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ROLL NUMBER

DESCRIPTION

1339

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1339

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1339

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1609

Committee Clerk Signature

Stephanie J. Thomas

Minutes:

Chair Keiser opened the hearing on HB 1339.

Rep. Shirley Meyer, District 36: This bill has come about, because of circumstances in Dickinson that have happened. The 3rd week in June, the last two years in a row, we have had not a lot of moisture in the form of rain, but we have had severe hail storms that have caused millions of dollars of damage in the Dickinson area. The first time when everyone lost ever window and siding on the west side of their home, they pulled out their insurance policy and looked it over. Great deals of people in Dickinson have Colorlock siding, and that's a problem. It's probably the best siding ever made, but the problem is Colorlock siding is no longer in business, and homeowners found out in a hurry, as did the roofers and other repair people, there is nothing out there that matches Colorlocks siding, and that is why this bill is here. The homeowners were very surprised that the insurance companies had no intentions of siding the other 3 sides of their house to match the west side, and this bill is trying to address the situation. All this is going to do is if your insurance company does not cover indirect loss for consistent repair, you have to disclose that to the person buying your insurance.

Brian Bowker, Dakota Fire Insurance: See written testimony #1.

Rep. Thorpe: Could we not sell policies as you presently have, and they could explain to the homeowner the difference, and if they want to pay the premium for the higher coverage, you can offer that?

Brian: One of the problems that I see on that is how you define that scope of damages. It's very challenging in terms of contract to very clearly define what we intend to pay for under the contract. To throw things into a subjective realm, what is necessary for uniformity or aesthetics, that's very subjective, and that really depends upon the perspectives of the different parties involved. There's no definitive nature of damages that we can insert to make sure that those type of claims aren't controversial, and that the claim settlement is equitable amongst all parties.

Rep. Thorpe: Without this bill presently, an agent out there selling the homeowners coverage, do they explain to them at the time when the policies sold, that if there's some damage to the siding, and the contractor is unable to match the color or the material, that it would be an extra charge somewhere along the way?

Brian: We do not offer such coverage, and in regards to the transaction, generally, it probably wouldn't be discussed.

Rep. Kasper: Let's say you had your home in Dickinson, and you got hail on 3 sides of your house, and let say your siding is blue, and there's no company in the Midwest that has blue siding. If the insurance company says we're going to replace 3 sides of your house, but the 4th side is going to be gray, how would you like that?

Brian: I realize that from the perspective of the consumer, it would certainly be practical to have as much property replaced as I could, for the purpose of pricing and analyzing loss, and determining how to measure that damage in each instance. That is problematic in the context of how do you define that as a major loss. To say that the insurance contractor responds to a

esthetics issue and uniformity presents a whole host of problems, in regard to analyzing average losses, and determining pricing for that, and defining clearly under the contract of insurance how we will approach those claims, and what we mean exactly by uniformity and esthetics.

Rep. Kasper: If this bill were limited only to siding and maybe the roof, would that make it easier to determine the potential actuarial losses?

Brian: The more you limit it, the easier it comes. One of the difficulty comes when an insurance product is priced, you have to have some actuarial prediction of the frequency of the losses that you're going to pay for, and of the average loss. When you are trying to determine an average loss, then you're going to have to somehow speculate upon what proportion or percent aesthetic concerns of uniformity will add to the average claim.

Rep. Kasper: Your action with the statistics in your insurance company right now, I would assume you have records of all the hail losses you paid to your insurers in the state of ND in the last many years. Don't you have records of what you did, and what you didn't do, so you can go back and maybe do some research?

Brian: I certainly can't speak as confident in actuary in regards to all the pricing aspects and procedures. We do keep records of what is paid, however we certainly don't analyze the portion of the claimant we have not paid, so to include the remainder of things that were not paid from their policy would be speculative at best.

Rep. Keiser: If this were to become a law, what number of property and judgment claims for insurance policy would not carry this exclusion language? If this passes, wouldn't all of our policies just exclude indirect?

Brian: Certainly, that would be the primary action that I would think our industry would take initially. Obviously, insurance is a product that the market does determine to some extent what

type of product we offer. Initially, I think we'd be forced to excuse it, because we have no way to really define it, rate it, price it, or execute a contract.

Rep. Keiser: Is there any estimate by the moral hazard on TNT claims?

