

ARIZONA HOUSE OF REPRESENTATIVES
Forty-ninth Legislature – Second Regular Session

COMMITTEE ON BANKING AND INSURANCE

Minutes of Meeting
Monday, February 22, 2010
House Hearing Room 5 -- 2:00 p.m.

Chairman McLain called the meeting to order at 2:42 p.m. and attendance was noted by the secretary.

Members Present

Mr. Ash
Mr. Campbell CL
Mr. Meza

Mr. Seel
Mr. Tobin

Mr. Quelland, Vice-Chairman
Mrs. McLain, Chairman

Members Absent

Mr. Bradley (excused)

Committee Action

HB2168 – DPA S/E (6-0-1-1)
HB2698 – DPA (4-3-0-1)

HB2766 – DPA (7-0-0-1)

CONSIDERATION OF BILLS:

HB2168 – technical correction; veterans – DO PASS AMENDED S/E
S/E: auto insurance; disclosure

Vice-Chairman Quelland moved that HB2168 do pass.

Vice-Chairman Quelland moved that the McLain 12-line strike-everything amendment dated 2/11/10 to HB2168 be adopted (Attachment 1).

Heidi Nitz, Majority Intern, advised that the proposed strike-everything amendment to HB2168 (Attachment 1) exempts rate-related insurance information from being disclosed to the public by the Department of Insurance (DOI) if the information can be classified as a trade secret (Attachment 2).

In response to Vice-Chairman Quelland, Ms. Nitz said this legislation was requested by Progressive Insurance Company.

Greg Harris, representing Progressive Insurance Company, spoke in support of the strike-everything amendment to HB2168. He advised that insurance companies must file their rate information with the Department of Insurance (DOI) to allow the Department to make an assessment about whether the rates they will charge are fair and adequate to allow the company to deliver its service and to fulfill its obligation. Under current law, all information used to develop the rate must be disclosed to the Department, and this information becomes public record. When a company develops an innovative filing, it may have invested a large sum of money in market research and materials submitted to the Department, and the company wants to safeguard that information. This bill allows the Department to make the required assessment and allows a company to file without concern that its information will be protected. He advised that the Department is not opposed to this legislation.

Mr. Seel asked the number of other states that have a policy similar to this. Mr. Harris advised that Progressive has brought this issue in 16 or 17 states. He said he can provide a list of those states if needed. He related that some states have a trade secret provision built into their rate filing process.

Mr. Tobin, sponsor, commented that he has not had other insurance carriers contact him in opposition to the bill. He assumed they also do not want that information shared with competitors.

Vice-Chairman Quelland noted that information has been given as to why this is in the best interest of insurance companies; he asked why this is in the best interest of the citizens of Arizona. Mr. Harris stated that this proposal serves consumers well. When a company develops an innovative product, it deserves the opportunity to protect its investment and gain the benefit of that creative effort. He advised that the only people who request the records are competitors, so this is not about preventing the public from gaining the benefit of the filings but protecting trade secrets from other carriers. Vice-Chairman Quelland again stated that he does not see how this is in the best interest of the public and he asked how the public gets the benefit of this legislation. Mr. Harris said this deals with a mathematical formula that describes how the policy pricing will be developed. He maintained that this is not an issue that impacts consumers.

Mr. Ash commented that the public has an interest in protecting the work product if companies can come up with new innovative ways to reduce fees. He opined that there will be less innovation in the marketplace if the work product is disclosed to competitors.

Mr. Seel said it appears that this bill strikes a balance between access to the public and protection of the company's product. Mr. Harris agreed.

Chairman McLain stated that if the Department does not agree with the company's claim of trade secret protection, the decision will be made in the courts. Mr. Harris concurred. He said the company would have the burden of proving in court that the record was eligible for trade secret protection.

Vice-Chairman Quelland expressed concern that this is a rush to judgment without the public actually knowing it is there. Mr. Harris revealed that he has been in contact with the Department on this issue for quite some time. He revealed that identical language passed the House 98 to 0 last year. This issue is not a secret and is not meant to be anything other than to provide the

opportunity for consumers to have access to products that otherwise would not be available on the market.

