

2009 HOUSE JUDICIARY

HB 1158

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1158

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/13/09

Recorder Job Number: 6928 and 6830

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1158.

Larry Maslowski, Sr. Analyst & Director, Consumer Protection Property and Casualty Division, ND Insurance Department: Sponsor (attachment).

Rep. Delmore: How is the term "an person" defined in the law, and if I work for a company or dealership, is the dealership responsible for the liability or is there personal liability?

Larry Maslowski: That is not our intent, a "person" encompasses corporations, insurance companies, LLC, etc. We are trying to track that group of people as the ones having responsibility for this. I don't believe that is the direction that we are going. As it stands now, if an automobile dealer operating like they have, initially this honoring of the contract, they already are required to have it, a liability policy in place to protect the consumer.

Rep. Delmore: I just wanted to make sure that we put into statute what we need it to do, that's why I was curious.

Chairman DeKrey: If I have a buy a truck, fix it up and resell it, advertise it for sale, a guy comes and is wondering how the engine is, I tell him that if you have any engine trouble in 30 days, bring it back. Now, am I going to be required by law to insure that, or can I still take the vehicle back.

Larry Maslowski: It is not our intent to go in that direction. We understand that a "person" is defined in our code to include those types of entities like corporations, etc.

Rep. Dahl: What kinds of complaints do you get.

Larry Maslowski: There was recently a failure of one of these companies, which impacted a number of dealers. This company sold directly to consumers and to dealers. So we are trying to help people who have these contracts; there were in excess of 100 in ND.

Rep. Klemin: I always understood that the expansive definition of a person, included an individual and in that case it would appear to apply to what Ch. DeKrey is talking about, except that he is making a verbal assurance. These terms, automobile warranty contract, automobile mechanical breakdown, or automobile service contract, are those terms specifically defined anywhere else in the statute.

Larry Maslowski: No they are not.

Rep. Klemin: Is it the intent of the Dept. that we are talking about written agreements.

Larry Maslowski: Yes.

Rep. Klemin: So the kind of oral agreement that Ch. DeKrey was talking about, that would not apply because it is not a written agreement, because as far as I know, contracts can be both oral and written.

Larry Maslowski: Our intent wasn't to go in that direction.

Rep. Klemin: Well if that's the case would you have any problem with just a slight change to this that says "a person who issues a written automobile warranty contract..."

Larry Maslowski: That would be okay.

Rep. Koppelman: Is there a legal term that talks about an individual. An individual talks about an individual human being. A person in the law can mean an individual, but can also mean a corporation, etc. Is there a legal definition.

Larry Maslowski: I don't know.

Chairman DeKrey: Thank you. Further testimony in support of HB 1158. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1158.

Rep. Klemin: I move that we amend line 7, overstrike "an" and insert immediately thereafter "a written".

Rep. Koppelman: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Klemin: I move a Do Pass as amended.

Rep. Koppelman: Second.

12 YES 1 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Griffin

VK
1/13/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1158

Page 1, line 7, overstrike "an" and insert immediately thereafter "a written"

Renumber accordingly

Date: 1/13/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1158

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Klemin Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		✓
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 1

Absent 0

Floor Carrier: Rep. Griffin

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

REPORT OF STANDING COMMITTEE

HB 1158: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1158 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "an" and insert immediately thereafter "a written"

Renumber accordingly

2009 SENATE JUDICIARY

HB 1158

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1158

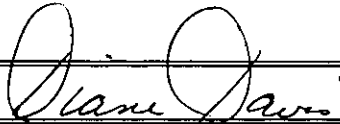
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/16/09

Recorder Job Number: 9556

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to automobile warranty contracts, automobile mechanical breakdown contracts and automobile service contracts.

Larry Maslowski – Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the ND Insurance Department. – See written testimony.

Senator Nething – Asks if we intentionally omitted these folks. How did we open that loop hole?

Maslowski – We weren't aware of the magnitude. Just has been a growth of these people. When a dealer goes out of business there is no one to honor these contracts.

