid.

Rep Laning: Are you saying that the 90 days doesn't mean anything?

Mandigo: If the valued policy provision applied to the first 90 days of the policy & after that these conditions don't apply.

Rep Laning: What exactly does the 90 days do for the insured?

Mandigo: The 90 days waiting period, it is enacted as a protective mechanism both the carriers & the insured. The carriers have 90 days for the policy to start to go out & inspect.

Rep Kasper: Why doesn't the insurance company or agent value the building while they are talking about insuring it before it goes into effect? Isn't there a method?

Mandigo: I believe that issue is dealt with on page 2, item 3. When the policy starts there is a method of determining premiums. Our point is, it they are in the first 90 days, (inaudible).

Rep Kasper: It appears we don't have concrete definitions. We are talking about three different choices. One, the face of the policy, actual cash value & two, replacement cost three, original cost plus depreciation. (inaudible) write a policy for.

Mandigo: I don't think there are definition in the century code & that's causing the problems.

Rep Kasper: Why don't we amend this bill to specifically define the definitions.

Mandigo: We would be delighted to bring the precision to the century code.

Rep Louser: What happened from last session & now?

Mandigo: They issued interpretation from (inaudible). What we discovered instead of 2 options, we noticed right away that it turned up to be 3 because we didn't get the words right.

Rep Louser: Why isn't the insurance office is responsible to educate the providers.

Mandigo: (Inaudible).

Rep Louser: It's the insurance office to give providers any information & any changes that made & found, so there isn't any miscommunication.

Mandigo: My understanding is that the ISO issues on their guidance. I'm not sure how that happens.

Rep Louser: **Line 20**, policy is written as an actual cash value, to me it reads that it's provider friendly. I wondering if you're looking at protecting the consumer. Shouldn't it state to the effect, accept by the insured opposed to is written. I read that as the provider of both the policy, here it is. Maybe the definition should say what the insured accepted. Does that make sense?

Mandigo: I see your point, if the implication is what the insured wanted (inaudible). We thought in 2016, looked like a relatively easy fix but didn't turn out.

Rep Lefor: So in 2015, you started to try to correct this, then the insurance services created the forms. So, do they create the forms & act as advisors to the insurance industry? Second question, if this is the case, have you ran idea past them to determine whether or not (inaudible)?

Mandigo: The second question, I don't know if we have status with the office. The first question, I don't know if they would issue a preapproval, I think that was outside their boundaries.

Rep Lefor: Have you vetted this in other states on how they handle this type of thing?

Mandigo: Other states have similar options, but no, I didn't.

Chairman Keiser: We are concerned about all, but mainly (inaudible) how often do the brokers go through this?

Mandigo: During the first 90 days, you may not get what you pay for. I asked one of our members, how often do members have the conversations, the answer was zero. What we are saying that actual cash value as it stands right now, is a possible option. In order to protect ourselves, we need to put a sticker on that says that you may not get replacement costs. That's clearly what we are not going to do but we just wanted to close this.

Chairman Keiser: The law is clear, I tell my friend, do your due diligence on your policy. When you continue the new policy with a change, do you talk to the carrier? (inaudible)

Mandigo: We want to keep that 90 days from resetting.

Rep Ruby: The reset should have the 90 days. (inaudible).

Mandigo: There are some exceptions to the 90 days' period & one is which is a 25% (inaudible). The 2nd carve out if you will, is policy with limited increase 25% or more because you get an additional or finally you have followed the recommendation of the insurer because they ran replacement cost. Any of the three exceptions of A doesn't apply. People who are doing good due diligence, doesn't happen.

Rep Ruby: (inaudible)

Mandigo: The way we read it is that 90 day's reset every renewal period. Whether it's a 3 year or a 1 year. That 90 days resets each time that insurance agent sits down & talks about how you should insure your building.

Rep Kasper: When we renew, we don't sit down, I don't think that is good.

Mandigo: (inaudible in parts of the paragraph) The normal practice, when you establish a new relationship, the tradeoff is (inaudible) on a guaranteed bases, that is less prevalent.

Chairman Keiser: Is there anyone else here to testify in support, opposition, neutral position?

Chrystal Burtuska~ ND State Insurance Dep-Product Filing Division Director: Gives a history lesson of what happened last session. The insurance department is neutral on this bill.