To Vice-Chairman Quelland's comment, Mr. Tobin said this is about protection of proprietary property. He maintained there has been no attempt to rush this through.

Vice-Chairman Quelland announced the names of those who signed up in support of HB2168 but did not speak:

Lanny Hair, Executive Vice President, Independent Insurance Agents & Brokers of Arizona
Kerry Hayden, Government Affairs Representative, Farmers Insurance Group of Companies
Don Hughes, Lobbyist, Property and Casualty Insurance Association of America

Vice-Chairman Quelland announced the names of those who signed up as neutral on HB2168 but did not speak:

Karlene Wenz, Legislative Liaison, Department of Insurance (DOI)

Question was called on the motion that the McLain 12-line strike-everything amendment dated 2/11/10 to HB2168 be adopted (Attachment 1). The motion carried.

Vice-Chairman Quelland moved that HB2168 as amended do pass. The motion carried by a roll call vote of 6-0-1-1 (Attachment 3).

HB2698 – homestead exemption; limit; retirement accounts – DO PASS AMENDED

Vice-Chairman Quelland moved that HB2698 do pass.

Vice-Chairman Quelland moved that the Ash 21-line amendment dated 2/11/10 to HB2698 be adopted (Attachment 4).

Rene Guillen, Majority Research Analyst, explained that currently the homestead exemption protects up to \$150,000 of equity in a person's dwelling from attachment, execution and forced sale. The proposed amendment to HB2698 (Attachment 4) will double the exemption to \$300,000 and add 401(k) retirement plans to plans protected from creditors (Attachment 5).

Representative Matt Heinz, sponsor, related that this issue is one of fundamental fairness. He believes that caution should be taken in civil litigation in removing someone's primary residence or retirement savings accounts. This bill, with the proposed amendment, makes sense and will protect citizens.

Mr. Seel asked what prompted this bill. Representative Heinz answered that this was brought to him by some colleagues and a number of constituents; it protects someone's primary residence and retirement-type assets.

Mr. Ash noted that bankruptcies seem to be increasing every year. He believes that the interest of creditors needs to be balanced with what the bankrupt parties owe them. He wondered why \$150,000 is not sufficient protection. Representative Heinz agreed that balance is needed;

however, he said he believes that when it comes to the person's primary residence, special consideration should be given.

Jay Kaprosy, Senior Government Relations Advisor, Arizona Bankers Association, testified in opposition to HB2698, increasing the homestead exemption. He revealed that Arizona's \$150,000 exemption is more than twice what the national average is for states that have a homestead exemption. The exemption protects assets from creditors, however; in a bankruptcy, creditors are left with the debts as a result of that action. When those debts are exempted, they have to get paid, which means that everyone else will pay for those debts in higher costs at banks, through credit cards, or at the retail or service vendor that provides services. He related that the exemption was raised five years ago from \$100,000 to \$150,000. The Association believes increasing the amount is unnecessary at this time and that \$150,000 strikes an appropriate balance.

Mr. Ash asked how much additional equity must be in a home for the bank to sell it. Mr. Kaprosy said he does not have numbers at this time but he will get that information. He said that many sales do not go forward because proceeds are not available to pay creditors.

Mr. Seel pointed out that a large number of homes do not have \$150,000 in equity. Mr. Kaprosy explained that is part of the calculation when a bank is attempting to assess the value in moving forward with the sale of the property.

To that point, Mr. Tobin asked the number of Arizona foreclosures that have reached the \$150,000 exemption amount. Mr. Kaprosy replied that he does not have that number and said he will look into that. Mr. Tobin commented that if the ceiling were higher, homeowners would have more incentive to negotiate with the lender. Mr. Kaprosy countered that increasing the exemption to \$300,000 will protect a greater amount of assets from creditors.

