

2015 SENATE TRANSPORTATION

SB 2155

2015 SENATE STANDING COMMITTEE MINUTES

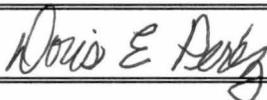
Transportation Committee
Lewis and Clark Room, State Capitol

SB 2155
1/23/2015

Recording job number 22448

Subcommittee Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution

To amend and reenact section 26.1-25-04.2 of the North Dakota Century Code, relating to a motor vehicle accident surcharge.

Minutes:

Attachments: 2

Chairman Oehlke: opened the hearing on SB 2155, all committee members were present.

Senator Ron Carlisle, District 30, Burleigh County introduced this bill in behalf of a constituent, Section 3 will take off the surcharge (0:10-1:10)

Evan Mandigo, State Executive, ND Association of Independent Insurance Agents, in favor, attachment #1 (1:39 - 6:07)

Chairman Oehlke: in line 16: "determined to be solely at fault", what does it mean? If both vehicles are moving who decides who is solely at fault. We need a definition of "at fault", "solely at fault", "partially at fault".

Evan Mandigo: We need to work on the language.

Senator Campbell: right now, if somebody is innocent he has to pay, isn't it the insurance of the person who ran into him?

Chairman Oehlke: we are talking about someone who has little or no insurance, not enough to cover your claim against your vehicle. Normally if your company has to pay out a big collision loss, they can surcharge your policy for a period of time. This bill would say they can't do that, plus it is a zero deductible, even if you carry one on your collision insurance.

No additional testimony in support.

Dale A. Haake, Director, Casualty Claims, Nodak Mutual Insurance Company in opposition, attachment #2, supports prohibition of a surcharge upon the victim, opposes the waiving of the collision deductible, and the wording "solely at fault". To insert "fault" is to put an insurance company at odds with its insured. Asks that the final sentence of paragraph

three be struck and the ending of the first sentence be modified to read: "and determined to be the majority at fault" (9:58- 14:35)

Senator Sinner: What percentage of claims involve uninsured drivers? The problem isn't if the insurance company is willing to pay or cover that deductible it is that there will be disagreement between the insured and the insurance company.

Dale A Haake: we don't have accurate numbers. Actuarially we can cover whatever this legislature decides we must cover. The inequities come about when we have a person who is truly innocent get struck by an uninsured driver versus an accident where the insured perhaps does share responsibility. Oftentimes they will claim the other person is at fault. Another issue is, if an uninsured driver carries 60% of the responsibility and my insured carries 40%, my insured still has a right to recover damages. If that person were insured we would fix their car, go to the other company, recover our sums and share on a pro rata basis; my insured would get 40% of our deductible back, we would get 60% of whatever we paid. Under this bill if other driver is uninsured, my insured receives a windfall and their entire deductible is covered. That does not seem to weight out that if they have an accident with an insured person they share in the loss, if noninsured everything is taken of. (16:40 - 19:32)

Chairman Oehlke: would it simplify the process if we had optional coverage, say property damage on insured motorist coverage? In ND you can recover from un/underinsured driver if you/your passenger are bodily injured, there is nothing for the vehicle. If we were to offer that as an amendment, what coverage limit would you prescribe?

Dale A Haake, that solution would be a perfect fix. I cannot respond to the coverage limit.

Senator Campbell what are the penalties for the uninsured?

Chairman Oehlke: if no other factors like intoxication, recklessness, etc... \$150, it is a misdemeanor.

Dale A Haake: basic principle of a deductible is to share the cost with the insurance company when something happens regardless of fault. The policy holder has the right to select what size deductible; it is not mandated by the carrier. Larger deductible, lower premium and vice versa.

Pat Ward, Property & Casualty Insurance Association of America, this is a "if it isn't broke don't fix it" kind of deal. I have issues with the "solely at fault" language and with waiving deductibles.

Senator Rust: if last sentence is left in the bill, would insurance companies adjust rates?