39:40

When we changed the language of the bill, if you look on line 13, "if the covered loss occurred within 90 days after the policy effective date. Previously, that's the issue date. So, even it says 90 days, if a company gets their underwriting done new on your home, then a week, 30 days or 45 days, this is a moot point. This whole law goes out the window because the effective date of your policy. We given some proposed verbiage to Evan to potentially propose as an amendment. So, at the end of the day, where they are trying to get to is, they

want the policy paid. If I have a partial loss, if I have a total loss, for example, my policy, if only 1/2 of my house burns down, my policy is going to dictate that is paid out as either replacement cost or APB. The 90-day provision only applies for a total loss, the whole house. If only partial house burns down, then it's applicable to the provisions in the policy regarding the partial loss. So, we proposed some verbiage to take the APB & the replacement cost out completely. It's too broad to zero in on that. Basically, if you have a total loss within the first 90 days, it would it would be paid as if it was a partial loss.

Rep Louser: Asks about a real-estate transaction, how did we determine the 90 days was chosen?

Burtuska: I do want to clarify something. This 90-days doesn't start over when you renew your policy. If I have changed the value of my policy in any way, my house still \$300,000, it's 90 days. If you read the section of the law, subdivision A does not apply to renewal policies with limit increases less than 25%. So, if it's 26%, then yes law would come into play. Just because you renew & you pay \$2,000 premium, 90 days doesn't start over. As to your question, I would have to differ the question & do some research. We are neutral & I can't say how long it takes a company to underwrite. Home owners is probably quick, but the larger commercial properties, it will probably take longer to underwrite. The 90-days has been on the books for a long time.

Rep Ruby: Is the 90 days when (inaudible).

Burtuska: That a completely different policy. The 90-days would be the effective of the cost (inaudible).

Chairman Keiser: (inaudible) It doesn't retrigger the 90 days, agents walk a tight line. Explains a personal situation about renewing policies.

Burtuska: We have yet have heard any issues.

Chairman Keiser: Is there anyone else here to testify in the neutral position? What are the wishes of the committee?

Rep Kasper: This is a complex issue; I would suggest that we sit down & simplify the amendments.

Chairman Keiser: Closes the hearing.

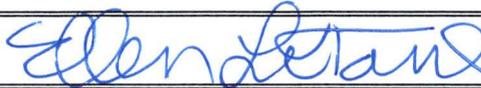
2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1302
1/25/2017
PM
Job Number 27416

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Property & casualty insurance covered loss.

Minutes:

Attachment 1

Chairman Keiser: Reopens the hearing of HB 1302.

Rep Laning: Attachment 1. Changes 90 days to 60 days. Subparagraph deleted with new language.

Chairman Keiser: I would like the insurance department to come up.

Johnny Palsgraaf~Attorney-Insurance Dept: There was no definition for cash value, this amendment was proposed early on. These policies, the roof may be saying actual cash value, these policies, you can't define these terms.

Rep Kasper: How are you defining partial loss.

Palsgraaf: The partial loss is defined in the policy itself.

Chairman Keiser: We had bad language, does this really fix it?

Palsgraaf: I understand what you are saying, when the total loss section is there for supplementary to protect consumers. The partial loss, they are defining each piece. Now, you will pay, the underwriter will state in policy the partial loss.

Chairman Keiser: What will you pay?

Palsgraaf: The lesser of, this is in the first 90 days. The idea of the 90 days' time is to adjust the face value. The contract is laid out in the policy.

Rep Kasper: What would happen if you took "as" out?

Palsgraaf: My opinion, it will not change it.

Rep Laning: Explains a situation.

Rep Ruby: According to the amendment we will go to the 60 days instead of the 90 days, would that trigger?

Palsgraaf: Yes, that's what it's getting to.

Rep Kasper: I would like to see the definitions, what does the law say?

Palsgraaf: The filing form itself. I lay out my term in the filing form. The payment is wrapped up in the policy itself.

Chrystal Burtuska~Form & Rates for the Insurance Dept:

Chairman Keiser: Does the department have any problem with the 60 days?

Burtuska: No

Rep Laning: Moves the adoption of amendment 17.0743.01001.

Rep Ruby: Second.

Voice vote-motion carried.

Rep Louser: I will support 60 days but would like 30 days.

Burtuska: The commercial takes longer.

Chairman Keiser: What are the wishes of the committee?

Rep Laning: Moves a Do Pass as Amended.

Rep Bosch: Second.

Roll call was taken for a Do Pass as Amended on HB 1302 with 13 yes, 0 no, 1 absent & Rep Laning is the carrier.

