2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2105

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2105
1/19/2015
Job Number 22091

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to property and casualty insurance valuation

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Senator Krebsbach: Testified on behalf of the bill. She said it was a consumer friendly bill from the insurance industry. (:20-1:22)

Evan Mandigo, State Executive of the Independent Insurance Agents of North Dakota: Written Testimony Attached (1). (1:56-10:52)

Senator Campbell: Asked if this was an insurance company's anti-consumer bill where a consumer insures their building for two million and something happens to it and he is legitimate and he gets paid only one and half million dollars because of a lot of challenges and issues. If he had a claim prior to the ninety days what would he be covered for before the ninety days, the original policy?

Evan Mandigo: Assuming we have a two million dollar building, in order for this to be triggered it has to be a total loss. Partial losses are not affected one way or another by this. (11:45-14:24)

Chairman Klein: Scenario; I had this building insured for five years for two million dollars. My renewal comes up, I pay my premium, and eighty days from now it burns to the ground. You are saying at that point I could be susceptible to not getting my two million?

Evan Mandigo: That's the way I read it and the way it has been applied in some instances that have been reported to our members.

Chairman Klein: And you have had issues and that is why we are here, consumers have been dinged on this?

Evan Mandigo: Yes that is true.

The committee continued with questions for Evan Mandigo on the intent of the bill.

Chairman Klein: Your language here is intended that, when the farmer raises it to 2.5 and he has notifies his carrier, paid the premium and something happens thirty days later that he gets 2.5 million. That he doesn't have some adjusted figure. That is your intent?

Evan Mandigo: That is my intent.

Chairman Klein: The intent is the policy holder has notified the agent or the company. The company understands what he has done. You want to make sure if it says a million bucks, he is going to get a million bucks?

Evan Mandigo: Yes we just want to do are best to avoid the imposition of that actual cash value process during the ninety day period. Were just saying that ninety day period suspends if these conditions apply.

Chairman Klein: You ran this past the insurance industry?

Evan Mandigo: I can't speak for the insurance industry. Also stated that **Doug Rued, First Western Insurance** couldn't make it but his written testimony was handed out **(2).**

Pat Ward, Attorney, State Farm Insurance Company: In opposition to the bill. He doesn't agree with how Evan Mandigo is reading the current law. Attachment of the current law without the amendments (3). (30:40-35:15)

Chairman Klein: What he heard was that it did affect renewals. You're reading of the policy wasn't that it does renewals?

Pat Ward: I don't believe it would be applied that way. I don't read it that way. I don't read the word issuance as meaning renewal. A policy can be issued and a different thing when it is renewed. This only applies to a rare exception where there is a claim, where there is not fraud, at least not obvious fraud within the ninety days of the renewal or with the twenty five percent increase.

Chairman Klein: Asked if there was anything that they could agree on or clarify or that he and Evan could look through.

Pat Ward: We can try.

Chairman Klein: Closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2105
1/19/2015
Job Number 22143

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to property and casualty insurance valuation

Minutes:

Amendment

Chairman Klein: Went over the changes in the bill. He said he would be comfortable waiting for Pat Ward to come in and explain the changes. He closed the meeting. Attachment (1)

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2105
1/21/2015
Job Number 22303

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Eva Leibelt

Explanation or reason for introduction of bill/resolution:

Relating to property and casualty insurance valuation

Minutes:

Amendment

Chairman Klein: Called the committee back to order. Lucas has some amendments crafted. These were worked out by Pat Ward and Evan Mandigo. What he heard from Mr. Ward is that number 1, 2 and 3 are currently in the law so they weren't oppose to anything there. Number 4 is where the jest of the amendment is, number 4 and page 2. He had Lucas go over the amendment. What we are doing here is trying to get Pat Ward, State Farm the company to be in agreement with the agents who have some concerns. Attachment (1)

Senator Sinner: Said he isn't sure number four is even needed.

Senator Murphy: If you buy the policy that is what number four is really saying.

Chairman Klein: It got everyone on board and that's what we do here.

Senator Burckhard: Moved the amendment.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Sinner: Moved a do pass as amended.

Senator Burckhard: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Burckhard will carry the bill.