Pat Ward: Yes, there would be some kind of an increase. ND has a low percentage of uninsured drivers, around 8%. The national average is 13-16%. If the legislature asks us to provide additional coverage, they are in a sense raising the premiums for anyone who buys car insurance.

No additional opposing testimony

Steve Becker, neutral, Executive Director of Professional Insurance Agents of ND, I agree we have an uninsured motorist problem that is getting worse; the wording of the bill will not fix the problem. The word "solely" is the problem, the word "identifiable" covers only certain drivers, leaves some vehicles uncovered. I agree with the uninsured motorist property damage coverage. The way this bill is written every driver that has coverage is going to pay something.

No other testimony **Chairman Oehlke**: closed the hearing, we will not act on this today.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2155
1/30/2015

Recording job number: 22786 (segment 1:40 - 6:54)

Subcommittee

Conference Committee

Committee Clerk Signature

Doris E. Perez

Explanation or reason for introduction of bill/resolution:

To amend and reenact section 26.1-25-04.2 of the North Dakota Century Code, relating to a motor vehicle accident surcharge.

Minutes:

Attachment: 0

Chairman Oehlke informed the committee that he received a request that uninsured property damage liability coverage get incorporated into this bill. If you have an accident with someone who has no insurance and you carry no collision insurance you would have some security with this provision. We are waiting for feedback from the insurance department. Note: he erroneously referred to this bill as SB 2166.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2155
1/30/2015
Recording job number 22868

Subcommittee Conference Committee

Committee Clerk Signature

Doris E. Riey

Explanation or reason for introduction of bill/resolution:

To amend and reenact section 26.1-25-04.2 of the North Dakota Century Code, relating to a motor vehicle accident surcharge

Minutes:

Attachment: 0

Chairman Oehlke opened the discussion on SB 2155, all committee members except Senator Campbell present.

Chairman Oehlke: I gave the insurance department a property damage policy change request for them to look over. They had a laundry list of problems with it. If we want we can try and turn this into a study, if not we should just have it do not pass.

Vice Chairman Casper moved: do not pass

Senator Sinner seconded the motion

No further discussion

Roll call vote was taken: Yes 5 No 0 Absent 1

Floor assignment Chairman Oehlke

REPORT OF STANDING COMMITTEE

SB 2155: Transportation Committee (Sen. Oehlke, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2155 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2155

TESTIMONY ON SB 2155
SENATE TRANSPORTATION COMMITTEE
SENATOR DAVID OEHLKE, CHAIR

January 23, 2015

Chairman Oehlke and members of the Senate Transportation Committee, my name is Evan Mandigo, State Executive of the ND Association of Independent Insurance Agents and I am testifying in favor of SB 2155.

The intent of this legislation is to prevent insurance carriers from surcharging personal auto insurance if your auto is damaged by an un or under-insured motorist and you have the vehicle repaired using your own Collision insurance. Nothing in the current law regarding Motor vehicle accident surcharge prevents a carrier from doing so.

The scenario would be if you are minding your own business operating your vehicle in a safe and prudent manner and are hit causing you to have your vehicle repaired using your collision coverage. We don't want to see an accident surcharge applied to the innocent driver's premium. The bill contains language dealing with "mystery" claims requiring the offending driver to be identified.

The bill also eliminates the collision deductible for the repairs caused by the offending driver. We feel the innocent driver should not have to incur the additional insult of paying a deductible for a crash caused by someone with no or not enough insurance to pay for the full cost of repair. Just the fact you are on the road when hit by a negligent driver should not make you pay for part of the repairs. If a crash is caused by a fully negligent but un or under insured driver, and the innocent driver should not suffer financially.

Let me give you a real life personal scenario. My wife was rear ended in one of our vehicles while waiting for a stoplight to change at an intersection in Bismarck on Tuesday morning. It was snowing and the road was slippery. The other driver was from out of town and probably not aware of the hill leading down to the intersection. She slid down the hill stopping only after contacting the rear door on our van with her F250 pickup. My van lost in the exchange. Damages will far exceed the deductible. The police came and the normal accident routine occurred. Her insurance will apply and our van will be repaired and returned to us with modest inconvenience being the only consequence.

