

2019 HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1280

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1280
1/16/2019
30882

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang by Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Inception & expiration of insurance policies.

Minutes:

Attachment 1,2,3,

1:40

Rep Beadle~Dist.27, Fargo: Introduces HB 1280. Right now, especially auto, people can have an accident, activate a policy immediately with an ap on their cell phone, which constitutes insurance fraud. Technically they didn't have the policy at the time of the accident. With this bill it becomes effective when you get it, it's active, not back dated.

5:25

Rep M Nelson: This is happening on hail insurance. You are now applying to all insurance which has not been customary.

Rep Beadle: I have no issues changing that.

Rep M Nelson: What this bill does it makes it active when the policy is activated.

Rep Schauer: If I get into an accident, can I quickly go to my ap, purchase insurance and I'm away we go. There's a bill now that authorities may not even come unless there's \$5000-\$7000 damage.

Rep Beadle: The police only come when you ask them to come. This bill there will be a time stamp which will tell when you purchased coverage.

10:36

Gino Banco~Personal Lines Product Manager for Progressive Insurance in ND:
Attachment 1.

Rep Kasper: What about when you buy a used car, you call your insurance and get coverage. Will this bill prohibit that?

Gino Banco: No, that's actually why we want this to go through. In that instance, you would be covered. Some carriers have decided because of this to only offer policies effective the next day. Whereas we offer policies same day. 80% of our policies are effective the same day they're purchased.

Rep Schauer: I don't think this solves the issue, can you determine when that accident happens. Wouldn't you want the coverage to start the next day at 12:01? Would you not want to do that because your competition doesn't do that?

Gino Banco: We could do that, but 80% of our applications, they would have to wait a day for their policies. Our customers want them immediately.

Chairman Keiser: You say they want it. They get it but do they care if it starts the next day at 12:01 when they go on the ap.

Gino Banco: They can choose any effective date they want.

Rep Kasper: You want it the second you drive the vehicle off the lot.

Chairman Keiser: Support, opposition to HB 1280.

Attachment 2 in support – Steve Schneider, did not testify

Johnny Palsgraaf~Legal Counsel for the ND Insurance Department: Attachment 3.

29:00

Rep Laning: They could essentially say we rescind and we are not going to cover the accident? Do you see a lot of legal hassle?

Johnny Palsgraaf: The potential for fraud is already there. Progressive is the only company that has approached us. They are rescinding the policy when fraud happens and it's mandatory that be reported to the insurance department if that's suspected. It's on their radar to catch fraud.

Rep Laning: The litigation part?

Johnny Palsgraaf: They time stamp when the policy is purchased. If you're dealing with a liability problem, you have witnesses, police reports. That's how they detect fraud. This isn't going to increase any litigation.

Rep Schauer: The intent is to reduce fraud but when you take this position of maintaining 12:01 I think you help fraud.

Johnny Palsgraaf: Reading this just by itself it may appear that way. But Chapter 26.130-15, if you commit fraud, then your policy is rescinded.

Rep Schauer: It says, "12:01 or the time stated on the application for the insurance policy." Isn't that a win, win for both sides?

Johnny Palsgraaf: This 12:01 to 12:01 is part of our regulatory structure. As I look closer, it says the later of.

Rep Richter: The application time stamp, can you tell it is fraud.

Johnny Palsgraaf: I feel it's how they write it in the policy. It's in the underwriting. Yes, it's taken care in the question process when you're signing up for an application.

Rep M Nelson: What's my proof of insurance when you just bought a vehicle and something happens?

Johnny Palsgraaf: Generally speaking you're correct, your current policy logically would be your proof of insurance because your contract includes this buying a new car option.

Chairman Keiser: Do you have a proposed amendment?

Johnny Palsgraaf: No I don't.

Chairman Keiser: opposition, neutral. Closes the hearing. Would you work with Rep Beadle to see if there is code in the transportation area?

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1280
2/4/2019
30882

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang by Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Inception & expiration of insurance policies.

Minutes:

Attachment 1

Chairman Keiser: opened the hearing on HB 1280.

Rep M Nelson: presented Amendment 19.0786.01001, Attachment 1, and moved to adopt the amendment.

Rep. Anderson: Second.

Chairman Keiser: We have motion to adopt amendment 19.0786.01001 and second. Discussion?

Rep. Louser: The bill sponsor knows this?

Chairman Keiser: I believe they do. The bill still does exactly what it was designed to do. They moved this and the description before you into the DOT section of the code. All those in favor say Aye, opposed No. Motion carries. Amendment is on the bill and we have HB 1280 as Amended.

