

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1448

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1448
1/28/2019
31613

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Exclusion of people from coverage of automobile insurance.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the hearing on HB 1448.

Rep Schobinger~District 40, Minot: Attachment 1. Introduces HB 1448. It's to eliminate for a step down policy. Explains what a step down policy.

3:20

Rep Kasper: I'm going to assume the arguments of people free market or can't afford. Do you have an estimate compared to the drop down in premiums?

Rep Schobinger: I don't know because I don't sell these policies. I just know about it.

Rep D Ruby: Does that also includes a kid on your policy & they move away from home, is it a reason for the company to utilize this lower coverage level?

Rep Schobinger: If the person is a named person on the policy, those limits would stand. It's the permissive driver drop down.

Rep P Anderson: Is there some disclosure?

Rep Schobinger: There would be on the policy but not on the declaration's page.

Rep P Anderson: Would a normal person know to ask that?

Rep Schobinger: That's why the bill is before you.

Chairman Keiser: This could result in a lower premium. There is a risk here if I allow someone not named on the policy. The insurance wouldn't have permitted that & would have to pay a higher premium if they have known.

Rep Schobinger: Yes, but when I write a liability, my job is to make sure that they are covered for the exposure they have. If it's a covered loss, you're covered. The exclusion is still there.

Chairman Keiser: Anyone else here to testify in support, opposition on HB 1448?

Pat Ward~Represent the Association of ND Insurers: Attachment 2.

17:15

Rep Richter: I borrow my car & the policy drops down to liability, who pays the difference between what the insurance is now at & what the cost is?

Pat Ward: If there is underinsured motorist situation, it would be the other individuals under insured policy. It's their negligence & the court will look at the person who was driving the car, not the owner of the car.

Chairman Keiser: Gives a scenario, do I still have the million-dollar coverage for myself?

Pat Ward: Yes you would. It's not your fault.

Rep Schauer: How is the consumer notified that they have the drop down policy?

Pat Ward: They usually know what they are buying & knows what they are buying.

Rep Schauer: Specifically, how do they know it?

Pat Ward: They have to identify who they are excluding. They can buy high risk policy.

Rep Kasper: I don't know what my coverages are. The blanket statement that everyone knows what they are buying is not the way it works out there.

Pat Ward: Companies are not selling these exclusions without the customer identifying who they are excluding.

Rep Kasper: I'm talking about the drop down.

Pat Ward: That's a permissive use. Agents are proactively selling these.

Rep P Anderson: Would you be unopposed if this is on the declaration page?

Pat Ward: I don't think so.

Rep D Ruby: Do you know how many companies that offer this in the state?

Pat Ward: I do not.

Chairman Keiser: Anyone here to testify in the opposite position, neutral? Closes the hearing on HB 1448. Closes the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1448
1/29/2019
31675

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Exclusion of people from coverage of automobile insurance.

Minutes:

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Chairman Keiser: Reopens the hearing on HB 1448.

Rep D Ruby: Moves to adopt amendment 19.1070.01002.

Rep Kasper: Second.

Chairman Keiser: Further discussion.

Voice vote ~ motion carried.

Chairman Keiser: We have HB 1448 as amended, what are the wishes of the committee?

Rep Adams: Moves HB 1448 as Amended.

Rep D Ruby: Second.

Chairman Keiser: Further discussion?

Rep P Anderson: The public needs to know. I like this bill.

Roll call was taken on HB 1448 for a Do Pass as Amended with 10 yes, 1 no, 3 absent & Rep Louser is the carrier.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1448
2/12/2019
32604

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Exclusion of people from coverage of automobile insurance.

Minutes:

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Chairman Keiser: Reopens the hearing on HB 1448.

1:50

Rep Kasper: Moves to reconsider HB 1448.

Rep Schauer: Second.

Voice vote ~ motion carried.

Chairman Keiser: Is there anyone who wants to speak to the committee in support or the amendment? Anyone here to speak against HB 1448.

Pat Ward~Represents the ND Association of ND Insurers: Thank you for bring this bill back. At the time of the initial hearing, the way the bill was written, nobody felt there was a need to oppose at the time. At the time of the hearing, Rep Schobinger added an amendment, which we didn't see. It changed the bill & we would oppose the bill. Rep Schobinger might have had a misunderstanding on how it actually works. The committee was operating under a misunderstanding when the acted.

Rob Hovland~Center Mutual Company: Give his perspective on Center Mutual's position. This section of the law is about allow people to have exclusions from the policy. Any time you tinker, someone is going to be rated on their policy & they don't want them on their policy. That's why they get excluded & their premiums are lower.

Give a brief description of a permissive user with a poster board.

Permissive User

Anyone who is **NOT** of the following:

- ~Named Insured
- ~Spouse
- ~Family member who is a resident of household
- ~Other driver specifically listed

If you are any one of the four, this will never have an impact.

Poster 2

How does it work?

- ~The maximum limit of liability of a permissive user is the minimum limit-\$25,000 per person, \$50,000 per accident.
- ~If he gives me permission to user, they are a permissive user.
- ~If his policy has that language, permission user drives & causes an accident.
- ~Language is in bold & capital letters.
- ~Mutual company is a cooperative.

16:50

Rep Laning: If you had a bad accident, his insurance would pay the minimum levels, then your insurance will take over.

Rob: Correct.

Rep Laning: What if you didn't have any insurance?

Rob: Then you would have the minimal limits. That's your choice.

Rep Laning: The accident is higher than the minimal limits, the owner of the car is responsible for that?

Rob: No, 99.9%, it would be the driver. If there was a law suit, it did name the owner, the owner has the full limits available to them.

Rep Bosch: The person that was injured, 25 from your coverage & person driving has 25, but it was serious, the third person is seriously injured. How does it impact then?

Rob: There is an underinsured motorist coverage, which you choose your own limits.

Rep Schauer: If you say that permissive use is defined by what it isn't, why wouldn't you define it by what it is?

Rob: Because it's everyone else. These people don't apply but anyone else. It's essentially it's people who are not policy holders that use the vehicle.

Rep Schauer: I find that confusing. If this policy is so good, why not make people aware of the coverages changes on both the declaration page & by signing the notification page?

Rob: I don't have a problem to put it on the deck page. It doesn't affect the policy holder. We are trying to consolidate information.

Chairman Keiser: The permissive driver, does it applies to commercial & individual policies?

Rob: Commercial policies are written differently. The employer knows that they will have different employee drivers.

Chairman Keiser: It's seems the same to me. I have to indicate who the drivers & they have to be approved before they are allowed to drive.

Rob: That's a different class of drivers & not done in drop down.

Chris Oen~Director of Claims for NoDak Insurance Company: We are also in opposition of the amended bill. The review of the proposed changes, I see two issues that hamper an insurance company to control the rate in which it has to charge to its customer.

First, lines 7-9 & also on 16, the striking the work individuals will make it difficult to enforce. The taxi business, the personal individual is not designed to cover that. Every personal auto policy in this state has that exclusion.

The second thing, on line 12, the current law doesn't does not allow us to deny or give no coverage. The law allows us to do is take those group of permissive individual drivers that are not a policy holder, restrict them down to the minimal limit. Insurance base their rates on what vehicles & who is driving. It makes it difficult to almost impossible for use properly rate our premiums to give back to our customers.

Portability of insurance, means is whoever is driving, if I have an insurance policy, I'm driving somebody's vehicle, I have accessibility to my liability policy to follow me.

Commercial carrier, how NoDak approaches this step or drop down limit. We do insure farm vehicles which are essentially a commercial type vehicle. Typically, if they are working for a business or farm, if they were to cause an accident, these drop down provisions wouldn't

apply. The business or farmer are liable because they are responsible for the actions of their employees.

This is strictly about personal autos. We took that language & sent it out to the policy holders. We know we shouldn't bare the consequences.

I choose to have my insurance rate me with all my disclosures & pay the proper rate.

31:58

Chairman Keiser: Our personal policy & the coverage we have in ND; does it apply to rental cars out of state? Correct?

Chris: Yes. I want to touch on one more topic. The underinsured & uninsured motorist, this is a required coverage in ND. I choose to insure myself.

Rep Richter: The driver's ed, the students, are they a class of individuals?

Chris: In that scenario, I guess that could be a considered a class. The driver instructor has to have a commercial, therefore the drop down wouldn't be an issue. The driver instructor is in charge.

Chairman Keiser: You said that on line 12, you were concerned about striking the class of individuals. If that true, that was the original bill.

Chris: The copy of the bill is the engrossed bill.

Chairman Keiser: The original bill, I thought you were in favor of the bill.

Chris: I'm against this strike.