Now change that a bit and the other driver has no insurance. The financial outcome should be identical. Our vehicle was stopped waiting for a green light to proceed. I can't visualize how an innocent driver should have any fault in that scenario.

Mr Chairman and members of the committee, this concludes my testimony and out of simple fairness to innocent drivers I urge a do pass recommendation for SB 2155.

Thank you for your consideration and I am happy to answer any questions you may have.

IN OPPOSITION TO SB 2155 WITH PROPOSED CHANGES

Dale A. Haake – Director of Casualty Claims for Nodak Mutual Ins.

Representing Nodak Mutual Insurance Company

Chairman Oehlke, members of the Senate Transportation Committee, my name is Dale Haake and I am here to speak in opposition to SB 2155 and to offer a change to the wording.

The problem of uninsured drivers has escalated in North Dakota sharply over the last several years. This is not an illusion, this is fact. This has definitely caused problems for those citizens who have been struck by an uninsured person and have not been able to recover from that person and are forced to have their vehicle repaired under their own insurance coverage.

This bill is a well-intentioned effort to prevent added financial stress to the victims of such a loss. I am fully in support of the first sentence which prohibits a surcharge being placed upon the victim of such an accident. However, the last aspect of this bill, the waiving of the collision deductible, creates far more problems than the authors realize, and must be struck.

To begin with, it must be understood that a deductible is a tool whereby an insured is able to select the amount of loss they are willing to share with the insurer in exchange for a reduced premium. The higher the deductible, the lower the premium, and vice versa. This is a sharing that is based upon a loss occurring. It has nothing to do with fault. To insert fault into the equation for a select type of accident defeats the entire purpose of the insured having a choice of the deductible they wish to purchase

There is, however, a far more important reason for the need to remove the last sentence from this bill. This bill requires the waiving of the collision deductible when the opposing vehicle operator is "determined to be solely at fault". Here in lies the problem.

In North Dakota, accidents, including auto accidents, are governed by our Comparative Fault laws. These laws require that the responsibility for the accident having occurred be apportioned on a percentage basis among all involved parties. As a person who has worked auto accident claims for approximately 34 years, I can attest to the fact that a great many people who contributed significantly to an accident hold firmly to the claim of being totally innocent of any wrong doing and that all responsibility for the loss rests

strictly with the other driver.

It is the job of an insurance claims person to investigate the facts of a loss and determine responsibility, including whether or not there exists responsibility, in any amount, upon their own insured. Under this bill, when an adjuster, after doing a diligent investigation into the facts of a loss, determines that his insured carries a certain percent of responsibility for the accident having happened, will apply the deductible called for by the insurance contract. It is highly likely the insured will not agree with the findings of the adjuster, and this is where the conflict begins.

This bill, as written, is simply a recipe for conflict and strife between the insurance company and their insured. The insured is going to insist they were free of any responsibility for the accident and that their deductible should be waived. The insurance company, based upon the adjuster's investigation, will insist it has a right to apply the deductible. The result will be a huge increase in argument, Insurance Department complaints, and no doubt litigation. It will also create distrust and dissatisfaction between a good and valued customer and a good and honest insurance company. Such strife and conflict simply should not exist.

Again, members of the Transportation Committee, I stress that this bill, as currently worded, is a misapplication of the purpose of a deductible. A deductible is a cost sharing tool that is agreed upon between the insured and the insurer before the loss occurs and has nothing to do with fault. To insert fault into the equation with the objective being the application or waiving of a deductible is to knowingly and deliberately put an insurance company at odds with its insured, and should never happen.

I ask that the final sentence of paragraph three be struck, and that the ending of the first sentence be modified to read "and determined to be the majority at fault".

Thank you for your consideration of my thoughts.