Senator Nething – How do you keep track of these dealers?

Maslowski – Said he is unsure, they will tap them when they find them and need to. He clarifies this is not for the auto motive industry dealers.

Senator Nething – Says if you stay with your manufacturer your okay.

Senator Fiebiger – Asks how big a problem this is.

Maslowski – States, possibly 1200 contracts in ND with an agency that went out of business.

Senator Nething – Asks how they get the information.

Maslowski – He thinks maybe from car sales or credit.

Senator Olafson – Relates a story of a constituent with a problem and wondering if they got the information from the DOT. Is anyone tracking how they are getting the information?

Maslowski – Not that he knows of.

Senator Lyson – Said he is getting several of these cards for warranties. How will this work?

Maslowski – Said he is unsure but we hold the dealers up to these standards. If one fails they go to that company.

Senator Fiebiger – Asks about what other states are doing.

Maslowski – Said he hasn't looked into that. He is aware that some states require contractual liability because of the way they file.

Joel Gilbertson – Alliance of Automobile Manufactures – Supports this bill with a minor clarification amendment. See proposed amendment.

Senator Fiebiger – Questions where the amendment goes.

Gilbertson – Explains.

Senator Olafson – Asks if he knows where the companies are getting their information.

Gilbertson – Does not know.

Senator Olafson – Said he will check with the state agencies.

Close the hearing on 1158

Senator Olafson moves to adopt the amendment

Senator Nelson seconds

Verbal vote – all yes

Senator Olafson moves do pass as amended

Senator Fiebiger seconds

Vote – 6-0

Senator Olafson will carry

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1158

Page 1, line 1, remove "subsection 1 of"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

"26.1-40-18. Automobile warranties construed."

Page 1, after line 10, insert:

- "2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
 - a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or
 - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.

3. ~~This section does not apply to an original equipment manufacturer issuing new vehicle warranties.~~

Renumber accordingly

Date: 4/16/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

1158

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Amendment

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Olafson Seconded By Sen Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	/		Sen. Tom Fiebiger	/	
Sen. Curtis Olafson – V. Chair.	/		Sen. Carolyn Nelson	/	
Sen. Stanley W. Lyson	/		Sen. Mac Schneider	/	

Total (Yes) _____ (N) _____

Absent _____

Floor Assignment _____

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

Verbal all yes

Date: 2/16/09
Roll Call Vote #: 2
ALL VOTES 1158

1158

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen. Clayton Seconded By Sen. Griebner

[illegible]

Total (Yes) 6 (N) 0

Absent

Floor Assignment *See, Volsen*

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

REPORT OF STANDING COMMITTEE

HB 1158, as engrossed: Judiciary Committee (Sen. Nethling, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1158 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 1 of"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

"26.1-40-18. Automobile warranties construed."

Page 1, after line 10, insert:

- "2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
 - a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or
 - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.
3. This section does not apply to an original equipment manufacturer issuing new vehicle warranties."

Renumber accordingly

2009 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1158

2009 HOUSE STANDING COMMITTEE MINUTES

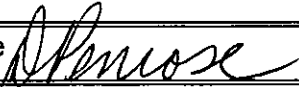
Bill/Resolution No. HB 1158

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/15/09

Recorder Job Number: 11889

Committee Clerk Signature 

Minutes:

Rep. Kingsbury: We will call the conference committee on HB 1158 to order.

Attendance: All present.

Rep. Kingsbury: Senate, please explain your amendments.

Sen. Olafson: I will let Joel Gilbertson explain the amendments.

Joel Gilbertson, Alliance of Auto Manufacturers: I did work on the bill after the House heard it. This was one of the early bills and went through the House without problems. It was after the House heard the bill, the Alliance got back to me that there was a problem with the amendments. It was not their intention to cover the original equipment manufacturer issuing warranties. So the amendment was drafted to take care of that matter. Then it was discovered that most states, to make it more clear, that it applies not just to OEM original warranties but also to the extended warranties.