Rep Laning: Move a Do Pass as Amended on HB 1280.

Rep. Schauer: Second.

Chairman Keiser: Discussion? The clerk will take the roll for a Do Pass as Amended on HB 1280. 14 yes 0 no 0 absent. Rep. M. Nelson is carrier.

DR 2/4/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1280

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 6 of section 39-16.1-11 of the North Dakota Century Code, relating to inception and expiration of motor vehicle insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 39-16.1-11 of the North Dakota Century Code is amended and reenacted as follows:

6. Every motor vehicle liability policy is subject to the following provisions, which need not be contained therein in the policy:
 - a. The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute ~~whenever~~ if injury or damage covered by ~~said~~ the motor vehicle liability policy occurs; ~~said~~ the policy may not be canceled or annulled as to ~~such~~ the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; ~~and a~~ and a statement made by the insured or on the insured's behalf and ~~no~~ a violation of ~~said~~ the policy ~~may do not~~ do not defeat or void ~~said~~ the policy. This subdivision does not restrict the ability of an insurance carrier to void a motor vehicle liability policy for which an application was made after injury or damage occurred and does not obligate the insurance carrier to pay a claim on account of injury or damage that occurred before the application was made.
 - b. The satisfaction by the insured of a judgment for ~~such~~ an injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of ~~such~~ the injury or damage.
 - c. The insurance carrier has the right to settle any claim covered by the policy, and if ~~such~~ the settlement is made in good faith, the amount ~~thereof~~ thereof that settlement is deductible from the limits of liability specified in subdivision b of subsection 2 for the accident out of which ~~such~~ the claim arose.
 - d. The policy, the written application ~~therefor~~ thereof the policy, if any, and any rider or endorsement ~~which~~ that does not conflict with the provisions of this chapter constitute the entire contract between the parties."

Renumber accordingly

Date: Feb 4 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1280

House _____ Industry, Business and Labor _____ Committee

☐ Subcommittee

Amendment LC# or
Description:

19.0786.01001

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 Nelson

Seconded By

Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes)

No

Absent

Floor
Assignment

Voice vote
Motion carried.

Date: Feb 4, 2019Roll Call Vote #: 2**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES**BILL/RESOLUTION NO. 1280

House _____ Industry, Business and Labor _____ Committee

☐ SubcommitteeAmendment LC# or
Description: _____**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 Laning Seconded By Schauer

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<input checked="" type="checkbox"/>		Rep O'Brien	<input checked="" type="checkbox"/>	
Vice Chairman Lefor	<input checked="" type="checkbox"/>		Rep Richter	<input checked="" type="checkbox"/>	
Rep Bosch	<input checked="" type="checkbox"/>		Rep Ruby	<input checked="" type="checkbox"/>	
Rep C Johnson	<input checked="" type="checkbox"/>		Rep Schauer	<input checked="" type="checkbox"/>	
Rep Kasper	<input checked="" type="checkbox"/>		Rep Adams	<input checked="" type="checkbox"/>	
Rep Laning	<input checked="" type="checkbox"/>		Rep P Anderson	<input checked="" type="checkbox"/>	
Rep Louser	<input checked="" type="checkbox"/>		Rep M Nelson	<input checked="" type="checkbox"/>	

Total (Yes) 14 No 0Absent 0Floor
Assignment Nelson

REPORT OF STANDING COMMITTEE

HB 1280: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1280 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 6 of section 39-16.1-11 of the North Dakota Century Code, relating to inception and expiration of motor vehicle insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 39-16.1-11 of the North Dakota Century Code is amended and reenacted as follows:

6. Every motor vehicle liability policy is subject to the following provisions, which need not be contained ~~therein~~ in the policy:
 - a. The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute ~~whenever~~ if injury or damage covered by ~~said~~ the motor vehicle liability policy occurs; ~~said~~ the policy may not be canceled or annulled as to ~~such~~ the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; ~~and a~~ and a statement made by the insured or on the insured's behalf and ~~no~~ a violation of ~~said~~ the policy ~~may do not~~ may not defeat or void ~~said~~ the policy. This subdivision does not restrict the ability of an insurance carrier to void a motor vehicle liability policy for which an application was made after injury or damage occurred and does not obligate the insurance carrier to pay a claim on account of injury or damage that occurred before the application was made.
 - b. The satisfaction by the insured of a judgment for ~~such~~ an injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of ~~such~~ the injury or damage.
 - c. The insurance carrier has the right to settle any claim covered by the policy, and if ~~such~~ the settlement is made in good faith, the amount ~~thereof~~ of that settlement is deductible from the limits of liability specified in subdivision b of subsection 2 for the accident out of which ~~such~~ the claim arose.
 - d. The policy, the written application ~~therefor~~ of the policy, if any, and any rider or endorsement ~~which~~ that does not conflict with the provisions of this chapter constitute the entire contract between the parties."