15.0449.01001
Title.02000

Adopted by the Industry, Business and Labor Committee

January 21, 2015

TV
1/21/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2105

Page 2, line 3, after the first "the" insert "increased"

Page 2, line 3, replace "determined by a representative of" with "approved by"

Page 2, line 4, replace "or calculated using the insurer's cost estimator" with "before the loss"

Renumber accordingly

Date: 1/21/2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2105

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 15.0449.01001

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 Senator Burckhard Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment ____________

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

Date: 1/21/2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2105

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 15.0449.01001

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 Senator Sinner Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Burckhard

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

REPORT OF STANDING COMMITTEE

SB 2105: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2105 was placed on the Sixth order on the calendar.

Page 2, line 3, after the first "the" insert "increased"

Page 2, line 3, replace "determined by a representative of" with "approved by"

Page 2, line 4, replace "or calculated using the insurer's cost estimator" with "before the loss"

Renumber accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2105

2015 HOUSE STANDING COMMITTEE MINUTES

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

SB 2105
3/11/2015
24669

☐ Subcommittee
☐ Conference Committee

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Property and casualty insurance valuation.

Minutes:

Att - 1

Chairman Keiser: Opens the hearing on SB 2105.

Senator Karen Krebsbach~District 40: Introduces the bill. What this bill is about is to make sure the payment through the insured gets paid in full on a policy.

Evan Mandigo~State Executive of the Independent Insurance Agents of North Dakota: (Attachment 1).

8:00

Representative Kasper: There seems to be two issues here, when the policy is issued and when it's renewed. Isn't it the responsibility of the insurance agent, who is selling the policy to go and inspect the property, take pictures and provide that as evidence of what the actual value of that structure so the insurance company has that information before they issue the policy?

Mandigo: Most insurance carriers require those steps to be taken prior to issuing the policy.

Representative Kasper: How does the insurance company have a problem over evaluation being they had all the information from the beginning to under write the risk? I'm talking about the initial not renewal.

Mandigo: We don't have issues with the 90 day clause at inception because the insurance companies properly date the period a time to verify those numbers.

Representative Kasper: The underwriting process, is that not the time to verify the valuation of that property or what the insurance companies are willing to accept as a risk and not 90 days after the underwriting process?

Mandigo: Absolutely, but current law gives the insurance companies 90 days to evaluate that.

Representative Kasper: Current law says the insurance company issues the policy but if there is loss within 90 days, they can say we made a mistake, we shouldn't have issued it for $200,000 and we are only going to pay you a $150,000?

Mandigo: The literal reading of the law could lead you to that outcome, yes.

Representative Kasper: The insurance agents have no problem with that?

Mandigo: That's why we are here.

Representative Kasper: It appears to me that this does not fix the opportunity for the insurance company to pay a lesser allowance than what the insurance policy was issued at.

Mandigo: Our point is during the 90 days, these 4 reasons would preclude the use of the actual cash value.

Representative Kasper: Line 17, the loss payable to the insurer for covered loss incurred during the first 90 days is the lesser of the full value, the actual cash or the replacement value. What I'm reading is the insurance company has the opportunity to choose one of the three even though the insured asked for a valuation, paid the premium and the insurance company accepted that valuation when they wrote the policy.

Mandigo: That is the way the current law reads. Our proposed change would limit those options to either the true value of the policy or whichever valuation method the insured selected when they had the policy issued. The intent of line 17 to 19, is to take the cash value off the table as an automatic default option.

Representative Kasper: It's beyond the scope of understanding why the insurance agents who have written the policy now there still is an opportunity with your amendments for the insurance company to come in within the 90 days, say, oops, we are not going to pay the full value because the actual value is less.

Mandigo: The initial selection of evaluation of either cash value or replacement rests with the policy holder on day one. When they have selected actual cash value on day one, then that becomes the method. If they selected replacement method on day one, that becomes the selection method. What we are trying to do is to prevent the law from defaulting automatically to something that the insurer may not have selected.

Representative Kasper: The insured selects actual cash value and applies for the policy for 200,000. The insurance company accepts the risk for actual cash value at $200,000. During that 90 day period, the home burns down and it's a total loss. Could the insurance company come back and say, the actual cash value really wasn't $200,000 because we have this out clause that during the first 90 days that you said you would accept, we are only going to pay you a $175,000 because that's the actual cash value because we determined that is what it is.

Mandigo: That becomes a matter of judgment of what is the actual cash value. It would seem contrarily to the intent of this law for the insured to pick what they have determined the actual cash value.