January 26, 2017

1/26/17 DD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1302

Page 1, line 13, overstrike "ninety" and insert immediately thereafter "sixty"

Page 1, line 14, overstrike "ninety" and insert immediately thereafter "sixty"

Page 1, line 16, overstrike "ninety" and insert immediately thereafter "sixty"

Page 1, line 18, overstrike "The actual cash value or replacement cost of the property,
depending on the"

Page 1, line 19, overstrike "policy provisions applicable to the structure"

Page 1, line 19, remove "in accordance with whether the"

Page 1, remove line 20

Page 1, line 21, replace "policy" with "The amount paid in accordance with the policy provisions
as if a partial loss occurred"

Renumber accordingly

Date: Jan 25, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1302

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0743.01001

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Laning Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____ Voice vote ~ Motion carried

Date: Jan 25, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1302

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Refer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider _____

Motion Made By Rep Laning Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	<u>Ab</u>		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Laning

REPORT OF STANDING COMMITTEE

HB 1302: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1302 was placed on the Sixth order on the calendar.

Page 1, line 13, overstrike "ninety" and insert immediately thereafter "sixty"

Page 1, line 14, overstrike "ninety" and insert immediately thereafter "sixty"

Page 1, line 16, overstrike "ninety" and insert immediately thereafter "sixty"

Page 1, line 18, overstrike "The actual cash value or replacement cost of the property, depending on the"

Page 1, line 19, overstrike "policy provisions applicable to the structure"

Page 1, line 19, remove "in accordance with whether the"

Page 1, remove line 20

Page 1, line 21, replace "policy" with "The amount paid in accordance with the policy provisions as if a partial loss occurred"

Renumber accordingly

2017 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1302

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

Engrossed HB 1302
3/7/2017
Job Number 28773

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Lebelt

Explanation or reason for introduction of bill/resolution:

Relating to property and casualty insurance covered loss

Minutes:

1 Attachment

Chairman Klein: Called the committee back to order.

Representative Schobinger: Introduced the bill. The bill before you is another attempt on a bill the legislature thought they had fixed last session. This bill deals with what is called the Value Policy Law of North Dakota. He went on to explain the bill. (:25-6:30)

Senator Roers: I am assuming it has no effect on builder's risk policies, correct?

Representative Schobinger: No, this has to do with a policy written on your commercial building where there is a total loss. With a builder's risk policy, they built it up, the value is increasing as they finish it.

Evan Mandigo, State Executive of the Independent Insurance Agents of North Dakota: In support. Written testimony, see attachment #1. ((7:32-18:50)

Chairman Klein: This seems simple enough. If you negotiated for actual cash value, I would think you would want to get actual cash value if you negotiated for replacement cost that is what you should get. Obviously not everyone was seeing it that way.

Evan Mandigo: The ultimate resolution of a claim that I am aware of was we got it but it was only after some very strenuous advocacy by the client's producer. A client shouldn't have to go through that, it should be crystal clear on day one what the total loss value is during that exclusion period. Again if this bill is approved on day sixty-one, that amount of insurance that shows on the policy is what the insurance company owes.

Chairman Klein: So we are just making day fifty-nine and day sixty-one about the same. We are just saying if that is what you negotiated for, that is what you get.

Evan Mandigo: Yes.

Steve Becher, Executive Director of the Professional Insurance Agents of North Dakota: In support. I thought I would clarify a couple of different things. This law is basically a company protection law as well as a consumer protection law. The ninety days now is a company protection law so people don't come and highly over insure their buildings and then they don't get the value that is listed on the policy. After the ninetieth day the company has had time to underwrite it and then there is no quiver on the amount. Whatever is listed on the policy is what they are going to pay. If the company has not determined that they have over insured to that point, that is the dollar amount. When you changed the law last session we changed it to whatever the policy provisions are in the policy. The concern after the fact is what happens if a company comes back with a new policy provisions and says, in the first ninety days we ended up paying ACV. We were worried that the company would come back with a new policy provision with this we don't think they will do that because they have to pay partial loss based on what the insured has purchased and if they have to pay total losses either the valued policy limit or the replacement cost, whichever is less in the first ninety days. That should eliminate that endorsement issue. (20:24-21:51)

Chairman Klein: Closed the hearing.

Senator Poolman moved a do pass.

Senator Roers seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

Senator Poolman will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1302, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1302 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1302

Testimony for HB 1302
House IBL Committee
January 23, 2017

Good Morning, Mr. Chairman and members of the House IBL Committee. My name is Evan Mandigo State Executive of the Independent Insurance Agents of North Dakota.

I am here today to testify in favor of HB 1302. Section 26.1-39-05 of the NDCC deals with how a total loss occurring within an initial waiting period of a property insurance policy may be settled.

This is not the first time the issue has been deliberated by the Legislature. SB 2105 was enacted by the 2015 session and signed by the Governor with the assistance of this committee. We felt the issue was resolved, but discovered that the language was not quite right. We are here today with a bill we believe does so.