Renumber accordingly

2019 SENATE TRANSPORTATION

HB 1280

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1280
3/14/2019
33709

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to inception and expiration of motor vehicle insurance.

Minutes:

3 Attachments

Representative Thomas Beadle, District 27, Fargo: Please see **Attachment #1** for testimony introducing HB 1280.

Chairman Rust: I presume then the other little things are style.

Representative Beadle: That is correct.

Gino G. Banco, Personal Auto Product Manager, North Dakota, Progressive Group of Insurance Companies: Please see **Attachment #2** for testimony.

Senator Clemens: I'd like you to go over lines 12-14 beginning with the semicolon on line 12, because it seems like some of those crossed out and added words are changing that statement.

Mr. Banco: I think you're saying the first part contradicts lines 14-18 which is what is inserted, is that what you're suggesting?

Senator Clemens: I'm not saying it contradicts, but the way I'm reading that; the way it used to read was, "no statement made by the insured or on the insured's behalf and no violation of said policy may defeat or void said policy." Now it says, "and a statement made by the insured or on the insured's behalf and a violation of the policy do not defeat or void the policy."

Mr. Banco: It says the same thing.

Chairman Rust: Senator Dwyer does it change anything?

Senator Dwyer: No, it just takes a different approach.

Senator Dwyer: So I see in the House amendments they completely changed it as Representative Beadle mentioned. Now it does what you guys wanted and this is a better approach?

Mr. Banco: We initially proposed changes to 26.1-18-30. We're trying to solve the same problem, because the problem arises in a conflict between those two statutes, we initially (when I say we, I mean Progressive) thought that it was best addressed in chapter 26. However, it became clear to us during that hearing that it may cause some unintended consequences to the rest of the insurance code. So we happily worked with the insurance department and confirmed with the Department of Transportation that it was okay to move the "fix" to the other section of code. Either way would have worked for us, but the first way we started would have caused some issues for the insurance department and we certainly didn't want to do that. This was addresses the problem without causing any unintended consequences.

Please see **Attachment #3** for testimony from Steve Schneider, APCI/American Property and Casualty Insurance Association.

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1280
3/14/2019
33765

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Liz Stenehjerm

Explanation or reason for introduction of bill/resolution:

A bill relating to inception and expiration of motor vehicle insurance.

Minutes:

No Attachments

Chairman Rust: Reminded committee of what bill does.

Senator Dwyer: I move a **DO PASS**.

Senator Bakke: I **SECOND** the motion.

Roll Call Vote Taken:

6-0-0 Do Pass

CARRIER: Senator Fors

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1280**

Senate Transportation Committee

☐ Subcommittee

Amendment LC# or Description: _____

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 Dwyer Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Senator Rust - Chairman	X		Senator Bakke	X	
Senator Clemens - Vice Chairman	X				
Senator Dwyer	X				
Senator Fors	X				
Senator Patten	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Fors

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

REPORT OF STANDING COMMITTEE

HB 1280, as engrossed: Transportation Committee (Sen. Rust, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1280 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1280

January 16, 2019

North Dakota House Industry,
Business, and Labor Committee

Testimony in Support of HB 1280

Chairman Keiser and Members of the Committee,

My name is Gino Banco. I am the personal lines product manager for Progressive Insurance in North Dakota, the largest provider of auto insurance in the state.

Progressive supports House Bill 1280 because it would amend current statute to be consistent with the common sense of the honest people of North Dakota who know that insurance policies are purchased to protect against financial loss arising from unforeseen future events, not from events that have already occurred.

North Dakota Century Code §26.1-18-30, however, has a loophole that requires insurance policies to start coverage at 12:01 a.m. on the day they become effective, meaning insurers must provide coverage, retroactively, when an uninsured person purchases insurance *after* a loss. All they need to do is purchase the insurance policy the same day.

One can imagine a scenario where an uninsured person has a loss on a given morning and then purchases an insurance policy covering that same type of loss in the afternoon, effective that same day. With the currently mandated 12:01 a.m. effective time, the insurance policy must retroactively cover that loss. This incentivizes people to remain uninsured until they have a loss, since they can simply purchase a policy that covers the loss retroactively.