Mr. Seel asked where Arizona would be on the national level if the exemption is increased to \$300,000. Mr. Kaprosy related that Arizona is already ranked fifth of states that have a \$150,000 exemption; increasing the exemption to \$300,000 would put Arizona in third place of states that have a homestead exemption. He again stressed that this bill will shelter more assets from debts that people are obliged to pay. He commented on the personal responsibility of paying one's debts and said he believes \$150,000 provides ample funds to help people get back on their feet.

In answer to Mr. Tobin, Mr. Kaprosy relayed that 42 states have a homestead exemption, three states have no exemption and the bottom 30 states are below a \$50,000 exemption.

Mr. Tobin asked whether the Bankers Association is opposed to 401(k) retirement plans being exempt from creditors. Mr. Kaprosy said the Bankers Association's opposition is to the increase in the homestead exemption.

In reply to Mr. Meza, Mr. Kaprosy said that the two states above Arizona are Nevada and Massachusetts. Florida is one of the states that has an unlimited cap to shelter assets from creditors. Mr. Meza noted that Arizona and Florida have a high concentration of seniors. Mr. Kaprosy said he does not believe that is relevant.

Chairman McLain said she has a sense that some Members are uncomfortable with raising the cap and that the 401(k) protection is warranted. She asked staff about amending the bill on the Floor so that only the 401(k) provision is retained.

After discussion, Mr. Tobin volunteered to run an amendment on the Floor to retain the current \$150,000 homestead exemption and to protect 401(k) retirement plans from creditors.

Chairman McLain said she will not allow the bill to be on the Committee of the Whole calendar if an appropriate amendment cannot be worked out.

Mr. Ash commented that he has a problem with the 401(k) portion of the bill. He believes the current bankruptcy laws are generous and he is reluctant to expand them.

Vice-Chairman Quelland said he is uncomfortable that the public has not weighed in on this issue. He cautioned Members to err on the side of the public.

Persons opposed to HB2698 who did not speak:

Austin De Bey, Vice President/Government Affairs, Arizona Credit Union League

Stacy Langford, Vice President Member Services, Arizona Bankers Association

Janna Day, Lobbyist, Bankruptcy Trustees Association of Arizona

Question was called on the motion that the Ash 21-line amendment dated 2/11/10 to HB2698 be adopted (Attachment 4). The motion carried.

Vice-Chairman Quelland moved that HB2698 as amended do pass. The motion carried by a roll call vote of 4-3-0-1 (Attachment 6).

HB2766 – tenant notice; foreclosures – DO PASS AMENDED

Vice-Chairman Quelland moved that HB2766 do pass.

Heidi Nitz, Majority Intern, explained that HB2766 stipulates that a landlord must provide tenants of a property subject to foreclosure written notice 60 days in advance of the sale of the property (Attachment 7). Additionally, the bill outlines the form of the notice of foreclosure, eviction protocol, the termination of the tenant's obligations to the landlord and the tenant's remedies.

Vice-Chairman Quelland moved that the Meza six-line amendment dated 2/19/10 to HB2766 be adopted (Attachment 8).

Ms. Nitz explained that the amendment changes the period of time for which landlords must provide written notice from 60 to 90 days and changes the contact for information from the Superior Court to where the action is filed (Attachment 8).

Representative Barbara McGuire, sponsor, said she brought this legislation forward last year because she was inundated with phone calls from renters who were caught in the fallout of the foreclosure situation. One call was from a person who was forced to move out within three days. She believes that owners have an obligation to let tenants know that the property is in

foreclosure. She maintained that it is an injustice to tenants to pay rent without being notified that the property is in foreclosure.

Mr. Ash commented that tenants only have to give the landlord 30-days notice to move out. Representative McGuire said that depends on the contract between the renter and the property owner. Mr. Ash questioned why the tenant should receive more notice than the landlord. Representative McGuire said that 90 days is in line with federal law recently enacted.

Chairman McLain asked whether a state law is necessary in light of the recently enacted federal law. Representative McGuire replied in the affirmative. She said this issue was heard in the Commerce Committee and those issues were addressed.