Chairman Keiser: Anyone else here to testify in opposition, neutral position? Closes the hearing.

Chairman Keiser: We have HB 1448 as amended before the committee. We have a couple of options, removing the amendments or leave the amendments. What are the wishes of the committee?

Rep Bosch: Move Do Not Pass as Amended.

Rep C Johnson: Second.

Roll call was taken on a Do Not Pass as Amended on HB 1448 with 11 yes, 2 no, 1 absent & Rep Louser is the carrier.

DP 1/29/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1448

Page 1, line 12, overstrike ". However, if"

Page 1, line 13, overstrike "the policy does provide"

Page 1, line 13, remove "provides"

Page 1, line 13, overstrike "liability coverage to a person named in a restrictive"

Page 1, line 14, overstrike "endorsement"

Page 1, line 14, after the comma insert "but"

Page 1, line 15, after the period insert "A personal automobile policy may not reduce or exclude the limits of liability, uninsured motorist coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision coverage for a class of individuals."

Renumber accordingly

Date: Jan 29, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1448

House _____ Industry, Business and Labor _____ Committee

☐ Subcommittee

Amendment LC# or
Description:

19.1070.01002

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 Ruby

Seconded By

Rep Kasper

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: Jan 29, 2019Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1448

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 Rep Adams Seconded By Rep Ruby

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

Total (Yes) 10 No 1Absent 3Floor Assignment Rep Louser

Date: Feb 12, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1448

House _____ Industry, Business and Labor _____ 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 Rep Kasper Seconded By Rep Schauer

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 12, 2019Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1448

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 Rep Bosch Seconded By Rep Johnson

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

Total (Yes) 11 No 2Absent 1Floor Assignment Louser

REPORT OF STANDING COMMITTEE

HB 1448: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (10 YEAS, 1 NAYS, 3 ABSENT AND NOT VOTING). HB 1448 was placed
on the Sixth order on the calendar.

Page 1, line 12, overstrike ". However, if"

Page 1, line 13, overstrike "the policy does provide"

Page 1, line 13, remove "provides"

Page 1, line 13, overstrike "liability coverage to a person named in a restrictive"

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Page 1, line 14, after the comma insert "but"

Page 1, line 15, after the period insert "A personal automobile policy may not reduce or
exclude the limits of liability, uninsured motorist coverage, underinsured motorist
coverage, basic no-fault benefits coverage, or collision coverage for a class of
individuals."

Renumber accordingly

REPORT OF STANDING COMMITTEE

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individuals."

Renumber accordingly

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1448

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1448
3/19/2019
Job #33969

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to exclusion of people from coverage of automobile insurance.

Minutes:

Att. #1-7

Chairman Klein: Opened the hearing on SB. All members were present.

Representative Randy Schobinger, District 40: see attachment #1 for testimony in support.

(9:10) Chairman Klein: You seem to have singled out a couple of auto insurers. How many do we have in the state?

Representative Schobinger: It's hard to say but more than two.

Chairman Klein: And this step down is used by every company in the state?

Representative Schobinger: The way I understand it, it's just two or three.

Chairman Klein: So you're advocating changing the whole century code for two or three companies?

Representative Schobinger: I'm advocating we change the century code back to its original intent of HB 1378 in 2001. That was supposed to exclude a couple of drivers that had bad driving records. And not to include all permissive drivers.

Chairman Klein: So you went back to the insurance department and implied they aren't applying the law the way we had intended.

Representative Schobinger: They are applying it the way it was written; it just wasn't contemplated before it was passed. The way it's done in most states, is because when somebody tries to file, the insurance department has the right to say we aren't going to accept it. I asked Tennessee about it, there is no company writing this type of coverage and no company that has been approved for it.

David Schweigert, attorney, business owner, Bismarck, resident: See attachment #2 for testimony in support of the bill.

Chairman Klein: You have no exposure, she's the only one exposed?

Dave: They could sue me that's a possibility. The legal claim against me is negligent entrustment. There is no doubt that she's responsible for those actions.

Chairman Klein: But she wasn't insured, you were just trusting her?

Dave: Exactly, I have a vehicle that I insure for \$1M. I expect the people that I ask to drive that vehicle would also be insured. I have a million-dollar policy I've asked someone to do something for me, I reasonably believe that he's insured under that policy. Doing something I asked him to do for my convenience.

Chairman Klein: Does this happen often?

David: Yes, it does. There are people that have been exposed by this.

Vice Chairman Vedaa: I have a commercial vehicle policy; would they be required to have a commercial farmer's policy?

David: The issue with your CGL is that it essentially covers auto accidents.

Vice Chairman Vedaa: I'm specifically talking about a commercial auto policy; I'm assuming this step down is not in that policy?

David: I have not seen them in commercial policies generally because they are written more broadly.

Vice Chairman Vedaa: You talk about the situation with the farmer and the four kids, would that kick in, can that insurance company subrogate against the vehicle that just hit them?

David: Let's say there are only two people in that scenario. There is no underinsured motorist that is following that claim. If those limits were higher, yes you could make a claim. One more problem with this drop down, let's assume in the situation with the baby sitter driving the car, they are in an accident and are seriously injured. The baby sitter was negligent. In that scenario there is a prohibition in a lot of policies and I believe under the North Dakota insurance code, that says you can't make both a liability and an underinsured motorist claim against the same policy. So now if my children are injured and I bring a claim against the babysitter who has these decreased limits, I am prohibited from going on my own same policy and even going after the UIM benefits that I've paid for.

Senator Piepkorn: Were these drop down clauses in effect before this original law passed?

David: Not that I'm aware of.

Senator Piepkorn: So the problem you're trying to solve was made possible by this legislation.

David: Yes.

Senator Piepkorn: So you have a negligent son at home who has been in trouble quite a bit. You would put his name on the list, that's where its intended. He would be a named individual.

David: Right, basically if the law is amended as proposed it doesn't prohibit the insurance company from restricting the coverage for my son, or even excluding him in that situation.

Senator Piepkorn: Along those lines, you have a more responsible daughter who's at college and she comes back and would be able to drive your car and be fully insured?

David: Yes. She would not be specifically named.

Senator Piepkorn: If then as an adult she does register to vote in Grand Forks, is she still covered?

David: If the amendment passes as proposed, she would be covered. You could exclude the errant son and yet keep the daughter in those non "uninsureds" as being covered.

Senator Piepkorn: In the case of your friends coming out to help with a weening or a branding, he was a chronic alcoholic, so we all conclude that that added to his lack of judgement, and you still let him drive that vehicle, what's the situation then?

David: I believe in that situation, that regardless of whether or not this amendment is made, you could still go after the farmer for a negligent entrustment type action there. This basically, if the concern is about the people out here that these guys are negligently throwing in the vehicle, this change does nothing for that. The negligent entrustment claims would still be there, this is just basically expanding and saying that someone I ask to drive my vehicle should be covered.

Jaclyn Hall, North Dakota Association for Justice, introduced Lindsay Wilz, attorney/shareholder, Maring Williams Law Office: see attachment #3-4 for testimony in support of the bill.

(41:40)Chairman Klein: So what I heard is our agents are undertrained cause even they don't understand the policies that their providing to their consumers? Wouldn't you have a legal remedy there because your agent didn't even know what was before them?

Lindsay: An agent's duty to an insured is only to provide the coverage requested. So if I go into an insurance agent's office and ask for full coverage, all the insurance agent has to do is be sure that I have collision coverage, comprehensive coverage, and I am insured to the state minimum limits.

Chairman Klein: He does not have to let you know of the step down?

Lindsay: Nope. There is no requirement for an agent to inform you of what the insurance policy says.

Chairman Klein: I see a lot of shaking heads behind you. Insurance is complicated, but nevertheless, we believe the agent has a handle on it. On the flip side.

Lindsay: We spoke with the defense side of the bar about examples where this has come up, and a defense attorney has a client that is currently being sued and there is a step down clause in his policy. The defense attorney is under the insurance company, even after a claim was brought against this individual, never informed the individual that he was subject to drop down limits and did not inform the named insured of that and litigation was commenced and the defense attorney was the first person that informed him that he might be subject to personal responsibility because of his step down coverage.

(45:00) Pat Ward, Association of North Dakota Insurers, introduced Rob Hovland, Center Mutual: see attachment #5 for testimony in opposition to the bill. See attachment #6 for examples referred to in the testimony.

(50:45) Senator Piepkorn: Didn't we hear in Schobinger's testimony that individual had a broader interpretation?

Chairman Klein: Well we have another lawyer's interpretation. He explained just now what he believes would've been the right verbiage. Could you just say that again?