We see this behavior often. In fact, just recently, there was a young woman in West Fargo who approached a stoplight that had just turned yellow at 4:21 p.m. She thought she had enough time to make it, but collided with two other vehicles in the intersection. Fortunately, there were no serious injuries. Unfortunately, she had no car insurance. She then used her smart phone just 30 min. later at 4:52 p.m. to purchase a Progressive policy through our website, paying \$63.97 for down payment. Per North Dakota Century Code, that policy became effective at 12:01 a.m. the same day: 16 hours and 21 minutes *before* she had the accident. We are now liable for \$25,000 of damages.

Over the last 36 months, we incurred over \$150,000 in losses due to this type of scenario. Assuming other auto insurance providers experience losses at the same rate we do, we estimate that the mandate to start policies at 12:01 a.m. has cost the North Dakota auto insurance industry, and therefore the people of North Dakota through their insurance premiums, more than \$1,000,000 over the same time period.

HB 1280 would solve this problem by allowing insurance policies to become effective when the policy is purchased, the way it works in other states.

Thank you for time and consideration.

Gino G. Banco
Personal Auto Product Manager, ND
Progressive Group of Insurance Companies

If you require further information, or if you have any questions, please do not hesitate to contact me on my cell phone at (856) 625-8889 or via email at gino_g_banco@progressive.com.

APCI/American Property and Casualty Insurance Association

#2

January 16, 2019

House Industry, Business, and Labor Committee

Support HB 1280

Chairman Keiser and Members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCI) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCI represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

The purpose of ND HB 1280 is to close a current loophole that allows someone to purchase insurance later in the day after an accident and to become retroactively covered for such incident. Currently, NDCC 26.1-30-18 states that an insurance policy must begin coverage at 12:01AM on the day it becomes effective. For an insurance policy purchased the same day it becomes effective, this means the policy must cover accidents which occurred earlier that day, even if the accident is not disclosed to the insurer.

The statute already recognizes the moral hazard this creates by exempting hail insurance policies from this requirement. NDCC 39-08-20 recognizes the moral hazard by confirming an uninsured person who purchases a policy the same day an accident occurred is still in violation of ND law for driving without liability insurance at the time of the accident.

These changes simply extend the hail insurance exemption to all insurance policies to eliminate the moral hazard loophole. We urge you to support ND HB 1280.

Please don't hesitate to reach out with any questions. Thank you.

Steve Schneider

sschneider@aiadc.org

312.782.7720

HOUSE BILL NO. 1280

Presented by: Johannes (Johnny) Palsgraaf
Legal Counsel
North Dakota Insurance Department

Before: House Industry, Business, and Labor Committee
Representative George Keiser, Chairman

Date: January 16, 2019

TESTIMONY

Good morning Chairman Keiser and members of the committee. My name is Johannes (Johnny) Palsgraaf and I am Legal Counsel for the North Dakota Insurance Department. I appear before you in opposition of House Bill No. 1280.

The 12:01am to 12:01am statute is a general statute and applies to all insurance policies in the insurance code unless specifically excepted. House Bill 1280 is a general change to the statute and would impact all types of insurance.

It is the Department's understanding, based on the legislative history, that the 12:01am to 12:01am policy inception and expiration time statute was intended to help assure that a consumer switching insurance companies does not suffer a lapse or gap in coverage during the transition to a new policy. A gap in coverage exposes the insured to liability claims and other uninsured exposures, such as property damage coverage. A lapse of coverage is an underwriting factor in most property and casualty insurance policies, such as auto insurance, and a lapse in coverage results in higher premium payments for the insured.

The Insurance Department believes that protection from gaps and lapses in insurance outweighs any benefits of changing the 12:01am to 12:01am statute. Additionally, there are currently sufficient protections and remedies in the existing law to address the concerns with the 12:01am to 12:01am insurance policy inception and termination requirement. The current

process works to protect both companies and consumers, and this established process and the statutes have been in place for quite some time.

HB 1280 seems to be targeted at the concern of insurance policies covering insureds on the date that coverage begins, back to 12:01am that same day. In other words, an insured is potentially covered by insurance prior to the actual time the insurance is purchased. However, by definition, insurance coverage only covers an unknown event and not known events prior to the placement of the policy.