Representative Kasper: It appears to me where the insurance company would have that option to do that. Have you seen that happen?

Mandigo: The intent of the bill is to take that option away from the insurance carrier on an automatic basis.

Representative Kasper: Have you seen an actual cash value claim during the first 90 days that was less than the face amount that was originally applied from the insured?

Mandigo: Yes and that's the reason why we are here today is to cut down the window for that to happen again.

Representative Kasper: It appears to me that you haven't solved the problem for the consumer. You've kept the opportunity for the insurance carrier to pay less than that face amount. Why wouldn't you say that during the first 90 day, if there is a loss, the insurance company will pay the full value of the policy that was written for and cannot reduce the actual cash value because they accepted the risk?

Mandigo: Right now there is 90 days built in to the statue as a matter for protecting against insurance fraud. Without that 90 day waiting period, there is a greater potential for abuse.

Chairman Keiser: Subsection A clearly says that there are options for payment. The new language you have added says those options do not apply if one of these four criteria are met?

Mandigo: That is our intent.

Chairman Keiser: Do these four criteria in fact limit it; do they really do what you say they do? I purchase a policy and I can at the front end with my agent say, I want replacement value or I want the true value. I can say that at the time of the initiation and that locks me in to that repayment schedule? If I pay full value, a fixed amount, then this takes away the ability of the insurance company to force me into one of those two other options?

Mandigo: The four elements for this safe harbor, removes the ability of the carrier to force you back into the actual cash value, so long as you have done one of those four things.

Chairman Keiser: I haven't done one of the four?

Mandigo: The intent of one of these four windows is that when you make a change to an existing policy, once the policy is in place and you make a change, what these four conditions do is prevent that 90 day window resetting every time you make that change.

Chairman Keiser: How does that protect the question Representative Kasper had?

Mandigo: Once the policy is written in absent of something else, that amount on the face of the policy is the amount of insurance. What we are working with is that the 90 day time period that happens any time under current law, you make a change, that's what those four things do. You have to keep in mind, unless you committed fraud, we are going to pay that million dollars.

Representative Kasper: I don't read this bill according to what you just stated. Beginning on line 21, that's the second year, not the first year, we're dealing with the first year with the policy on lines 14-19. In that first year issue, you're dealing with a 90 day opportunity to not pay the full value of that contract, if those things occur. Line 19, during the first 90 days, there is a possibility the insurance company will not pay the full loss because they have a loop hole even though they accepted the risk at the full value when they underwrote the policy. Now, on line 19, the renewal, which is after the 90 days of the initial issue, the insurance can't impose the 90 initial issue on the renewal policy.

Mandigo: There are four conditions beginning on line 21 that address your concerns. Subsection A deals with new policy and renewal policy. What we are saying is that if it happens during the first 90 days of either a new policy, renewal policy or change to an existing policy that the AVC option is off the table as an automatic option.

Representative Kasper: It's still an option that can be chosen.

Mandigo: It becomes an option at the by selection of the insured if they pick actual cash value as their method. Then ACV becomes the settlement option or replacement, which ever they picked. However the overarching principle is whatever the insurance puts on the policy on day one becomes the governing number and we are tightening up the availability of an insurance company being able to opt only for the ACV option. Our intent is the ACV option is the selection made by the policy holder, not retrospectively but the insurance company.

Representative Kasper: The insured selects actual cash value on the application and the policy is issued under actual cash value. The policy is issued under the actual cash value method valuing the house at $200,000 and the insurance accepted that actual cash value. During the 90 days, if there is a loss, can the insurance company come back and say its worth less. Do you see that as a possibility?

Mandigo: We don't see that as an opportunity because the insurance company has accepted the premium and established the amount of insurance by accepting the premium and issuing the policy. For them to come back, long after the fact, we don't see that as an option.

Representative Lefor: Line 17, what is the reason for the language "lesser of the"? It appears to give the insurance companies the option.

Mandigo: The "lesser of the" means that there are two potential values out there and whatever valuation method the insured has selected. The existing statue calls for that to be the settlement option, whichever of the two is lesser because you based your premium on.