Brian: I don't have any impericle data that I can site at this time. Just anecdotally concerns that we would have with this type of language. One is regards to certainly there could be an inducement to the presentation of a claim. If you have a small claim, it normally would be under your deductible. Secondly, as an insurer, I know in ND there's going to be a hailstorm eventually, and if I know that any damage to my property is going to result in replacement of all the siding, I think it would be ill advised for me to take reasonably prudent maintenance, and absorb those cost when I know that any small amount of damage is going to replace the entirety of the exterior of my house. So, there would be a concern that it might also be an inducement to be a little more laxed in regards to general maintenance in replacement property.

Dennis Prindabil, Dakota Fire & Insurance: See written testimony for Robert Hovland, testimony #2.

Rep. Keiser: When the change direct or indirect on line 11, it does make the substantial change in the intent of the bill.

Dennis: You're correct.

Rep. Kasper: The way I read this is you can have an endorsement in the policy saying we're not going to cover this indirect stuff and the base policy, and if your policy said that, then you've got to offer the insurer the opportunity to pay for additional premium and buy the indirect coverage. So, you would be liable, and you would have to have policy that would allow the old insurers to purchase an additional rider to cover this indirect loss.

Brian: Yes.

Pat Ward, Association of ND Domestic Insurers: See written testimony #3.

Rep. Dietrich: I think what Rep. Meyer is looking for is letting folks know that they won't be covered, and if they aren't covered, simply offer an endorsement to cover that cost.

Pat: I think you're correct. If one company is paying more than they're required to under the law or under the policy, then often times it creates problems across the board.

Hearing Closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1339

House Industry, Business and Labor

☐ Check here for Conference Committee

Hearing Date: 30 January 2007

Recorder Job Number: 2243

Committee Clerk Signature

Jan Prindle

Minutes:

Chairman Kaiser opened discussion of HB 1339. This relates to homeowner's coverage and notice for matching housing materials.

Representative Dietrich: We heard testimony that talked about how problematic Bismarck's hailstorm damage to two sides of the house and the difficulty matching materials. The insurance companies were not covering the whole house. We heard other testimony that insurance companies were not taking care of the problems, people basically would shop. It did happen in Grand Forks, but the insurance companies did step up to the plate and take care of the problems even if it was after the fact. I'm a little bit grey on the language on the endorsement.

Chairman Kaiser: The language on the endorsement says that if you exclude that indirect coverage than you must offer an endorsement that the policy holder can take or reject.

Representative Thorpe: I would just assume that if they offered the endorsement, I think it would be pretty high.

Vice Chairman Johnson: I move a Do Not Pass.

Representative Vigesaa: I second.

Vice Chairman Johnson: I looked at a couple of things and one of them is that at the current time some insurance companies have stepped up to the plate and if they can't get a match will

do all of it. My concern is that if you mandate that they have to say in the policy that they

exclude doing that and have to have a rider that they will cover, I think it will raise insurance costs for everybody. Those that are doing it will say they don't have to unless they have that rider so they are not going to even do it anymore. I think this is a disservice rather than a service.

Representative Thorpe: I think you are 100% right. My experience in this Committee is any time we try to tie something to insurers we ended up paying for it in insurance.

Chairman Kaiser: Insurance is the most complicated of businesses and it's also so the simplest. It is simple in the sense that they charge premiums to cover losses and operating expense and profits. If you increase the cost of insurance, the insurance companies will pass that along. They have to, to stay in business.

A roll call vote was taken: Yes: 13, No: 0, Absent: 1 (Dosch)

Representative Dietrich will carry the bill.

Date: 1-30-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1339

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep Johnson Seconded By Rep. Vigasaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch			Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigasaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Dietrich

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

REPORT OF STANDING COMMITTEE (410)
January 31, 2007 1:21 p.m.

Module No: HR-21-1643
Carrier: Dietrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1339: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1339 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1339

January 22, 2007

TESTIMONY OF BRIAN BOWKER
REGARDING HOUSE BILL #1339

Mr. Chairman, Committee Members:

My name is Brian Bowker, I'm the marketing manager for Dakota Fire Insurance, which is a property casualty insurer domiciled in Bismarck. I'm here this morning to testify in opposition to House Bill 1339.