Rob: If you wanted to be able to exclude multiple people, this language would read may exclude named individuals and if you're ever in a court room, somebody is challenging that there are multiple people excluded, the judge is gonna go back and say the plaintiff's lawyer says that they took out the words individuals, they didn't write that you could have named individuals excluded. In 2019 legislature, why would they take out individuals if it wasn't to make this so that only one person could be excluded. From an insurance perspective I would never dare exclude multiple people. I think that would be in direct violation of that.

(57:08) Senator Piepkorn: Are the amounts listed? Cause I would suggest that your consumer does not know what the minimum limits amount is.

Rob: We do not list the amounts. We list the amount of coverage they've purchased but we don't list the statutory limits.

(1:11:22) Chairman Klein: Thoughts I had on the spouse issue, when someone is going through a divorce, isn't there a timeline there anyway.

Rob: That doesn't have anything to do with step down coverage. That's in all policies, if a spouse leaves the residence for over 90 days they're no longer insured. The way to alleviate that is spouses can both be named insured.

Chairman Klein: Getting back to that military scenario. My drop down is just to the minimum? Can you explain how that would work?

Rob: If you ever have a question just add them as a driver. It's extremely rare that somebody would come back and have their own.

Chris Oen, Director of Claims for Nodak Insurance: testified in opposition to the bill. It is not buried in the language. It was specifically. We actually do put limits in there. Nodak has had this issue three times, all three the Supreme Court. The purchaser, the insured, the customer should not bear the responsibility. There's been a lot of discussion about residency. We have to apply all of our coverage very liberally. We have to look at all of the scenarios. North Dakota already defines residency in the century code. There's been a lot of talk of specific scenarios. At the end of the day, our job is to protect our customer. We've never applied a drop down provision to a college student that I know of. When we don't know who our customers are giving their keys out to, we need to. I believe that I should not bear that financial burden on a transaction that I was not a part of. These step down provisions will never apply to our named insureds or their family members. That driver is never gonna be subject to that exposure. Our insured buys the protection to cover their farm. There was a misconception, the drop down limits will never apply to the driver of an insured. Any employee of the insured would have full coverage.

(1:20:56) Senator Burckhard: Legislators live away from home for 120 days, do we lose our resident status?

Chris: You do not lose your residence when you are away from work temporarily for work or other employment commitments. Another thing I want to add is this is only personal auto. This does not apply to commercial auto. Anything operating under a farm business. I'm going to urge a do not pass.

Chairman Klein: Often times people with issues will come to us, they attempt to work out their concerns before session. Did you know anything about this before?

Chris: Originally, we understood this as a language clean up and then an amendment where there was some strike off language that occurred. Through Representative Schobinger, we had proposed an agreement to require a signature page at the time of purchase, or possibly giving a disclosure at the bottom of the deck page. But really the people the drop down limit applies to are never gonna see that page. But we're very open and we're not trying to hide this from our customers. Nodak insurance has had this for quite some time. We have a 95% renewal rate with our customers. This is not an issue with the customers who purchase our insurance.

Chairman Klein: Closed the hearing on HB 1448.

See attachment #7 for additional testimony submitted to the committee.

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1448
3/20/2019
Job #34016

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to exclusion of people from coverage of automobile insurance.

Minutes:

None.

Chairman Klein: Opened the committee work session on

Vice Chairman Vedaa: I spoke to my insurance agent, and as far as she knows, those are the only two companies that have that policy and it's because they are a part of the state. In North Dakota we have it in law but these other national companies don't have it at all.

Senator Roers: They don't have it at all?

Vice Chairman Vedaa: Nope.

Chairman Klein: Well Lindsay that young lawyer suggested that there are five other companies that have it too. And those companies would suggest they do but its optional.

Senator Kreun: The reason they gave in their testimony is aren't they just a state operation?

Chairman Klein: I would know Center Mutual, we've had that issue before the committee on what counties they can be in, where they can do business. However, when Nodak took the jump to become for profit corporation, they can do business outside of that, they have used this provision. They only got this non-mutual status last session, that's part of how they develop their contracts with some of their policy holders.

Senator Kreun: The other company indicated their board of directors and their clients are very satisfied by the way this is laid out and it hasn't cause a problem. The other company that has gone public, isn't that just their prerogative to have that step down, and then if you go look the one is covered under the first insurance and if that runs out it goes to the other insurance, and in all actuality, the person that they're insuring when they come to an agreement doesn't even know what that is because the insurance company has taken over and that insured is taken out of the conversation. So my question is where is the problem?

Chairman Klein: I would agree, the question we asked as we were leaving was what was the average claim? It was under \$15,000 of course the attorneys argue its always over, well they generally aren't involved until it gets to be a bigger something of consequence.

Vice Chairman Vedaa: It clearly lets who you have your vehicle insured with, off the hook in the event that something happens and puts it back on the driver's insurance company. But the reason they were here supporting that was because of that. They've only got \$50,000 in the game at that point. I agree with that but what is strange to me is why don't other companies offer that to them? You would think State Farm would come in and say we can offer 25/50, let's do it. That's what I don't understand. They say it's a good thing for me, it just drops that liability down to 25/50 and then it goes on the driver, I don't know. Why don't those other companies go in and just grab that and run with those liability limits if they can? Why aren't they doing it?

Chairman Klein: You'll have to do some research. How that effect what these two companies are doing. They seem to have full disclosure of how they are operating. It's like buying a rider for something special. You don't have to abide by the step down, you're just being notified that they're gonna save some money. It's a good example not to borrow your car.

Vice Chairman Vedaa: Is it possible somebody from the insurance department could come down and talk to us about it?

Chairman Klein: The question we could've asked them is are they providing disclosure and how is it effecting the insured when they have a question and is that against any of the rules in the insurance department

Senator Kreun: One out of two thousand claims involves step down, how many claims do we have if it's just one out of two thousand? If they've got the proper documentation, all the info that we had on business and farming that had nothing to do with it, we got all this info that had nothing to do with it.

Vice Chairman Vedaa: And that's my question, when you said that they are offering this, they are actually taking it away. By this are they taking something away? To me it sounds like a great idea, until I end up in court and they go well you're the idiot that borrowed your car out. I borrow somebody my care, I have to have some responsibility. What if he's driving the car and the front tire falls off? Okay who's responsibility is that? That could come back on me as lack of maintenance. Now do I have \$450,000 coverage on that?

Chairman Klein: You have whatever you have. We're gonna go to him first up to \$25,000, if the accident created less than \$25,000 he's done, but if it created \$100,000 \$25 comes out of his wallet and then they come back.

Senator Roers: His 25 goes first then it comes down to me.

Vice Chairman Vedaa: The question would be what if he doesn't have it. Or if the tire came off and it was actually my fault. His insurance covers if it was his fault, but if it was the lack of maintenance on my vehicle, is my insurance company gonna pay that extra half or are we sitting there in limbo fighting over who is gonna pay?

Senator Kreun: Disclosure is part of the issue, and they showed us disclosure is part of the issue. They have you sign it and say we don't have this coverage. That's with any coverage you have.

Senator Roers: It says you do have the drop down coverage.

Vice Chairman Vedaa: It's an exclusion. You're paging through it and you think it's an add on. Is it or isn't it?

Senator Kreun: You weigh the premium versus the coverage. When I get mine I've got two pages of exclusions.

Vice Chairman Vedaa: There is not a coverage, you can't tell them you don't want that I know that for a fact. You aren't gonna get that taken off.

Senator Kreun: There's the list of exclusions and either I want the policy or not with the exclusions.

Chairman Klein: Center Mutual made the decision to include the step down coverage. The question is, they made that decision and have lived with it for 20 years, I'm still trying to figure out who has been wronged and why it's such a critical thing we're trying to fix.

Senator Roers: You used the word, they made a decision to provide, I think the word is they made the decision to reduce that exposure, consequently getting you a better rate because they don't have that exposure out there of the third party use of the car. So from that perspective you take that coverage based on the step down coverage or you go to x company that doesn't have a step down policy.

Vice Chairman Vedaa: We as a state allow them to provide that coverage, is there a savings to our insurance, we don't know that because they don't offer it the other way. But, I can guarantee you they are the ones that are off the hook in the case of an accident.

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1448
3/20/2010
Job #34037

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk:	Amy Crane
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Explanation or reason for introduction of bill/resolution:

Relating to exclusion of people from coverage of automobile insurance.

Minutes:

None.

Chairman Klein: Opened the committee work session on HB 1448.

Chairman Klein: Vice Chairman Vedaa had some questions he wanted resolved last time.