Pat Ward, Property Casualty Insurance (PCI): We need to amend the amendment .0201, on page 1, #3 remove the words "issuing new vehicle warranties". The sentence will read as follows: 3. This section does not apply to an original equipment manufacturer. The problem is that with the way it is worded now it could be construed to apply to other types of warranties issued by automobile manufacturers. That was not the intention.

Rep. Kingsbury: What would the amendment be.

Pat Ward: On the .0300 version, page 2, line 4.

Larry Maszlowksi, ND Insurance Dept: This was our bill originally and in the original form, currently the law requires that an automobile dealer or a third party administrator who issues warranties, which are not covered, must create a reinsurance policy. We concur with the new amendment. We never intended that OEM be included.

Rep. Kingsbury: Thank you. What are the committee's wishes.

Sen. Nething: I move that the Senate recede from its amendments and amend as follows:

On page 2, line 4, #3, delete the rest of the sentence after manufacturer (see attachment A).

Sen. Olafson: Second.

Rep. Kingsbury: Roll call vote.

6 YES 0 NO 0 ABSENT

SENATE RECEDE FROM SENATE AMENDMENTS AND BE AMENDED

Rep. Kingsbury: Motion carried. We are adjourned.

VR
4/16/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1158

That the Senate recede from its amendments as printed on page 805 of the House Journal and pages 596 and 597 of the Senate Journal and that Engrossed House Bill No. 1158 be amended as follows:

Page 1, line 1, remove "subsection 1 of"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

"26.1-40-18. Automobile warranties construed."

Page 1, after line 10, insert:

- "2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
 - a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or
 - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.
3. This section does not apply to an original equipment manufacturer."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1158 (, as (re)engrossed):

Date: 4/15/09

Your Conference Committee H Judiciary

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen. Olafson	☒	☐	Rep. Kingsbury	☒	☐
Nothing	☒	☐	Baehning	☒	☐
Schneider	☒	☐	Griffin	☒	☐

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 805 - _____

_____, and place _____ on the Seventh order.

☒, adopt (further) amendments as follows, and place 1158 on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1158 was placed on the Seventh order of business on the calendar.

DATE: 4/15/09

CARRIER: Rep. Kingsbury

LC NO.	of amendment
LC NO.	<u>98176.0202</u> of engrossment <u>0400</u>
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Sen. Nothing

SECONDED BY: Sen. Olafson

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1158, as engrossed: Your conference committee (Sens. Olafson, Nething, Schneider and Reps. Kingsbury, Boehning, Griffin) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 805, adopt amendments as follows, and place HB 1158 on the Seventh order:

That the Senate recede from its amendments as printed on page 805 of the House Journal and pages 596 and 597 of the Senate Journal and that Engrossed House Bill No. 1158 be amended as follows:

Page 1, line 1, remove "subsection 1 of"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

"26.1-40-18. Automobile warranties construed."

Page 1, after line 10, insert:

"2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:

- a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or
- b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.

3. This section does not apply to an original equipment manufacturer."

Renumber accordingly

Engrossed HB 1158 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1158

HOUSE BILL NO. 1158

Presented by: Larry Maslowski
Senior Analyst and Director, Consumer Protection Property
and Casualty Division
North Dakota Insurance Department

Before: House Judiciary Committee
Representative Duane DeKrey, Chairman

Date: January 13, 2008

TESTIMONY

Good afternoon, Chairman DeKrey and members of the committee. My name is Larry Maslowski and I am the Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the North Dakota Insurance Department. I appear before you today in support of this bill.

In a previous session the Legislative Assembly made a public policy decision and deregulated the market for "property service contracts". "Property service contracts" as defined in the law encompass a wide range of contracts including extended warranties, mechanical breakdown, and service contracts for all types of products including automobiles, homes, and appliances.

N.D.C.C. § 9-01-21 effectively removed the Insurance Commissioner from any regulatory oversight of these types of contracts. According to this law the contracts are not contracts of insurance.