Fundamental to an insurance contract is our ability to define not only the types of fortuitous loss that will be covered, but also the need to unambiguously state how the loss will be defined and measured.

House Bill 1339 would introduce much ambiguity into the loss settlement process by its inclusion of property that has not been damaged, but has qualified through the subjective standard of uniformity and aesthetics. Inherent to the principle of insurance is the requirement of fortuitous damage, damage that occurs by chance. Wear and tear, obsolescence and fading of color, represent physical deterioration that occurs to all property. To intertwine indemnification for loss elements that are truly fortuitous with issues of deterioration and maintenance, provides for an environment of uncertainty in regards to all aspects of the insurance transaction. Minor damage to a few boards in a deck or siding, or the loss

of a few wind blown shingles, may well result in the replacement of entire decks, sidings, roofing and window frames, as the owner submits subjective concerns over aesthetics and uniformity.

This bill, if passed, would without doubt provide for a contentious loss settlement environment, increase homeowner premiums and could as well render some property uninsurable. Insurers would likely gravitate to newer structures in which damaged property could be easily repaired or replaced without noticeably contrasting with non-damaged property elements that have become worn, faded and obsolete.

I would strongly urge a do not pass of this bill.

House Bill 1339 - Testimony of Robert Hovland

Mr. Chairman and members of the Committee: My name is Rob Hovland. I am testifying as the chairman of the Association North Dakota Insurers (ANDI) and as President of Center Mutual Insurance Company, which is one of ANDI's members.

I don't think this Bill, if passed, will have any long term effect on insurance companies, because we will adjust to whatever you decide the rules of homeowners' insurance are. However, there is no question that North Dakota homeowners will be significantly impacted - and many will view the impact as negative - particularly those in the more rural areas of our state. Higher costs, reduced coverage, or in some cases, no coverage at all will be the inevitable result.

A law like the one proposed in House Bill 1339 will obviously cause Homeowners' insurance rates to increase significantly. It is estimated that over 70% of homeowners' insurance claims are related to exterior damage caused by weather. When payments on these claims is increased - in some cases by as much as 400% (as when four sides of a house are required to be replaced rather than just the side damaged) premiums will have to be increased to absorb the additional cost.

This Bill, if passed, would also result in reduced coverage. Generally, exterior damage is provided on a replacement cost basis, which means no depreciation is deducted from the claim. If insurance companies are required to replace all four sides of a house when only one side is damaged, undoubtedly, companies will be more reluctant to offer replacement cost coverage, meaning depreciation will be taken into account when claims are adjusted. Reducing claims by depreciation means more out-of-pocket expense to the consumer. Given the choice, in my opinion, most consumers would prefer full

replacement of a damaged area versus depreciated coverage over the entire house.

The rural areas - where Center Mutual markets itself most aggressively - will be impacted even more severely. Currently, we allow North Dakota consumers to insure their property for much less than the cost to rebuild, because consumers want it that way. The market value of homes in most smaller communities is usually much lower than the replacement value, so many consumers don't want to pay the higher premiums required to insure property for full replacement value. However, if the law says we may have to replace all four sides of a house when only one side is damaged, in many situations, we'll have to require full coverage, which is contrary to what many of our policyholders want.

This type of law would also force us out of insuring many homes that we are currently willing to insure. In rural areas, where real estate values are depressed, homes are sometimes not well maintained because maintenance and repairs do not increase the sale value. Currently, we are able to insure those properties with limited coverage, but this Bill would take away our ability to do so, which means we won't be able to insure those properties.

An unfortunate -- and unfair -- consequence of this type of law is that it rewards homeowners who don't maintain or update their houses, and punishes those who do. Matching products are not available for older siding and roofs, which makes "uniform repair" impossible. Replacement products are likely available for homes with newer siding and shingles. As a result, people who maintain and update their home will pay higher premiums only to receive coverage limited to the damaged area, while people who don't maintain and update their property will receive new siding for the entire house.

It should also be noted that siding on the south side of many homes does not

match the north side, because of the south side's increased exposure to the sun. This means "uniformity" oftentimes doesn't exist — even without a weather loss.

Requiring companies to offer an endorsement on anything excluded is also problematic. What premium do you charge when a house has two sides in good condition, and two in disrepair? How do we price property with pre-existing damage? How do we price a roof that is 40 years old and clearly in need of new shingles? Today, we are only able to insure these types of properties because we are allowed to exclude the problem areas.