The established process of purchasing insurance and underwriting a risk involves the insurance company asking historical questions about the property. For example in a standard auto insurance application, the insured is asked "have you been in an accident or is there any prior damage to your vehicle." Once the application is completed, the insurance company has the choice to begin the coverage at 12:01am the current day or begin the coverage at 12:01 am the following day. The company is not required to implement the policy the same day as the application. One of the reasons the Department believes that the HB 1280 changes are not needed is because insurance companies do a great job in vetting these things out through their underwriting process.

In circumstances where the applicant has provided false or misleading information on the insurance application, statute permits the insurance company to ~~cancel~~ ^{rescind} the insurance policy and refund the premium. Under these circumstances the policy is void and it is as if the policy never existed.

Changing the inception time of insurance policies to the time on the application will undoubtedly crack the door open to on-demand insurance in North Dakota. Currently the 12:01 to 12:01 inception and expiration statute is the only statute in the insurance code that clearly prevents companies from offering insurance for any arbitrary timeframe the company desires. HB1280 will allow insurance companies to begin insurance coverage at any time during the day. As a result, policies may only be in place from the time of the application to 12:01am the following day, a matter of hours. There may be other vagueness or ambiguity in the law that would open up additional on demand insurance avenues that the Department

would be unable to restrict. On demand insurance is essentially insurance that a consumer can turn on and off at any time. The Department does not believe that North Dakota has the consumer protection, fraud prevention or insurance company solvency protection statutes currently in place for this new on demand insurance market.

The Insurance Department is interested in exploring the on demand insurance market and is poised for the current innovation occurring in the on demand area of insurance. At the same time the Department wants to be smart about North Dakota's incorporation of these insurance products.

I testified before this committee on Tuesday in support of a bill that the Department sees as the appropriate first step towards incorporating these products. That bill creates narrow exemptions for specific types of liability only and insurance that does not appear to have the substantial risks related to other types of insurance. The Department is willing to move towards this new and innovative market in a manner that is consistent with that bill.

In conclusion, House Bill 1280 is a general change to the statute and would impact all types of insurance. Specific concerns are included in this testimony, but HB1280 changes the general statute that applies to all insurance policies. There are very likely other unforeseen issues that may arise as a result of this broad change. The Insurance Department opposes House Bill No. 1280 and respectfully recommends "do NOT pass." I am happy to take any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1280

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 6 of section 39-16.1-11 of the North Dakota Century Code, relating to inception and expiration of motor vehicle insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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 - a. The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute ~~whenever~~ if injury or damage covered by ~~said~~ the motor vehicle liability policy occurs; ~~said~~ the policy may not be canceled or annulled as to ~~such~~ the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; ~~and a~~ statement made by the insured or on the insured's behalf and ~~not~~ a violation of ~~said~~ the policy may do not defeat or void ~~said~~ the policy. This subdivision does not restrict the ability of an insurance carrier to void a motor vehicle liability policy for which an application was made after injury or damage occurred and does not obligate the insurance carrier to pay a claim on account of injury or damage that occurred before the application was made.
 - b. The satisfaction by the insured of a judgment for ~~such~~ injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of ~~such~~ the injury or damage.
 - c. The insurance carrier has the right to settle any claim covered by the policy, and if ~~such~~ the settlement is made in good faith, the amount thereof of that settlement is deductible from the limits of liability specified in subdivision b of subsection 2 for the accident out of which ~~such~~ the claim arose.
 - d. The policy, the written application thereof of the policy, if any, and any rider or endorsement ~~which~~ that does not conflict with the provisions of this chapter constitute the entire contract between the parties."

Renumber accordingly

HB 1280

Senate Transportation Committee
Testimony from Rep. Thomas Beadle

Chairman Rust and members of the Senate Transportation Committee,

My name is Representative Thomas Beadle, and I am in support of HB 1280.

As originally introduced, this bill dealt with the effective start date/time of policies issued. Current law says that an insurance policy begins at 12:01am on the policy start date. Companies that offer customers the ability to sign up online or via an app have found that there are some bad actors out there who will take advantage of their instant coverage options and will wait until they have an accident before signing up for coverage. By the time the police officer shows up to do a damage report, that driver now has coverage. Make no mistake, this is insurance fraud. However, the effective start time of coverage in statute makes it foggy for companies and drivers, and companies have mistakenly paid out hundreds of thousands of dollars in claims as a result of this confusion, and confusion about whether the company was still required by law to pay provide coverage.