Courtney Gilstrap Levinus, Arizona Multihousing Association (AMA) and Arizona Real Property Owners and Landlords Association (ARPOLA), in opposition to HB2766, advised that this issue was included in the Third Special Session budget bill signed by the Governor which requires the lender to provide a 90-day notice prior to foreclosure to occupants of the home. She said she believes this issue has been addressed because of the 90-day notice. In addition, Congress enacted the Protecting Tenants and Foreclosure Act in May 2009 which provides protection for the tenant in that once a home goes into foreclosure, the tenant is allowed to remain in the home at least 90 days. The process is slightly different for a multi-family property as all leases stay in place through the receivership process. She maintained that between federal law and the state law passed last year, this is already covered and additional legislation is not necessary.

Mr. Seel asked for information about lenders providing notice to tenants. Ms. Levinus said the Bankers Association has more knowledge of that because it is the lenders who send the notice. Mr. Seel said his intent is to find out whether current law is working

To that point, Mr. Campbell related that he can provide letters from constituents who had and are still having problems with lenders not giving notice.

Mr. Ash asked whether he misunderstood that there is federal law that requires them to give notice. Mr. Campbell concurred that although there is federal law, some landlords are not notifying tenants that the property is under foreclosure.

Ms. Levinus noted that the Attorney General's Office has a website so there is an avenue for people to report that they are not getting the proper notification.

Mr. Campbell commented this is a serious matter for his district.

Mr. Ash asked Ms. Levinus the reason for opposing this since federal law requires notification. Ms. Levinus said her opposition is because lenders are already giving notification. Mr. Ash asked whether she does not want landlords to duplicate the notice. Ms. Levenis answered in the affirmative.

Stacey Langford, Vice President Member Services, Arizona Bankers Association, made herself available to answer questions.

Chairman McLain queried the number of lenders who are following state law and giving notice to tenants. Ms. Langford maintained that bankers and their members are complying with state law.

Mr. Tobin noted that this bill talks about landlords, not banks. He said it seems to him that banks are complying with the law. Ms. Langford repeated that banks are complying with federal and state laws.

Mr. Tobin pointed out this legislation targets those people who are entering into a lease agreement after a foreclosure. Representative McGuire declared that this is a bill that protects renters.

Chairman McLain asked Mr. Tobin whether a bank would have knowledge of a single family home being rented. Mr. Tobin replied they might not know right away, so they might not know it is necessary to send out the notice.

Brian Tassinari, on behalf of the Arizona Association of Realtors, spoke in opposition to HB2766 as currently drafted. The statutory definition of “landlord” includes property managers and owners. The Association believes it is more appropriate for that duty to apply to owners. If an amendment were offered on the Floor to apply to owners only, the Association’s position would change to neutral on the bill.

Mr. Tobin asked Ms. Levinus whether she is aware that this legislation has to do with agreements being entered into after a foreclosure notice. Ms. Levinus replied in the negative and said she was focused on pre-foreclosure. Her issue is the landlord providing notice when it is already being provided by the lender.

Mr. Tobin asked Ms. Levinus if she is willing to work with the sponsor to improve this bill if it passes out of Committee. Ms. Levinus replied in the affirmative, providing it is limited in scope to addressing leases entered into after the foreclosure process has begun.

Chairman McLain said she does not believe that addresses the concerns of the Members. She said that if the notice is sent to the owner at the property address, a tenant might not open that letter and may forward it to the owner, so tenants will not receive the notice. If the letter is sent to “occupant,” it might be thrown away as junk mail. She said she is not sure the problem was solved last year by making the lender responsible for notification.

Discussion ensued on notification.

Chairman McLain asked whether federal law requires the lender to be responsible for notification. Ms. Levinus clarified that under federal law, once foreclosure has occurred, the resident is given at least 90 days to stay in the unit.

Question was called on the motion that the Meza six-line amendment dated 2/19/10 to HB2766 be adopted (Attachment 8). The motion carried.

Vice-Chairman Quelland moved that HB2766 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 9).

Without objection, the meeting adjourned at 4:10 p.m.

Joanne Bell, Committee Secretary
March 5, 2010

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)