Steve Becker~Executive Director of Professional Agents of North Dakota: The 90 day window is designed for the insurance company to have time to underwrite the risk. There are many cases, we as agents will bind coverage on a piece of property and send it into the carrier. Between the agent and the insured you come up with a dollar amount and you send that into the carrier. The 90 days is designed for the insurance carrier to have time to underwrite that risk. Under today's law, carriers can use that 90 days and say during that 90 days, we can either do whatever number is on the policy, replacement cost or actual cash value, whichever is less. So they have one of those three options. Obviously, which one of those three options is going to lesser, it going to be actual cash value in every case, which we don't think is fair for an insured to pay replacement cost policy and getting actual cash value on the settlement because the insurance carrier has not had a chance to look at it yet. What this bill attempts to do is during that 90 days, the carrier does not have a choice, they have the choice of the value on the policy or whichever valuation the insured chose. It only comes into play during that underwriting time when the insurance carrier has not had the chance to underwrite the risk yet. Those four safe harbors, basically say, in these four cases that 90 days is thrown out the window. Those four cases, when a renewal goes up more than 25% or there is inflation guard on the policy, those are only renewal based. The other ones are not renewal based. The number four says that if the valuation is determined by a representative of the insurer, which is an agent or by the insurance company themselves through use of a replacement cost estimator, than that 90 days is thrown out the window.

Representative Kasper: Number four actually say policy for which the increased limits were approved by the insurer before the loss, which means it's after renewal because the limits have been increased and it was approved before the loss. You said this only applies to only policies that are not issued in the 90 days, so that the insurer can underwrite. The actual loss is on line 14, if the covered loss occurred with in the 90 days after the policy was issued, that what we are talking about in this bill within 90 days after the policy is issued. This applies to policies that are already issued where underwriting is already done, not during the 90 day period of time or before the application was actually approved. That is where the problem is.

Becker: Many polices are issued automatically, the minute the agent hits the button and the insurance company hasn't seen it yet. It does happen that way.

Chairman Keiser: This is different than the binder period.

Becker: It is, absolutely.

Chairman Keiser: This says policy issued which is contrary to what you said.

Representative Beadle: For a new homeowner, in a situation they are going to get a loan, the bank is going to have an appraisal done. The homeowner is going to have a very up to date appraisal. With that in hand, how long will it take the underwriting process to happen on the insurance level and when that appraisal come back being qualified for the full value?

Becker: Appraisal is what it's worth to sell. Replacement cost, what it costs to build, which in some cases can be two different things. Typical, on homeowners like that, the policy will be underwritten and issued under two weeks.

Pat Ward~North Dakota Domestic Insurance Companies: I want to make clear is the stated value policy law. There are three kinds, you can have replacement cost, which could be more, could have an actual cash value, which is the actual cash value, or you can have the stated value which what this is. It applies to real estate and basic areas where there is a lot of fraud where they raise the limits. What the 90 day does is an exception to that stated value. The insurer issues a policy for a stated value, once they have approved the risk, they are on the hook for that stated value. Insurance don't like stated value laws because of that potential problem. The purpose of the 90 day window is on a stated value policy to give the company the opportunity to verify, if they have a suspicion that the property may not be worth that, but it gives the agent the leeway to issue the policies. That's why subsection four, where the limits are approved prior to the loss, it takes the 90 days out of there where the insurer has actually approved the value. If you have a problem with the wording "increase", take it out of there.

Representative Kasper: On number four, you are also talking about a policy that's enforced. You can't increase the limits on a policy that has not been enforced.

Ward: That that word out of there would make sense because if you say limits were approved by the insurer prior to the loss. Then you have an exception to the exception and that would take care of new policies and renewal policies.

Representative Kasper: I understand the value of getting a binder, however a binder under this scenario, may not be paid at all because the insurance company, if we are giving them 90 days to investigate the property, they may say, we don't want the risk and so the binder is revoked.

Ward: There is a policy in place but in the situation where there is an opportunity to get out there and value it, then the value is the actual cash value and not the stated value.

Representative Kasper: We would not be taking about a policy that's a replacement policy, this is only the stated value policy?

Ward: Yes, this is the stated value policy involved.

Representative Kasper: Why on line 18, are we referencing "or replacement cost of the property"?

Ward: You have to read on, you many have an option. You have actual value. Again this only happens in the first 90 days and the underwriting is not finished.

Representative Ruby: How does the insured know that the company has found their risk? They assume that it's covered 100%, when the company has approved that?

Ward: That would be between the agent and the insured.

Steve Becker: I don't remember getting notification from the carrier that they have actually finished the approval process.