The bill again addresses provisions of Chapter 26.1-39-05 of the North Dakota Century Code known as the Valued Policy Law. North Dakota is one of 18 states with such a law. The short version is if there is a total loss to real property, during an initial waiting period the amount written in the policy becomes the settlement amount unless the insured has selected either Replacement Cost or Actual Cash Value (ACV)

Following the enactment of SB 2105, the Insurance Services Office issued an interpretative endorsement allowing ACV as an involuntary settlement option regardless of what the insured selected. The carrier now has effectively 3 settlement options: The lesser of the Face amount of the policy, Replacement Cost, or ACV. We strongly believe there should be only 2: The face amount of the policy or what the insured selected when negotiating and paying the premium for the policy.

We believe Lines 18-21 on page 1 make the settlement options clearly the lesser of the face amount of the policy or either replacement cost or ACV. We want ACV removed as an automatic default option unless that is what the insured wanted.

Mr. Chairman and members of the House IBL Committee, this concludes my testimony. We urge a Do Pass recommendation from the committee. I would be happy to respond to your questions.

Jan 25, 2017

1

17.0743.01000

Prepared by Legislative Intern 8
January 24, 2017

PROPOSED AMENDMENT TO HOUSE BILL NO. 1302

Page 1, line 13, replace "ninety" with "sixty"

Page 1, line 14, replace "ninety" with "sixty"

Page 1, line 16, replace "ninety" with "sixty"

Page 1, replace lines 18 through 21 with the following:

"(2) Payment in accordance with the policy provisions as if a partial loss occurred.

Testimony for HB 1302
Senate IBL Committee
March 7, 2017

Good Morning, Mr. Chairman and members of the Senate IBL Committee. My name is Evan Mandigo State Executive of the Independent Insurance Agents of North Dakota.

I am here today to testify in favor of HB 1302. Section 26.1-39-05 of the NDCC deals with how an insured total loss to real property may be settled. It is otherwise known as the Valued Policy law and is intended to be a consumer protection statute. North Dakota is one of 18 states with a Valued Policy law. The substance of the law is once a value for insurance purposes is established, that is the amount of insurance for calculation of a total loss amount. It prevents the carrier from quibbling about the amount of insurance applicable to a total loss.

As a trade-off, carriers are allowed a period of time to check on the values established and do any due diligence before the full protection of the Valued Policy law kicks in. Depending on the state, that waiting period ranges from 30-90 days. We allow 90 at present but HB 1302 lowers that to 60.

What we are talking about today is what are the rules during the initial waiting period? A better way to put it is we are talking about exceptions to the general premise of the Valued Policy law that the amount of insurance on the policy governs a total loss scenario. Those exceptions start at line 13 on page 1 and continue over to line 4 of page 2. Our intent when this issue was before the 2005 session as SB 2105 the carrier had only 2 options for a total loss settlement during the waiting period. Face amount of the policy, or replacement cost or Actual cash value (whichever the insured picked usually at inception).

Following the enactment of SB 2105, the Insurance Services Office issued an interpretative endorsement still allowing ACV as an involuntary settlement option regardless of what the insured selected. The carrier still has 3 settlement options: The lesser of the Face amount of the policy, Replacement Cost, or ACV. We

strongly believe there should be only 2: The face amount of the policy or what the insured selected when negotiating and paying the premium for the policy.

We believe Lines 17-20 on page 1 clarify the settlement options so that the amount paid is either the full value of the policy or is handled like a partial loss. Our intent is and always has been to make sure the insured always gets the settlement to which they are entitled. Right now, a carrier can and has on at least one occasion we are aware of tried to impose an ACV settlement citing 26.1-39-05 as the authority when the insured had paid premium for replacement cost.

Here is a for instance. One of our member's clients constructed a detached garage near a building he owned. Coverage was placed by the producer with the carrier for an amount equal to the construction cost. The premium was accepted and everything was cool. Approximately 30 days later, the client was working on a motorcycle in the garage and left the building. Unknown to him, a gasoline can had tipped over and while he was gone, the gasoline found a spark and the ensuing fire totaled the garage. There was no allegation of improper conduct by the insured. The carrier maintained they only had to pay some version of ACV for this brand-new building. The insured was offered a total loss settlement significantly less than the cost new stating they could do so because ACV was an option (and involuntary) under the Valued Policy law. Only after vigorous advocacy by the producer at the Home Office of the carrier was that position reversed. We want to take this scenario completely out of play. The insured should always receive a loss settlement equal to what they bargained for and paid premium for in good faith. If the insured decides to accept and pay premium for ACV, that is fine, but it should not be imposed if another valuation method was selected in good faith if a total loss happens during the initial 60 days of the policy.

Mr. Chairman and members of the House IBL Committee, this concludes my testimony. We urge a Do Pass recommendation from the committee. I would be happy to respond to your questions.