Vice Chairman Vedaa: Yeah, I talked with him and yeah, you're always covered after that. Your liability will always cover you. You will never be left without liability coverage because you loaned out your vehicle. The only time you are, is if you've had someone you've excluded off that policy and you've let them drive your vehicle.

Senator Roers: Didn't the policy say that if my child borrowed my car to his friend, that's where the rub was? That third person isn't a part of your liability coverage.

Chairman Klein: That is where I believe the most accidents happen but it wasn't necessarily a rub, because what happens is it comes back to that driver before it comes back to the owner of the vehicle.

Vice Chairman Vedaa: As long as that son of yours is covered under your policy, there's coverage back to your policy.

Chairman Klein: I just don't think there is a problem here so I'm not supporting the bill.

Vice Chairman Vedaa: Moved a Do Not Pass.

Senator Kreun: Seconded.

Senator Piepkorn: I thought I heard you say at some point, does this effect the bottom line of these companies that do follow the step down procedure where they've got caps? Are they making more money because of this?

Vice Chairman Vedaa: Basically it could or it could not. because the step down could come back on the other person's insurance. So if I loan my vehicle out to Senator Roers, my policy would cover up to \$50,000 of that liability, Senator Roers' company could have a step down but now it's going under his policy. So it works both ways.

Senator Piepkorn: You lost me.

Vice Chairman Vedaa: So I have a step down, but so does Senator Roers. So his company has to cover him now after \$50,000, after my policy is done. It shifts the liability around, but a company that doesn't offer step down would be liable for that whole thing on my policy. It's actually benefiting the policy holder cause now it doesn't mess with my insurance.

Chairman Klein: I would say the short answer is yes. The non-policy holder is responsible for part of the claim. The policy holder is the insured, he is underwritten for his car and now he borrowed the car to some uninsured person. That person has an accident. We go to the driver first, rather than the car. Once you start having accidents your premium goes up. And in a mutual, all the policy holders are then subject to a lower premium, I would say that's why they've adopted this program.

Senator Piepkorn: I've got my college student, I live in Velva, he lives in Grand Forks, he comes back uses my car. I've got the 50/25 thing. But it costs more?

Chairman Klein: Your college student is covered, under your policy there is no step down. He's a family member he's never gonna be taken out of your policy. He is subject to that short period of time that step down coverage is never gonna apply.

Senator Piepkorn: Even if he registers in Grand Forks to vote?

Chairman Klein: Yeah, because Rob was clear, registering to vote does not declare residence. It'll never happen in North Dakota.

A Roll Call Vote Was Taken: 5 yeas, 1 nays, 0 absent.

Vice Chairman Vedaa will carry the bill.

Date: 3/20
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1448

Senate Industry, Business and Labor 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 Wdaga Seconded By Kwenn

[illegible]

Total	(Yes)	5	No	1
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Absent 0

Floor Assignment Vedaa

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

REPORT OF STANDING COMMITTEE

HB 1448, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1448 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1448

19.1070.01002
Title.

Prepared by the Legislative Council staff for
Representative Schobinger
January 28, 2019

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1448

Page 1, line 12, overstrike "However, if"

Page 1, line 13, overstrike "the policy does provide"

Page 1, line 13, remove "provides"

Page 1, line 13, overstrike "liability coverage to a person named in a restrictive"

Page 1, line 14, overstrike "endorsement," and insert immediately thereafter "but"

Page 1, line 15, after the period insert "A personal automobile policy may not reduce or exclude the limits of liability, uninsured motorist coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision coverage for a class of individuals."

Renumber accordingly

Pat Ward testimony regarding HB 1448

H-IBL Jan 28, 2:30 PM.

Chairman Keiser and members of the House IBL committee. My name is Pat Ward and I represent the Association of North Dakota Insurers regarding HB 1448.

While we do not necessarily oppose this bill, we believe it will have some consequences that the Committee should be made aware of. I'm not sure what fact pattern led to this Bill, but in our opinion, there could be some impact which scaling back the excluded driver statute will have on insurance.

Driver exclusion statutes are actually intended to benefit the consumer. These statutes allow consumers to be rated on just specific drivers, which means the consumer could qualify for a policy they otherwise wouldn't have, or pay a much lower premium. For example, we frequently use driver exclusion forms when a policyholder (or potential policyholder) assures us that a problem driver will never drive a policyholders' vehicle. We would have either charged a much higher premium – and in many cases would not insure the consumer at all – if we couldn't exclude a driver or drivers that had major claims problems.

In the case of excluding a "class of persons" (which this Bill is addressing), there are some scenarios where consumers will be negatively impacted. For example, consumers who run small businesses – sometimes out of their home - make private passenger insurers nervous. The consumer doesn't want to buy a commercial policy but the private passenger companies either won't insure these types of consumers, or will charge significantly higher premiums, if the driver exclusion for a class of persons (employees) is not allowed. Another scenario is a farmer who has hired hands (who sometimes have bad driving records), that may or may not have access to the farmer's private passenger vehicles. If the farmer does not want his policy impacted by the potential of hired hands driving his personal vehicles, the farmer agrees to have that class of persons (employees) excluded.

Passing this Bill may upset consumers in scenarios where their policy will be negatively impacted (higher premium or don't qualify) even if the excluded class of drivers (that impact the policy) will never operate the consumers' vehicles.

Essentially, this Bill will make some consumers pay more premium than they do currently. Or they will have to update a list of excluded individuals frequently.

I will try to answer your questions if I can.

Testimony "Vote Yay" HB 1448 To Eliminate "Step Down" Endorsement in ND

Good Morning Mr. Chairman and members of the Senate Industry Business & Labor Committee. For the record my Name is Randy Schobinger, and I represent District 40 from the Minot area. I'm here today to ask that you vote in favor of this bill to eliminate what's commonly referred to as the "Step Down" auto liability endorsement in North Dakota. More specifically, it will ban an endorsement that steps down coverage to the state minimums when you allow a "Permissive Driver" to operate your vehicle. Here's why it's bad and should be removed as an option in North Dakota.

To understand the "Step Down" endorsement, we must first take a "Step Back" in time. Back to 2001 that is. During that legislative session HB 1378 was introduced and passed both chambers, and was signed by the governor. Not only did it pass; but received large majorities on both the House & Senate. Vote was 72 "yeas" to 25 "Nays" in the House; and 48 "yeas" to 0 "Nays" in the Senate. Which would mean both you (Mr. Chairman) and I voted in favor. I've distributed HB 1378 which appears to have given the permissive language where it reads, "The policy may contain a restrictive endorsement reducing the limits of liability, uninsured motorist coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision coverage while the vehicle is operated by a named individual, or class of individuals". It goes on to say the coverage can't be lower than the state required minimums. So, at first glance it would seem that there was a time when it made total sense to allow it. Right? Wrong! And to know why that's wrong we need look no further than the testimony at the time. Also included in your packet is the written testimony of Patrick J Ward who testified on behalf of the "North Dakota Domestic Insurance Companies". And in favor. You'll note that at no time in that testimony is there any mention of what has become known as the "Step Down" endorsement. It only speaks to the language of the bill allowing, and I quote, "an insurer to exclude an individual driver from coverage by agreement with the principal insured". He goes on to write, "it will allow for smaller premiums and fewer cancellations of families with 1 or 2 problem drivers". He even goes on to acknowledge that the part about lowering coverage again has nothing to do with "permissive drivers". But rather "writing lower coverages for the problem driver while the rest of the FAMILY may keep their higher coverages". Mr. Chairman and members of the Senate IBL. If you pass this bill as written, the original intent of HB 1378 will be realized. Because it will allow an insurance company to do what was the original intent. Exclude a "Named Individual" from a policy.

You might ask if excluding a "named individual" would only allow for a single individual to be excluded from any given policy. And the answer is no. I checked with Legislative Council. And where "individual" is referenced in the Century Code, it also applies to the plural. So, if you give the bill favorable recommendation, and it passes the floor, the original intent of HB 1378 in 2001 will be law.

So why is the endorsement bad for all North Dakotans? Mr Chairman there's on old saying in insurance that goes, "It doesn't matter who insures you, until it does". And that is most certainly the truth concerning this so called "Step Down" endorsement in North Dakota.