Representative Ruby: If day 40 was accepted and day 70 it burned down, then you and the insured doesn't know?

Becker: The insured isn't notified when the underwriting is done.

Chairman Keiser: Binders are frequently written, once I've talked to my agent, there is a binder in place and there is insurance coverage. The real way I know, I receive a policy.

Becker: That is correct.

Chairman Keiser: So the binder stays in play, unless you call me and say the insurance company doesn't like it, the binder is off?

Becker: There are rules through the insurance department that is the company says no, they have to send you notice that they are not taking the risk. They give you so many days to get replacement coverage someplace else.

Chairman Keiser: The only way you will ever know is when you get a copy.

Becker: That is correct.

Chairman Keiser: Anyone else to testify on SB 2105, opposition, neutral? Jeff, page 2, line 3, if we took out the "increase", that cover your concerns expressed this morning?

Jeff Ubben~North Dakota Insurance Department of Labor: I felt there is some potential gaps and removing the word "increased" would help but there are still some gaps.

Chairman Keiser: Closes the hearing. We will hold the bill.

2015 HOUSE STANDING COMMITTEE MINUTES

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

SB 2105
3/25/2015
Job #25386

☐ Subcommittee
☐ Conference Committee

Rae Mae Kuehn

Explanation or reason for introduction of bill/resolution:

Property and casualty insurance valuation.

Minutes: Attachment #1

Chairman Keiser: Opens the committee work on SB 2105.

Representative Kasper: (Attachment 1). Explains bill and amendments.

(3:35)

The industry is happy with it because it clarifies that 90-day window.

Representative Kasper: Moved to adopt amendment #15.0449.02001.

Representative Sukut: Seconded the motion.

Voice Vote. Motion passed.

Representative Laning: Moved Do Pass as amended.

Representative Boschee: Seconded the motion.

A Roll Call vote was taken: Yes 14, No 0, Absent 1.

Do Pass as amended carries.

Representative Kasper will carry the bill.

3/25/15

SL 3/25/15

15.0449.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Kasper
March 20, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2105

Page 1, line 14, overstrike "was issued" and insert immediately thereafter "effective date"

Page 1, line 17, replace "the" with ":

(1) The"

Page 1, line 17, overstrike the comma and insert immediately thereafter an underscored semicolon

Page 1, line 18, overstrike the first "the" and insert immediately thereafter:

"(2) The"

Page 1, line 19, overstrike "This" and insert immediately thereafter:

"b."

Page 1, line 20, replace "subsection" with "Subdivision a"

Page 1, line 23, remove "Policies"

Page 1, line 23, overstrike "with"

Page 1, line 23, remove "automatic"

Page 1, line 23, overstrike "inflation"

Page 1, line 23, remove "-adjusted"

Page 1, line 23, overstrike "limits"

Page 1, line 23, remove the underscored semicolon

Page 2, line 1, remove "(3)"

Page 2, line 3, replace "(4)" with "(3)"

Page 2, line 5, overstrike "b." and insert immediately thereafter "c."

Page 2, line 8, overstrike "c." and insert immediately thereafter "d."

Renumber accordingly

Date: Mar 25, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2105

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0449.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ ______

Motion Made By Rep. Kasper Seconded By Rep. Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Represenative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Motion passed

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

voice Vote

Date: Mar 25, 2015

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2105

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Laning Seconded By Rep. Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Represenative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Kasper

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

REPORT OF STANDING COMMITTEE

SB 2105, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2105 was placed on the Sixth order on the calendar.

Page 1, line 14, overstrike "was issued" and insert immediately thereafter "effective date"

Page 1, line 17, replace "the" with ":

(1) The"

Page 1, line 17, overstrike the comma and insert immediately thereafter an underscored semicolon

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Page 2, line 8, overstrike "c." and insert immediately thereafter "d."

Renumber accordingly

2015 TESTIMONY

SB 2105

1/19/2016 #1

TESTIMONY

SENATE BILL 2105

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 to testify in favor of SB 2105.

The bill 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 of the law is if there is a total loss to real property, the amount written in the policy is the true value of the property. For a total loss, it establishes the true value for insurance purposes eliminating uncertainty for the policyholder.

North Dakota has a provision invoking a 90 day waiting period before the valued policy provision applies to protect the insurance company from intentional over valuation and potential resulting insurance fraud. We support the general concept of the 90 day waiting period since it provides the insurance carrier a time window to inspect the property if they choose.