The original bill would have shifted the policy start time to be the timestamp that the policy was purchased instead of the start of that day. In conversations on the House side, there were concerns about the coverage gaps that could exist or potential for double coverage if you start your new policy before your current policy expires. In that event, which carrier would be responsible for coverage in that situation. Based on a few concerns, the house committee opted to amend the bill to the current format.

The substantive change is on page 1 lines 14-18. This language makes it clear to the carrier that they have the ability to void a policy if it was made in the circumstance where an individual purchased it after the accident took place. This removes any confusion and doubt and ensures that companies can protect themselves from fraudulent activities by customers without having to go to the Insurance Department to handle it. It's a pretty simple change, but one that gives certainty.

North Dakota Senate
Transportation Committee

PROGRESSIVE

March 14, 2019

Testimony in Support of HB 1280

Chairman Rust and Members of the Committee,

My name is Gino Banco. I am the personal auto product manager for Progressive Insurance in North Dakota, the largest provider of auto insurance in the state.

Progressive supports House Bill 1280 because it would amend current statute to be consistent with the common sense of the honest people of North Dakota, who know that insurance policies are purchased to protect against financial loss arising from unforeseen future events, not from events that have already occurred.

Currently, there is a loophole in the North Dakota Century Code that forces auto insurers to provide coverage, retroactively, when an uninsured person purchases insurance *after* a loss. All they need to do is purchase the insurance policy the same day. This loophole is created through an interaction between § 26.1-18-30, which requires insurance policies to start coverage at 12:01 a.m. on the day they become effective, and § 39-16.1-11, which prohibits an insurer from fully voiding a policy that was issued in reliance on fraudulently misrepresented information.

One can imagine a scenario where an uninsured person has a loss on a given morning and then purchases an insurance policy covering that same type of loss in the afternoon. For the policy to be effective the same day, the person lies on the application, stating that they were not involved in an accident that day. With the mandated 12:01 a.m. effective time, the insurance policy is now retroactively in effect at the time of loss. Without the ability to rescind the fraudulently purchased policy, the insurance carrier is now forced to cover the accident that happened before it was purchased. This incentivizes people to remain uninsured until they have a loss, since they can simply purchase a policy that covers the loss retroactively.

We see this behavior often. In fact, just recently, there was a young woman in West Fargo who approached a stoplight that had just turned yellow at 4:21 p.m. She thought she had enough time to make it, but collided with two other vehicles in the intersection. Fortunately, there were no serious injuries. Unfortunately, she had no insurance. So the young woman then used her smart phone just 30 min. later at 4:52 p.m. to purchase a Progressive policy through our website, paying \$63.97 for down payment. Per North Dakota Century Code, that policy became effective at 12:01 a.m. the same day: 16 hours and 21 minutes *before* she had the accident. We are now liable for \$25,000 of damages.

Over the last 36 months, we incurred over \$150,000 in losses due to this type of scenario. Assuming other auto insurance providers experience losses at the same rate we do, we estimate that the mandate to start policies at 12:01 a.m. has cost the North Dakota auto insurance industry, and therefore the people of North Dakota through their insurance premiums, more than \$1,000,000 over the same time period.

HB 1280 would solve this problem by allowing insurance policies to fully voided with respect to losses that occur before the policy is purchased, the way it works in all other states in the country.

Thank you for time and consideration.

Gino G. Banco
Personal Auto Product Manager, ND
Progressive Group of Insurance Companies

If you require further information, or if you have any questions, please do not hesitate to contact me by cell phone at (856) 625-8889 or via email at gino_g_banco@progressive.com.

APCI/American Property and Casualty Insurance Association

March 14, 2019

Senate Transportation

Support HB 1280

Chairman Rust and Members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCI) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCI represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

The purpose of ND HB 1280 is to close a current loophole that allows someone to purchase insurance later in the day after an accident and to become retroactively covered for such incident. Currently, NDCC 26.1-30-18 states that an insurance policy must begin coverage at 12:01AM on the day it becomes effective. For an insurance policy purchased the same day it becomes effective, this means the policy must cover accidents which occurred earlier that day, even if the accident is not disclosed to the insurer.

The statute already recognizes the moral hazard this creates by exempting hail insurance policies from this requirement. NDCC 39-08-20 recognizes the moral hazard by confirming an uninsured person who purchases a policy the same day an accident occurred is still in violation of ND law for driving without liability insurance at the time of the accident.

These changes simply extend the hail insurance exemption to all insurance policies to eliminate the moral hazard loophole. We urge you to support ND HB 1280.

Please don't hesitate to reach out with any questions. Thank you.

Steve Schneider

sschneider@aiadc.org

312.782.7720