As part of my House floor speech I gave the following potential real-life example: "Imagine your 18 year old son graduates high school. And decides to go off to college in a big city. Rather than purchase a vehicle, he chooses to use public transit. He comes back for Christmas. You ask him to run to Walmart to pick up some last minute Christmas gifts. And to take your car. On the way he slides through an intersection and does \$50,000 damage to another vehicle, and \$100,000 in head and neck injury. You have \$500,000 combines single limit policy. It says it right there on your declarations page. So everything

should be ok. After all, he is a "family member", and family members are covered to the full limits. Not so fast. If you look in to the policy document (see form in packet) you will see that to be considered a family member one must reside in the home. I went on to say that the state minimums would apply. I later heard that representatives for Nodak Mutual and Center Mutual went before our organization to say I gave "misinformation" concerning this scenario. So asked that they reply to tell me how they see it that way. I didn't hear anything back from Nodak Mutual. But did from Center Mutual. And the response basically said that where a "family member" is "temporarily" out of the house they would cover to the full limits. On the surface it sounds like problem solved. Or no problem at all. But right here in North Dakota we have a legislative district with a propensity to elect very young and current college students to it. Of course I'm referring to the Grand Forks District. And even I can deduce that in order for that to happen a good number of current students will turn out to vote for their candidate of choice. To do that they must become a resident of the district in which they vote. So at that moment, a student whose parents are written with either of the 2 companies endorsing the "Step down" will be driving their parent's vehicle at State Minimum limits. Mr Chairman, that's simply unacceptable to me. And what if the child doesn't vote at all. But rather moves into an apartment or house, lives with roommates, or girlfriend or boyfriend. Some of their clothes are in Grand Forks, and some back at their parent's house. Are they a resident of Grand Forks or back home? Nodak Mutual has taken the position that they are residents of Grand Forks. And drop-down limits apply.

The next question you all might have is, "Well that's a hypothetical, where's the real problem? And is there one?" The answer is absolutely Yes. The following real life example occurred on I-94 involving a driver who crossed the median and struck 3 vehicles on the other side of the highway. 5 people were injured. One of the companies applying this endorsement "dropped down" the liability limits for the adult driver daughter of the owner's vehicle to \$25,000 per person, \$50,000 per accident because she did not reside in the parents household, but lived elsewhere. The declarations page coverages were \$100,000 per person, \$300,000 per accident. Again, whether potential disaster or realized disaster, it's simply not acceptable.

Mr Chairman and members of the committee. I've distributed an actual current policy that includes this "Step Down" endorsement. Please note that nowhere near the declarations page is the "step down" coverage noted. For your benefit I have marked where it's at within the actual policy. Until I became an insurance agent, I can verify that upon receiving my policy in the mail, I opened it, pulled out the first couple pages to verify premium first, then maybe that the declaration page coverage was correct. Then back in the sleeve it went and in to the file cabinet. I most certainly didn't read to where this "step down" endorsement is first revealed.

Finally, Mr Chairman, the proponents of keeping this endorsement often say the named insured is always covered to the limits specified on the declarations page. I'm not an attorney, but am told that is simply not the case. And do hope there is someone here who can give you better information on it. But it's my understanding it has to do with the "negligent entrustment claim" vs a "Family Doctrine based claim". Under the first the declarations page limits would likely apply. However, under the second, the "step down" limits would apply to both the driver and named insured. Bankruptcy is a very real potential.

Mr Chairman and members of the Senate IBL committee. I hope you will weigh heavily what I've said here. It is truth. The lawsuits and people impacted by this ill-advised endorsement are many. And as

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p. 3

I stated earlier in my testimony, there is high likelihood such an endorsement wasn't even envisioned by the legislature and Governor that placed it in to our Century Code.

In closing, it's important that you are aware our former colleague and friend--Senator Bill Bowman--is currently caught up in a lawsuit concerning this very endorsement. Please give this bill a "Do Pass" recommendation so that the people of North Dakota can finally live under the insurance law as it was originally intended. I appreciate you!

end

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1378
(Representatives Severson, Berg, Kasper)

AN ACT to create and enact a new subsection to section 26.1-40-15.6 of the North Dakota Century Code, relating to limitations on automobile insurance; and to amend and reenact sections 26.1-40-16 and 26.1-40-16.1 of the North Dakota Century Code, relating to persons excluded from automobile insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-40-15.6 of the North Dakota Century Code is created and enacted as follows:

While operating a motor vehicle in which the individual is specifically excluded.

SECTION 2. AMENDMENT. Section 26.1-40-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-16. Exclusion of spouse of named insured persons - Restrictive endorsements. ~~No insurer is responsible under~~ By written agreement with the named insured, a private passenger automobile insurance policy covering an automobile or other motor vehicle registered or principally garaged in this state ~~from any liability for any claims resulting from the operation of the motor vehicle by a spouse of the named insured who resides in the same household if an endorsement on the policy excludes that spouse from coverage under the policy and the spouse excluded signs the endorsement. If the named insured expressly or impliedly consents to the operation of a secured motor vehicle by a spouse excluded under the policy, the named insured is not relieved of personal liability as provided by subsection 5 of section 26.1-41-02.~~ may exclude a named individual, individuals, or class of individuals from coverage. The policy may contain a restrictive endorsement reducing the limits of liability, uninsured motorist coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision coverage while the vehicle is operated by a named individual or class of individuals. However, if the policy does provide liability coverage to a person named in a restrictive endorsement, the coverage may not be less than the minimum provided under section 26.1-40-15.2, section 26.1-40-15.3, subsection 2 of section 26.1-41-01, and section 39-16.1-11. If the policy excludes a named individual, individuals, or class of individuals from all coverage and the named insured expressly or impliedly consents to the operation of a secured motor vehicle by the excluded party, the named insured is not relieved of personal liability as provided by subsection 5 of section 26.1-41-02.

SECTION 3. AMENDMENT. Section 26.1-40-16.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-16.1. Payment of benefits to family members of a policyholder. An automobile insurance policy that provides coverage for bodily injury may not contain any provision limiting payment of benefits or reducing the amount of benefits payable to a person because the person to whom benefits are being paid under that policy is related to the policyholder by blood, marriage, or adoption, or is a foster child, and resides in the same household as the policyholder. However, a relative may be excluded from coverage under section 26.1-40-16.

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ZUGER KIRMIS & SMITH

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March 12, 2001

**Testimony of Patrick J. Ward In Support of Engrossed House Bill 1378
Regarding Exclusion of an Individual Driver**

Dear Chairman Mutch and members of the Senate IBL Committee:

Engrossed House Bill 1378 is supported by the North Dakota Domestic Insurance Companies. HB 1378 would allow an insurer to exclude an individual driver from coverage by agreement with the principal insured. This would allow for smaller premiums and fewer cancellations of families with 1 or 2 problem drivers.

Section 1 of HB 1378 provides that the uninsured and underinsured motorist provisions of sections 26.1-40-15.1 through 26.1-40-15.7 do not apply to bodily injury, sickness, disease or death resulting from operation of a motor vehicle in which the individual operator has been excluded by agreement.

Section 2 of HB 1378 would allow an insurer the freedom to exclude a named individual who is a problem or high risk driver from coverage on a family or group auto policy rather than having to cancel the entire policy and force the family to go shopping for coverage elsewhere. It also allows the possibility of writing lower

Phone 223-2711
Fax 223-9619

**Testimony of Patrick Ward in support of House
Bill 1378 re exclusion of an individual driver.**

February 04, 2001

Chairman Berg and members of the House IBL Committee:

House Bill 1378 is supported by the North Dakota Domestic Insurance Companies. HB 1378, with amendments offered today, would allow an insurer to exclude an individual driver from coverage by agreement with the principal insured. This would allow for smaller premiums and fewer cancellations of families with 1 or 2 problem drivers.

Section 1 of HB 1378 provides that the uninsured and underinsured motorist provisions of sections 26.1-40-15.1 through 26.1-40-15.7 do not apply to bodily injury, sickness, disease or death resulting from operation of a motor vehicle in which the individual operator has been excluded by agreement.

Section 2 of HB 1378 would allow an insurer the freedom to exclude a named individual who is a problem or high risk driver from coverage on a family or group auto policy rather than having to cancel the entire policy and force the family to go shopping for coverage elsewhere. It also allows the possibility of writing lower coverages for the problem driver while the rest of the family may keep their higher coverages. For example, a minor driver facing revocation due to excessive points under the graduated licensing statute could be excluded or given minimum coverages.

If such restricted coverage is written, it must be for at least the minimums provided by law for uninsured, underinsured, no fault and other statutory basic minimums.

The amendment proposed in section 2 provides that the owner who gives permission to an excluded driver remains liable for no fault benefits to an injured person other than the excluded driver.

Section 3 provides that the problem driver or drivers may be excluded from no fault benefits as provided in Section 2.

We respectfully urge A Do Pass with the suggested amendments to this bill.

Testimony of Patrick J. Ward In Support of Engrossed House Bill 1378
March 12, 2001
Page 2

coverages for the problem driver while the rest of the family may keep their higher coverages. For example, a minor driver facing revocation due to excessive points under the graduated licensing statute could be excluded or given minimum coverage.