We have a two concerns relating to how the 90 day window is currently interpreted however. One concern is what valuation method should be used and the other when it should apply.

During the 90 day waiting period, the carrier has different valuation options for a total loss triggering the Valued Policy law. The options are the lesser of full value (valued policy provision), Replacement Cost, or Actual Cash Value (Depreciated value). This condition clearly favors ACV as the settlement option regardless of what value was used to establish the premium paid by the insured.

Instead of an almost certain ACV settlement basis, we propose language in Lines 17-19 on Page 1 removing ACV as an automatic selection. Our language would change the options to the

#1

lesser of whatever valuation method the insured selected (ACV or Replacement) or the true value.

Next we wish to create a "safe harbor" starting with Line 21 on Page 1 and finishing with Line 4 on Page 2 exempting insureds from the 90 day waiting period so their Valued Policy law protection starts on Day 1 instead of 91 each year or when the policy increases 25%. The safe harbor exemption would apply if a renewal policy

1. Increases less than 25% or
2. Has an automatic adjusting feature for inflation or
3. Is increased 25 % or more due to additions or
4. The new limit is calculated by the insurer or has used the insurer's cost estimator.

We believe these 4 exceptions to the automatic 90 day exclusion window for application of the Valued Policy law protects policyholders who prudently follow the advice of their insurance advisors. They should not be potentially penalized by application of the automatic 90 day exclusion period every renewal if their insured values increase for any of the reasons listed above.

Mr Chairman and members of the Committee, for these reasons, the North Dakota Association of Independent Insurance Agents strongly urges a do pass recommendation for SB 2105.

This concludes my testimony and I would be happy to answer any questions you may have.

1/19/2015 #2

TESTIMONY

SENATE BILL NO. 2105

This is a housekeeping type bill for the current Century Code 26.1-39-05, commonly referred to as the Valued Policy Law. This law provides that the insurance consumer will be paid the purchased amount of insurance if their real property is destroyed.

In other words, if you pay the premium for $200,000 coverage on your home and it is destroyed by something covered by the policy the insurance company cannot collect the premium, issue a policy and then adjust your property for less in value and only pay that reduced sum.

The law does have a 90 day waiting period to protect the insurance company from intentional overvaluation and insurance fraud. This portion of the law was added when a potential arson fire occurred and the insurance policy in place had been significantly increased shortly before the loss.

SB 2105 corrects potential pitfalls in the current law that could eliminate the consumer protection provided by the law.

The corrections show up in underscored language as follows:

1a. This clarifies that if the loss occurs in the first 90 days, the policy will pay as per the policy provisions. Currently, the law allows payment by the depreciated actual cash value method even if you purchased a replacement cost type policy.

(The following revisions are for provisions that exempt the policy from the 90 day waiting period)

1a. (1) Renewal policies with coverage amount increases less than 25% - clarifies policies being renewed at less than 25% are protected by the Valued Policy Law.

1a. (2) Policies with automatic inflation adjusted limits - this just cleans up language to mirror the common inflation guard provisions of insurance contracts

1a. (3) Policies which have been increased 25% or more due to new constructed additions - currently if a home owner or business owner added a new addition to their structure that amounted to more than 25% of the current value the Valued Policy Law protection was nullified.

1. a. (4) Policies which have been increased to a coverage amount determined by the insurance company - currently if the policy was increased more than 25% due to the cost estimating by the insurance company the Valued Policy Law protection did not apply.

I believe these changes will avoid unintended misinterpretation of the important consumer protection features of the Value Policy Law and I recommend a Do Pass recommendation from the Committee.

Thank you for your consideration.

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SB2105 1/19/2015 #3

CHAPTER 26.1-39
PROPERTY AND CASUALTY INSURANCE

26.1-39-01. Rescission of fire insurance contract for alteration increasing risk.
An alteration in the use or condition of a thing insured from that to which it is limited by the policy, if made without the consent of the insurer, by means within the control of the insured, and if it increases the risk, entitles an insurer to rescind a fire insurance contract.

26.1-39-02. Rescission of fire contract not permitted if risk not increased.
An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a fire insurance contract.

26.1-39-03. When fire contract unaffected though risk increased.
A fire insurance contract is not affected by any act of the insured subsequent to the execution of the policy, if the act does not violate its provisions, even though it increases the risk and is the cause of a loss.