At the same time the Legislative Assembly enacted the new law, the Insurance Commissioner asked for some degree of consumer protection when it came specifically to automobile warranty, automobile mechanical breakdown, and automobile service contracts. The concern was and still is that automobile dealers, in particular smaller

dealers, come and go. When a dealer or its third-party administrator goes out of business and is no longer available to honor the contract, it leaves the customer without any protection or, at best, limited legal recourse. The Legislative Assembly concurred and created a requirement that an automobile dealer or third-party administrator who issues a nonregulated contract must carry a contractual liability insurance policy which backs up their ability to respond to future claims.

Since the new laws went into effect, we have seen a proliferation of companies who are not dealers or third-party administrators operating on behalf of dealers offering the unregulated "property service contracts". While this is perfectly legal, it has created an uneven playing field (as far as dealers are concerned) and poses a serious risk to consumers who purchase these contracts from an entity other than a dealer or its third-party administrator as there is no protection should these entities fail or go out of business.

In order to continue to have some degree of protection in place for consumers, we would like to see the law amended and broadened to include "any person" who issues these types of contracts, and to require that they carry a contractual liability policy to back up the civil contracts they are offering.

We ask for the committee's favorable consideration of this amendment.

Thank you. Do you have any questions?

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1158

Page 1, after line 10, add a new subsection 3 and insert:

3. This section shall not apply to an Original Equipment Manufacturer issuing new vehicle warranties.

Renumber accordingly

HOUSE BILL NO. 1158

Presented by: Larry Maslowski
Senior Analyst and Director, Consumer Protection Property
and Casualty Division
North Dakota Insurance Department

Before: Senate Judiciary Committee
Senator David Nething, Chairman

Date: February 16, 2009

TESTIMONY

Good morning, Chairman Nething and members of the Senate Judiciary Committee. My name is Larry Maslowski and I am the Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the North Dakota Insurance Department. I appear before you today in support of House Bill No. 1158.

In a previous session the Legislative Assembly made a public policy decision and deregulated the market for "property service contracts". "Property service contracts" as defined in the law encompass a wide range of contracts including extended warranties, mechanical breakdown, and service contracts for all types of products including automobiles, homes, and appliances.

N.D.C.C. § 9-01-21 effectively removed the Insurance Commissioner from any regulatory oversight of these types of contracts. According to this law the contracts are not contracts of insurance.

At the same time the Legislative Assembly enacted the new law, the Insurance Commissioner asked for some degree of consumer protection when it came specifically to automobile warranty, automobile mechanical breakdown, and automobile service contracts. The concern was and still is that automobile dealers, in particular smaller dealers, come and go. When a dealer or its third-party administrator goes out of business and is no longer available to honor the contract, it leaves the customer without

any protection or, at best, limited legal recourse. The Legislative Assembly concurred and created a requirement that an automobile dealer or third-party administrator who issues a nonregulated contract must carry a contractual liability insurance policy which backs up their ability to respond to future claims.

Since the new laws went into effect, we have seen a proliferation of companies who are not dealers or third-party administrators operating on behalf of dealers that are offering the unregulated "property service contracts". While this is perfectly legal, it has created an uneven playing field (as far as dealers are concerned) and poses a serious risk to consumers who purchase these contracts from an entity other than a dealer or its third-party administrator as there is no protection should these entities fail or go out of business.

In order to continue to have some degree of protection in place for consumers, we would like to see the law amended and broadened to include any person who issues these types of contracts, and to require that they carry a contractual liability policy to back up the civil contracts they are offering.

During the deliberations in the House, a concern was raised as to whether this would apply to an individual (not a dealer) who sells a car and makes a verbal commitment to stand by the vehicle to the purchaser. It is not our intent to require individuals who may make this verbal agreement in conjunction with the sale of their vehicle subject to this requirement. Our intent is to make the requirement apply to all those who are in the business of issuing written contracts for automobile warranties, automobile mechanical breakdown, and automobile service contracts. To address this concern, the bill was amended in the House to pertain to "written" contracts.

We ask for the committee's favorable consideration of this amendment.

Thank you. Do you have any questions?