If such restricted coverage is written, it must be for at least the minimums provided by law for uninsured, underinsured, no fault and other statutory basic minimums.

Section 2 provides that the owner who gives permission to an excluded driver remains liable for no fault benefits to an injured person other than the excluded driver.

Section 3 provides that the problem driver or drivers may be excluded from no fault benefits as provided in Section 2.

We respectfully urge a Do Pass on this bill.

KEP SCHOBINGER

HB 1448

HB 1448

3/19/19

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THIS ENDORSEMENT APPLIES TO YOUR POLICY. PLEASE READ IT CAREFULLY

PERMISSIVE USER RESTRICTIVE ENDORSEMENT

The language provided by this endorsement modifies the policy. All provisions in the policy apply, except those specifically modified by this endorsement. The definitions provided in the Definitions section of the main policy apply to this endorsement.

Under Part A – LIABILITY COVERAGE

LIMIT OF LIABILITY – The maximum limit of liability for a “permissive user” operating a vehicle insured under this policy is \$25,000 per bodily injury/\$50,000 per accident/\$25,000 for property damage.

Under Part C – UNINSURED MOTORISTS COVERAGE

LIMIT OF LIABILITY - In the event a “permissive user” is an “insured” under this policy, the maximum limit of liability available to the “permissive user” is \$25,000 per “bodily injury” (subject to a \$50,000 per accident limit of liability).

*** Under Part C - UNDERINSURED MOTORISTS COVERAGE**

LIMIT OF LIABILITY – In the event a “permissive user” is an “insured” under this policy, the maximum limit of liability available to the “permissive user” is \$25,000 per “bodily injury” (subject to a \$50,000 per accident limit of liability).

“Permissive user” is defined as any person other than “you”, a “family member” or other person specifically identified in the policy.

*

PERSONAL AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, "we" agree with "you" as follows:

DEFINITIONS

A. Throughout this policy, "you" and "your" refer to:

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered "you" and "your" under this policy, but only until the earlier of:

1. The end of 90 days following the spouse's change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

B. "We", "us" and "our" refer to the Company providing this insurance.

C. For purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are in quotation marks when used.

D. "Bodily Injury" means bodily harm, sickness or disease, including death that results therefrom.

E. "Business" includes trade, profession or occupation.

F. "Diminution in value" means the real or perceived loss in market value or resale value, which results from a loss or damage.

*G. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

H. Throughout the policy, "minimum limits" refers to the following limits of liability as required by North Dakota law, to be provided under a policy of automobile liability insurance:

- a. \$25,000 per "bodily injury," subject to \$50,000 for each accident; and
- b. \$25,000 for each accident with respect to "property damage."

I. "Permissive user" means any person other than "you", a "family member" or other person specifically identified in the policy.

J. "Property damage" means physical injury to, destruction of, or loss of use of tangible property, but does not include "diminution in value".

K. "Trailer" means a vehicle designed to be pulled by a:

1. Private passenger auto; or
2. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.

L. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. A "newly acquired auto".
3. Any "trailer" "you" own.
4. Any auto or "trailer" "you" do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

This Provision (J.4.) does not apply to Coverage For Damage To Your Auto.

M. "Newly acquired auto":

1. "Newly acquired auto" means any of the following types of vehicles "you" become the owner of during the policy period:

- a. A private passenger auto; or
- b. A pickup or van, for which no other insurance policy provides coverage, that:
 - (1). Has a Gross Vehicle Weight of less than 13,000 lbs.; and
 - (2) Is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) Incidental to "your" "business" of installing, maintaining or repairing furnishings or equipment; or
 - (b) For farming or ranching.

2. Coverage for a "newly acquired auto" is provided as described below. If "you" ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage "we" provide for a "newly acquired auto" will begin at the time "you" request the coverage.

Schobinger, Randy A.

HB 1448 3/19/19
Att #1 p. 10

From: Joseph, Christopher
Sent: Wednesday, March 13, 2019 1:01 PM
To: Schobinger, Randy A.
Subject: House Bill No. 1448

Good afternoon Representative Schobinger,

I just visited with the Insurance Department to ensure the interpretation of "a named individual" on page 1, line 9 of House Bill No. 1448 means more than one named individual. For drafting purposes, singular always includes the plural and the Insurance Department verified that they would be interpreting the phrase as allowing a policy to exclude more than one named individual.

Sincerely,

Christopher S. Joseph
Legal Counsel
North Dakota Legislative Council
600 East Boulevard Ave
Bismarck, ND 58505
(701) 328-2916
cjoseph@nd.gov

TESTIMONY OF DAVID SCHWEIGERT IN FAVOR OF HOUSE BILL 1448

Good morning. My name is David Schweigert, I am an attorney and business owner in Bismarck, North Dakota. I'm here this morning to testify in support of House Bill 1448. I spend a lot of time reviewing insurance policies, and I have major concerns about the use of step-down or drop-down insurance policies because in truth they create gaping holes in coverage that an average consumer would have no idea exists in their coverage.

The way step-down or drop-down coverage works is complicated.

I would guess that not many people who have this type of coverage even realize this drop-down exists. It's usually not stated on the dec sheet. If they do take the time to comb through the language of the policy, I would guess that most wouldn't be able to identify it in their policy even if they read it. It is hard to understand what language on page 11 of a 20 page policy, that has multiple words that have particular definitions as defined by the policy, means when it says that if the vehicle is being used by someone other than a "named insured" and is involved in an accident causing bodily injury the amount of coverage available for the bodily injury is reduced to the statutory minimum required by law of the state where the accident occurs. Although in my opinion it is cleverly hidden, what the above actually means in North Dakota, is that despite the fact you believed you had \$1M in automobile liability insurance for those who you have let drive your vehicle, that is not the case. Permissive users, those who are not "named insureds" only have \$25,000 per person, \$50,000 per accident.

This create problems because it does not provide the coverage that I thought I had for those who I may ask to drive my vehicle for my convenience. It is easiest to explain how this works using several examples.

Let's assume that my wife and I want to go out for supper and we get a babysitter who is driving a car that makes you a little uncomfortable. My kids want to go get some ice cream with a friend. For my wife and I's convenience, we ask the babysitter to take them and drive them to go get some ice cream in our vehicle, and on the way, they pick up friend to go with. The babysitter misses a stop sign and is in a bad accident. The friend and one of my children are hurt badly.

The parent's of my son's friend and I can now bring an action against the babysitter who is going to be insured by my vehicle's insurance, and I believe there is \$1M available to cover the friend and my children's injuries. Unfortunately, that is not the case because there is a drop-down clause in the policy that says, that despite the fact I have paid for \$1M in coverage, that is **not** available for this accident because the drop-down clause has reduced the coverage for the babysitter to \$25,000 per person \$50,000 per accident. There is now only \$50,000 available to cover my child and his friend. The babysitter is left exposed for helping us out.

Another example. I am driving down the road with my son who goes to college up at UND and votes in Grand Forks. I get tired, and for my convenience, I ask him to drive, he does. Next thing I know I wake up on the side of the road, my son hit a patch of ice passing another car and I am seriously hurt, as are people in the vehicle he clipped. The occupants of the other car bring a claim against him. I believe there is liability coverage of \$1M, but because of the drop-down clause, that is **not** the case. There is only \$25,000 per person \$50,000 per accident of available of liability coverage. My son is left exposed for helping me out.

Final example and this really emphasizes the reason that I am so disturbed by the drop-down clauses. Let's say you own a ranch. As is typical during fall weaning season at least where I grew up, the neighbors come over and help and sometimes it is orchestrated chaos getting the calves weaned onto trailers and into the sales barn. Not to sound discriminative here, but as the trailers are loaded let's just say it is not uncommon to have the more senior individuals who have come to help get in the pickups as they are loaded with calves and take them into town. I am working in the back, sorting calves and loading them onto the trailers. I can't leave. I need to get calves to town. I ask my 75-year-old neighbor, who came over to help, to get in my vehicle, loaded with my calves, and drive it to town. It's a heavy load and as he approaches the four-way stop on the middle of main street the pickup doesn't stop quite as fast as he was expecting, and he T-bones a car load of high schoolers on their way to school that morning. All four of the teenagers are seriously injured. The medical bills of two of them are in excess of \$250,000. I feel horrible. The teenagers sue my neighbor. I think well at least there is a \$1M in coverage for this accident, but learn that is **not** the case because of the drop-down clause, it is only \$50,000. The North Dakota minimum per accident to cover all four of these kids. My neighbor is left exposed for helping me out.