26.1-39-04. Measure of indemnity on fire policy.
If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy. If there is a valuation in the policy, the valuation is conclusive between the parties in the adjustment either of a partial or a total loss if the insured has some interest at risk and there is no fraud on the insured's part. In the event of a partial loss, the insurer is liable only for the proportion of the amount insured as the loss bears to the value of the whole interest of the insured in the property insured. A valuation fraudulent in fact, however, entitles the insurer to rescind the contract. The provisions of this section may not be construed as a revocation of any of the rights of insurers delineated in section 26.1-39-05.

26.1-39-05. Face of policy to be paid in case of covered loss.

1. Whenever any insurance policy is written or renewed to insure any real property in this state, including structures owned by persons other than the insured, against loss caused by or resulting from any covered cause of loss and the insured property is wholly or completely destroyed by any covered cause of loss without fraud on the part of the insured or the insured's assigns, the amount of the insurance written in the policy is the true value of the property insured and the true amount of loss and measure of damages, subject to the following conditions:
   a. If the covered loss occurred within ninety days after the policy was issued or within ninety days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for covered loss incurred during the first ninety days is the full value of the policy, or the actual cash value or replacement cost of the property, whichever is less. This subsection does not apply to unchanged renewal policies or policies with inflation adjustment limits.
   b. Builder risk policies of insurance covering property in the process of being constructed must be valued and settled according to the actual value of that portion of construction completed at the time of any covered cause of loss.
   c. In case of double insurance, each insurer shall contribute proportionally toward the loss without regard to the dates of the insurance policies.
2. This section does not apply as to personal property or any interest therein.
3. This section does not apply to any claim for loss of an appurtenant structure or separate structure. Any claim for loss of an appurtenant or separate structure must be settled for actual replacement cost or actual cash value, depending on the policy provisions applicable to the structure, unless an appurtenant or separate structure is individually described in the policy and a value is assigned to that specific structure before the loss.

1/19/2015 #1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2105

(4) Policies for which the increased limits were ~~determined by a representative of~~ approved by the insurer ~~or calculated using the insurer's cost estimator~~prior to the loss.

PROPOSED AMENDMENT INSTRUCTIONS TO SENATE BILL NO. 2105

Page 2, line 3 after the first "the" insert "increased"

Page 2, line 3 overstrike "determined by a representative of" and insert immediately thereafter "approved by"

Page 2, line 4 overstrike "or calculated using the insurer's cost estimator" and insert immediately thereafter "prior to the loss"

1/21/2015 #1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2105

(4) Policies for which the increased limits were ~~determined by a representative of~~ approved by the insurer ~~or calculated using the insurer's cost estimator~~prior to the loss.

PROPOSED AMENDMENT INSTRUCTIONS TO SENATE BILL NO. 2105

Page 2, line 3 after the first "the" insert "increased"

Page 2, line 3 remove "determined by a representative of" and insert immediately thereafter "approved by"

Page 2, line 4 remove "or calculated using the insurer's cost estimator" and insert immediately thereafter "prior to the loss"

Mar 11, 2015

TESTIMONY

HOUSE IBL COMMITTEE

SENATE BILL 2105

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 to testify in favor of engrossed SB 2105.

The bill 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, the amount written in the policy is the true value of the property, eliminating much uncertainty for the policyholder.

North Dakota has a provision invoking a 90 day waiting period before valued policy protection applies to protect an insurance company from intentional over valuation and possible insurance fraud. We support the general concept of the 90 day waiting period since it provides the insurance carrier a time window to inspect the property if they choose.

We have two concerns relating to how the 90 day window is now interpreted. One concern is what valuation method should be used and the other when it should apply.

During the 90 day window, the carrier has different settlement options for a total loss. The options are the lesser of full value (valued policy provision), Replacement Cost, or Actual Cash Value (depreciated value). This means ACV becomes the default option regardless of what was used to establish the premium paid by the insured since it is going to be less.

Instead of an almost certain ACV settlement basis, the language in lines 17-19 on page 1 removes it as an automatic selection. The bill changes the options to the lesser of whatever valuation method the insured selected (ACV or Replacement) or the true value.