Prior to deciding the fate of this Bill, I urge you to carefully consider the full consequences this Bill would have on North Dakota consumers.

TESTIMONY OF PATRICK WARD IN OPPOSITION TO HB 1339

Good afternoon Chairman Keiser and Member of the House Industry, Business and Labor Committee:

My name is Patrick Ward and I represent the Association of North Dakota Domestic Insurers. I am here to testify in opposition to HB 1339.

HB 1339 proposes, in all homeowners policies that cover direct damage sustained in a loss to external building materials which is related to rain, hail, storm, tornado, or other like perils, unless expressly excluded, the determination of direct loss must include *indirect loss if necessary for uniform and consistent repair*. The bill would mandate home insurers to pay to replace or repair all four sides of a home for a loss on part of one side of a home, if necessary for "uniform and consistent repair." This would arise when a home's siding is affected on one side or if one small piece of a slope of the roof is damaged, mandating that the entire siding or entire roof would have to be redone.

We oppose this mandate that eliminates the handling of these claims on a case by case basis, a mandate that is expected to increase premiums substantially.

A number of insurers currently are providing for replacement if there is any doubt. For example, among insurers who now have policies that cover accidental direct

physical loss to the insured property, it is the practice of these insurers to recognize the need to take "matching" of material into account. For example, the insurers use a material locator service to try to access material and determine if there is a reasonable match. Claims adjusters research availability of siding using tools provided by the insurer's product research units.

In fact, the claim handler uses an operations guide that tells the claim handler how to handle these types of claims. The guide recognizes situations that the damaged material or replacement material does not match the undamaged material. Claims handlers are directed to work with the policy holder to find a reasonable and acceptable repair solution, which currently includes as the option of re-siding the entire home or structure.

The insurers' settlement practices avoid arbitrary rules regarding matching of various materials and take into consideration differences in color, size and texture and evaluate each claim individually. Each claim is unique. Currently, the insurers work with the insured, with the objective of keeping the policyholders.

Our concern is how do you legislate what is "necessary" and what is "a uniform and consistent repair"? This is a judgment call, one that is best handled by the claim handler, manager and customer. If there is not a reasonable match,

insurers will re-side the entire house or re-roof the entire house, as they are now according to their existing practices and guidelines

By passing a mandate we believe you can expect an increase in premiums of 25 to 50 percent, from experience with the premium increases in other states.

We urge a Do Not Pass on HB 1339.



HARTLAND MUTUAL

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January 24, 2007

PIA of North Dakota
Mr. Kent Olson, Executive Director
1211 Memorial Highway, Suite #6
Bismarck, ND 58504

Dear Kent;

On behalf of Hartland Mutual Insurance Company, I am writing to express our opposition to North Dakota House Bill No. 1339.

In 2005, Dickinson, Bismarck/Mandan and Hettinger experienced substantial property damage from hail storms. As a result of these storms, insurance companies provided millions of dollars of relief to property owners. Based on a review of 5% of our Bismarck/Mandan property claim settlements resulting from the storms, it appears the passage of HB1339 would have substantially increased the property losses paid by insurance companies had such a requirement been in place at the time of the 2005 storms.

By our estimation, the loss amount paid to replace dwelling (home) siding only would have increased by 25-30%. The replacement of other external building materials, other than siding or roofing materials, would have increased by 30-40%. Overall, in our estimation, the cost of claim settlements in the Bismarck/Mandan area as a result of the 2005 storm would have increased by up to 67%.

The potential financial impact of the passage of HB1339 would be substantial and would ultimately cause homeowner premiums to rise significantly. The review of our own claim settlement files support that conclusion. The language in the proposed bill is, in our opinion, vague and provides no clear definition of external building materials, indirect loss, or perils to which this bill would apply.

The passage of HB1339 would have a significant negative financial impact on consumers and property insurance companies in North Dakota. We strongly urge the Industry, Business and Labor Committee to give the bill a "Do Not Pass" recommendation. I also request that you provide the committee chairman and members copies of this letter.

If you have any questions or if I can be of further assistance in this matter please feel free to contact me at 1-800-322-0065 or 701-838-3716.

Sincerely,

Miles Clauson
Claims Manager
Hartland Mutual Insurance