I expect that those in favor of drop down clauses will argue that their agents should be explaining this to their customers to make sure they understand this could happen. However, now many policies are purchased over the internet and you just check boxes about the amount of coverage you are purchasing. There is nothing that explains whether or not it has a drop down clause.

I suspect they may say, well the rancher example the kids could sue the rancher individually. He overloaded the trailer. He should have a farm liability policy that covers this accident. That I problematic as well. First they would have to prove that the trailer was overloaded, which is unlikely, it wasn't the size of the load that caused the accident, but the driver's unfamiliarity with the need for extra time to stop because of his load. Second and even more troubling is that the insurer could and likely would argue that since this accident involved a motor vehicle, the farm liability policy would not cover the accident. So if the rancher gets sued, the insurer could say, not covered by the farm liability coverage because of the motor vehicle exclusion in the farm liability coverage. I have yet to see a farm or commercial liability policy that does not specifically exclude coverage for accidents involving motor vehicles.

In closing, when I borrow or ask someone to drive my vehicle, it is my hope that those I let drive it will have the same protections as myself. When someone else drives my vehicles it is for my convenience. I believe it is my obligation to afford them the same types of protection as myself. Please vote yes on 1448 banning drop-down or step-down clauses. Thank you.

I would be happy to answer any questions you may have.

David D. Schweigert

DDS:ber

Senate Industry, Business and Labor Committee
Senator Jerry Klein, Chairperson
Date: March 19, 2019
Steve Leibel, Bismarck
Engrossed House Bill 1448

I am writing to express my support for HB 1448. As you probably know, most people do not read insurance policies cover-to-cover. If they did, they probably would not understand most of it—insurance contracts are written in a very technical style and require a little background in general insurance principles (including caselaw) to understand the effect. This can lead to a disparity between what people get when they buy insurance and what they think they get. HB 1448 addresses one of those situations.

A. How Step-Down Clauses Work.

The recent case of *Nodak Mut. Ins. Co. v. Bahr-Renner*¹ illustrates one example of how these very technical “step-down” clauses work. In *Nodak*, a mother and daughter co-owned a pickup although the daughter lived out of the country. Mother had a bodily injury liability policy with limits of \$100K per person/\$300K per accident. During a visit to North Dakota, the daughter caused a car accident that resulted in damage and injuries to a number of persons. When the injured persons made a liability claim against the daughter, the mother’s insurance company claimed that even though the daughter was a co-owner of the pickup, the injured claimants could not recover more than the statutory minimum liability limits because the

¹ 842 N.W. 2d 912, 2014 ND 39.

Leibel Testimony

Page 2

daughter—who was an “insured” because she was operating the vehicle as an owner—did not qualify as a “family member” under the policy because she did not live with her mother². Here is what this language looks like in a policy:

A. The following limits of liability apply:

1. With respect to you or any “family member”: The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of “bodily injury” sustained by any one person in any one auto accident...

2. With respect to any other person who is insured under this policy:

The amount of coverage for damages due to “bodily injury” to one person is limited to the Statutory Financial Responsibility Bodily Injury Limit for one person.

In *Nodak*, the Supreme Court ruled that the injured claimants could not recover more than the statutory minimum liability limit because of this “step-down” clause. We do not know the ultimate effect on the parties of this ruling.

B. Why the Committee Should Approve HB 1448.

Insurance companies are not bad. However—like any other private business—their primary goal is to make money for shareholders. For this reason, they will always utilize those exclusions and limitations that are legally authorized. However, normal people do not read or understand the nuances of insurance policies. As such,

² Very recently this same step-down was used to limit liability limits to a stepchild who caused a fatality but no longer “resided” with his mother and step-father. *Nodak Mut. Ins. Co. v. Koller*, 876 N.W.2d 451, 2016 ND 43.

this is an area of the law where the legislature has a duty to ensure that insurance policies conform to the reasonable expectations of its citizens. The kind of arbitrary “gotcha” presented by a step-down clause is an example of where it is appropriate for the legislature to step in.

Undoubtedly, the insurance companies will say that this amendment will cause the sky to fall because it will result in increased premium rates. However, there are three responses to this. First, a minimum limit policy is virtually no liability protection at all—even a fender bender with moderate whiplash injuries can often have medical expenses alone in excess of \$20,000 if there were any radiographic studies (such as a CT scan or MRI) performed. As such, most people need a liability policy with at least a \$100K per person limit. Second, the only people affected by a step-down are those persons who purchased an increased limit for their own protection and the protection of those persons who drive his or her car. In North Dakota, there are a number of different legal theories that impose liability on a person who allows another to operate his or her motor vehicle with permission. These step-downs are a hidden landmine for people who try to be responsible.

Finally, at its most basic level, liability insurance places the cost of operating motor vehicles upon the persons who operate them. When a driver causes injury to another because of the negligent operation of a motor vehicle, this injury ripples through families and hospitals, and eventually can become a burden on taxpayers through Medicare or Medicaid. Allowing for arbitrary limitations is a mistake.

Thank you for your consideration.

Chairman Klein and Senate Industry, Business, and Labor committee members, I am Lindsay Wilz. I am currently the president-elect of the North Dakota Association for Justice and an attorney/shareholder at Maring Williams Law Office. I am here on behalf of both NDAJ and my firm testifying in support of House Bill 1448.

If you currently carry auto insurance through American Family, QBE/National Farmers Union, Center Mutual, or Nodak Insurance Company, to name just a few, there is a strong likelihood your policy carries an inconspicuous, confusing, and financially crippling exclusion to your bodily injury liability coverage known as “step-down” or “drop-down” coverage. As Representative Schobinger explained, “step-down” coverage is a provision buried in your auto insurance policy that reduces the bodily injury liability limits you have purchased to state minimum liability limits for permissive users. This exclusion states:

2. With respect to any other person who is insured under this policy:

The amount of coverage for damages due to "bodily injury" to one person is limited to the Statutory Financial Responsibility Bodily Injury Limit for one person.

The total amount of coverage for all damages due to "bodily injury" to two or more persons in the same occurrence is limited to the Statutory Financial Responsibility Bodily Injury Limit for two or more persons.

In plain English, this means if you are not the named insured or both a resident and a relative of the named insured, the bodily injury liability limits available to you are the state minimum limits

of \$25,000 per person/\$50,000 per collision even where the named insured has purchased higher limits, such as \$100,000, \$300,000, or more.

The insurance companies argue that the “step-down” coverage shifts the financial burden of an automobile collision from the owner of the vehicle to the driver of the vehicle. This is only partly true IF the driver has their own insurance. Which policy should be primary is a public policy issue as to whether the driver or the vehicle owner has the primary duty to insure the loss. The Legislature has already chosen to make the owner’s policy the primary policy, for likely two reasons: the owner has control over who drives the vehicle and under state law, it is the vehicle that is required to be insured not an individual licensed driver. If the Legislature desires to switch the primary policy to that of the driver, appropriate legislation can be drafted to guarantee that the primary policy is that of the driver, but that happens only if the driver has an applicable insurance policy for the collision. The insurance companies’ step-down provisions are an attempt to undermine the current legislation as to whose insurance company should be financially responsible, but it does so in every situation without regard to whether the driver actually has their own policy or not. This leaves countless insureds, including family members who don’t live in the household of the named insured, open to personal liability. It also leaves injured individuals without recourse and health insurance companies/Medicare/Medicaid left paying for the injuries.

There are a number of situations where this has, and will continue, to occur.

FAMILY FARM EXAMPLE:

John owns a farm and insures his grain truck for \$1,000,000 per person and per incident. John’s son, Frank, is an adult who lives on his own (separate household from Dad, John). Frank returns to the farm to help his dad during harvest. Frank is driving a grain truck and runs a stop sign

hitting a car and killing a wife and mother of two. John and Frank expect that there is insurance coverage of \$1,000,000 to cover the collision. However, the grain truck is insured with a policy that allows step down coverage and now only has \$25,000 per person to cover the collision. The widower of the collision brings a suit against Frank and John for the collision and wins a judgment of \$500,000. John has to sell the family farm to cover the loss, when he had purchased insurance that would have satisfied the judgment and protected his family farm. In this situation, because Frank is hauling grain for John and is in the course and scope of the business, John is responsible for Frank's actions. Frank's own automobile policy won't cover the loss under the business pursuits exclusion. The loss of the family farm and farming assets and/or bankruptcy now loom over John. This example would apply to countless farmers and ranchers in our state.