Next, the bill creates a “safe harbor” starting with line 21 on page 1 and finishing with line 4 on page 2 exempting insureds from the 90 day waiting period so Valued Policy protection starts on

Day 1 instead of 91 each renewal or when the policy increases. The safe harbor applies if a policy

1. Increases less than 25% or
2. Has an automatic adjusting feature for inflation or
3. Is increased 25 % or more due to additions or
4. The new limit was approved by the insurer before the loss

We believe these 4 exceptions to the automatic 90 day exclusion window protect policyholders who prudently follow the advice of their insurance advisors. The automatic 90 day exclusion period for ACV should not kick in every time insured values increase for any of the reasons listed above.

Mr Chairman and members of the Committee, for these reasons, the North Dakota Association of Independent Insurance Agents strongly urges a do pass recommendation for engrossed SB 2105.

This concludes my testimony and I would be happy to answer any questions you may have.

March 25, 2015

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Rep. Kasper

Talking Points for SB 2105 – Value Policy Law

- North Dakota currently has a valued policy law that states if real property suffers a total loss then the insurance company must pay the building limit shown on the policy whether that value is correct or even if it is too high for the structure.

- There are currently 2 exceptions to this law which are:
  1) The first 90 days after a new policy is issued, or
  2) The first 90 days after the building limit was increased by 25% or more at the insured's request.

- During these 90 day exception periods the insurance company is currently allowed to settle the total loss for the lesser of 3 options: actual cash value (ACV), replacement cost (RC), or the building limit list on the policy. **ACV is the cost to replace minus depreciation for age, wear & tear, etc.

- The 90 day exception period is there for a couple of reasons:
  1) To give the insurance company time to underwrite the risk and make sure that the limit is reasonable, and
  2) To curb potential insurance fraud for the person that insures a building for a limit way higher than its actual value, has a total loss before the insurance company has looked at the risk, and then profits by the insurance policy.

  Example – A person buys an old abandoned house in a small town for $10,000; insures it for $150,000; and before the insurance company gets a chance to underwrite they have a water claim with damage greater than the home is even worth. Without the 90 day valued policy exception the insurance company would be stuck paying $150,000 for a home worth $10,000 and would have no recourse.

- This bill corrects a couple of problems with the current law:
  1) It changes the start of the 90 day exception period to the policy effective date policy instead of when the policy was issued, and
  2) It changes what the insurance company is required to pay during this 90 day exception period to the lesser of 2 options:
     a. The building limit shown on the policy, or
     b. ACV or replacement cost, whichever is purchased by the insured when they applied for the policy.

- The change to effective date rather than policy issuance is to make sure that the 90 day exception period in the valued policy law is only 90 days. Currently, an insurance carrier could issue a policy 60 days after the policy was applied for and still have another 90 days before the exception was no longer valid for a total of 150 days after the day the policy started.

- The change to only giving the insurance company 2 payment options instead of 3 is because companies are currently paying ACV on most claims during this exception period as it is usually the lowest valuation. It is not fair to the consumer to pay for replacement cost and then only get ACV because the loss happened to occur during this 90 day exception period.

- This bill will make sure that a consumer will get what they paid for should a claim occur during this time; replacement cost or ACV depending on what they chose, or the building limit listed on the policy if that is less.

- All total losses outside of the 90 day exception period will remain as the building value listed on the policy with no negotiation as per existing law.

15.0449.02001
Title.

Prepared by the Legislative Council staff for
Representative Kasper
March 20, 2015

3/25/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2105

Page 1, line 14, overstrike "was issued" and insert immediately thereafter "effective date"

Page 1, line 17, replace the third "the" with ":

(1) The"

Page 1, line 17, overstrike the comma and insert immediately thereafter an underscored semicolon

Page 1, line 18, overstrike the first "the" and insert immediately thereafter "(2) The"

Page 1, line 19, overstrike "This" and insert immediately thereafter "b."

Page 1, line 20, replace "subdivision" with "Subdivision a"

Page 1, line 23, remove "Policies"

Page 1, line 23, overstrike "with"

Page 1, line 23, remove "automatic"

Page 1, line 23, overstrike "inflation adjustment"

Page 1, line 23, remove "-adjusted"

Page 1, line 23, overstrike "limits"

Page 1, line 23, remove the underscored semicolon

Page 2, line 1, remove "(3)"

Page 2, line 3, replace "(4)" with "(3)"

Page 2, line 5, overstrike "b." and insert immediately thereafter "c."

Page 2, line 8, overstrike "c." and insert immediately thereafter "d."

Renumber accordingly

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