MILITARY EXAMPLE:

Dave is in the military. He is an adult and lives on his own. He is deployed for one year to Iraq. He decides to cancel his car insurance because he will be gone for one year and no one will be driving his vehicle. He is granted a two week leave from his deployment and travels home to visit his parents in ND. He is driving his parents' vehicle and is involved in a collision. His parents unfortunately have a policy that contains a step-down provision. Instead of having the \$250,000 per person coverage his parents have paid for, Dave now only has coverage of the state minimum of \$25,000. Dave is now being personally sued for the damages above and beyond \$25,000. Additionally, the injured party may never be able to recover for the loss if Dave does not have the assets to cover the claim.

SPOUSES:

Spouses who are currently going through a divorce or are separated are also at risk. In this example, the vehicle is titled in both of their names, but the policy of insurance only includes one spouse as the named insured (this happens frequently). The husband moves out, becoming a resident somewhere other than the marital home. The husband is involved in a collision. He is now a permissive user but is not a resident relative. He is subject to the step-down limits and has no knowledge of the risk and exposure.

UNDERINSURED MOTORIST COVERAGE:

You are riding with your brother who does not live in your home and is not a “named insured” on your auto policy. You get tired, and your brother volunteers to keep driving. You have purchased \$500,000 in liability limits and \$500,000 in underinsured motorist coverage to protect yourself. Unfortunately, your brother falls asleep and rolls your vehicle, seriously injuring you. You bring a claim against your own insurance policy for your brother’s negligence. Even more unfortunate, your policy contains a step-down provision. You can only recover the statutory state minimum coverage of \$25,000. You accept this amount to avoid suing your brother personally, who also does not have any assets to cover the loss. You then try to make an underinsured motorist claim for the \$500,000 insurance limits. However, the law prohibits you from making an underinsured motorist claim and a liability claim from the same policy. Despite having been a prudent individual and purchasing ample insurance to protect yourself, you are limited to recovering \$25,000.

The step-down provisions have grave impacts to insureds without notice or understanding by the individual purchasing the insurance. The language stated earlier is found deep within the auto policy and is written in terms that are confusing for even the most sophisticated of consumers to understand. Most insureds are not ever aware that the step-down exclusion exists.

Insureds go to agents they feel they can trust – family members, friends, or on the recommendation of others. Most people don't know that step-down exclusions exist, let alone, know to ask whether the policy of insurance they are purchasing contains such a provision. The lack of knowledge about what these obscure policy provisions mean takes away the free market right to choose insurance coverage this is best suited for their needs. Further, every year more and more insurance companies are including step-down provisions, limiting the free market and right to choose the appropriate and necessary coverage.

Notice of the step-down provision and acceptance of the step-down limits via signature do not cure the problems associated with step-down provisions. Having a blanket application for insurance requiring multiple signatures, does not adequately explain to the insured when the step-down limits will apply or how they may impact the insured. Further, it does not allow the insured to purchase a rider to the insurance policy to override the exclusion. As more and more insurance companies adopt this unfair provision, insureds will be left with no alternative and be forced to accept the step-down limits for permissive users.

Step-down provisions impact those who are injured and those who are insured within our state. They shift the financial burden without regard to coverage or premiums paid, only benefiting those insurance companies who have adopted the language. House Bill 1448 is a prudent piece of legislation that protects our insureds and residents of North Dakota. I ask for a "Do Pass" from this committee.

Pat Ward testimony regarding Engrossed HB 1448

S-IBL March 19, 10:30 AM.

Chairman Klein and members of the Senate IBL Committee. My name is Pat Ward and I represent the Association of North Dakota Insurers regarding Engrossed HB 1448.

Driver exclusion statutes are intended to benefit the consumer. These statutes allow auto insurance policies to be rated on just specific drivers, which means the consumer can (1) qualify for a policy they otherwise wouldn't have and (2) pay less premium.

For example, we frequently use driver exclusion forms when a policyholder (or potential policyholder) assures us that a problem driver will never drive a policyholder's vehicle. Otherwise, the company would have to either charge the family a much higher premium – or in many cases would not insure the customer at all – if we couldn't exclude a driver or drivers that had major claims problems.

However, the real issue on HB 1448 has become the added sentence on lines 15-18, which relates to permissive user drop down coverage. Your ND Domestic Insurance Companies strongly oppose Engrossed HB 1448 as it was passed in the House. We think there may have been a major misunderstanding of how existing policies work under current law. Here to explain the policies are Rob Hovland of Center Mutual from Rugby and Chris Oen from Nodak Insurance of Fargo.

Also, in the case of excluding a "class of persons" (which this Bill also addresses because of the overstrikes), there are some scenarios where consumers will be negatively impacted. For example, consumers who run small businesses – sometimes out of their home - make private passenger insurers nervous. The consumer doesn't want to buy a commercial policy but the private passenger companies either won't insure these types of consumers, or will charge significantly higher premiums, if the driver exclusion for a class of persons (employees) is not allowed. Another scenario is a farmer who has hired hands (who sometimes have bad driving records), that may or may not have access to the farmer's private passenger vehicles. If the farmer does not want his policy impacted by the potential of hired hands driving his personal vehicles, the farmer agrees to have that class of persons (employees) excluded.

To recap the testimony of Rob and Chris:

1. The drop-down coverage applies only to permissive user situations, that is when an insured under the policy loans the vehicle to someone who is not insured under the policy, and that person who borrowed the vehicle has an injury accident for which he or she was negligent and is liable for damages.
2. In the above situation, the permissive user has minimum limits under state law (\$25,000 per person, 50,000 per accident) from the vehicle policy. BUT in addition, the driver has his own insurance limits in excess of that amount available from his own policy which follows him where he goes. Under the law, the driver is liable, not the car.
3. Persons insured under the policy always have the maximum coverage that they purchased. If a claim is brought against them personally.
4. Allowing insurance companies to underwrite only the people they know and expect to be regularly driving the vehicle gives the consumer better premium value and provides for more accurate pricing.
5. The auto insurance market in North Dakota is very competitive and healthy. Allowing companies to provide other options to consumers to save money but adequately cover themselves and their families is better than limiting them in the options they can consider. Two companies offering this option are North Dakota based companies.
6. These companies have had few if any complaints, about this coverage. They told us about customers who asked for this and appreciate it. Customers do not want to pay for coverage they don't really need.

We urge a do not pass on Engrossed HB 1448. I will try to answer your questions if I can.

19.1070.01002

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1448

Introduced by

Representative Schobinger

1 A BILL for an Act to amend and reenact section 26.1-40-16 of the North Dakota Century Code,
2 relating to exclusion of people from coverage of automobile insurance.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 26.1-40-16 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-40-16. Exclusion of named persons - Restrictive endorsements.**

7 By written agreement with the named insured, a private passenger automobile insurance
8 policy covering an automobile or other motor vehicle registered or principally garaged in this
9 state may exclude a named individual, ~~individuals, or class of individuals~~ from coverage. The
10 policy may contain a restrictive endorsement reducing the limits of liability, uninsured motorist
11 coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision
12 coverage while the vehicle is operated by a named individual ~~or class of individuals~~. ~~However, if~~
13 ~~the policy does provide~~provides liability coverage to a person named in a restrictive
14 endorsement, but the coverage may not be less than the minimum provided under section
15 26.1-40-15.2, section 26.1-40-15.3, subsection 2 of section 26.1-41-01, and section 39-16.1-11.
16 A personal automobile policy may not reduce or exclude the limits of liability, uninsured motorist
17 coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision
18 coverage for a class of individuals. If the policy excludes a named individual, ~~individuals, or~~
19 ~~class of individuals~~ from all coverage and the named insured expressly or impliedly consents to
20 the operation of a secured motor vehicle by the excluded party, the named insured is not
21 relieved of personal liability as provided by subsection 5 of section 26.1-41-02.

APCIA/American Property and Casualty Insurance Association

March 18, 2019

Senate Industry, Business, and Labor Committee

Oppose HB 1448

Chairman Klein and Members of the Committee,

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

HB 1448 would prohibit insurers from providing automobile insurance policies which permit liability coverage reductions for certain classes of drivers. Enactment of this type of legislation, which offers choices to those who purchase insurance, would prevent those customers from taking advantage of cost reductions which would make the coverage more affordable for them. The kinds of coverage reductions proscribed by this legislation are often used to reduce the cost of automobile insurance for customers who might otherwise have trouble obtaining coverage by lowering their cost due to reduced loss exposure. Our association has quite a few member companies who specialize in providing insurance to customers who need this kind of flexibility in order to keep their insurance affordable. Customers are aware of these policy provisions because they most likely chose that option to save money.

We urge you not to restrict a consumer's choice to purchase this kind of automobile liability insurance policy and urge you to oppose HB 1448.

Steve Schneider

Vice President, Midwest Region

Steve.schneider@apci.org

312.782.7720