

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON BANKING AND INSURANCE

Minutes of Meeting
Monday, January 31, 2011
House Hearing Room 5 -- 2:00 p.m.

Chairman McLain called the meeting to order at 2:00 p.m. and attendance was noted by the secretary.

Members Present

Ms. McCune Davis
Mr. Miranda R
Mr. Seel

Mr. Smith D
Mr. Williams

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

Members Absent

None

Committee Action

HB2109 – DPA (7-0-0-0)
HB2112 – DP (7-0-0-0)
HB2113 – DP (7-0-0-0)

HB2372 – Held by Chairman
HB2412 – Discussed and Held

CONSIDERATION OF BILLS:

HB2372 – conservatorships; guardianships; county reimbursement – HELD BY CHAIRMAN

Chairman McLain announced that HB2372 will be held.

HB2412 – credit card agreements. – DISCUSSED AND HELD

Vice-Chairman Dial moved that HB2412 do pass.

Brooke Olguin, Majority Research Analyst, advised that HB2412 adds credit card debt to the type of debt that must be prosecuted within six years after the cause of action accrues (Attachment 1).

Vice-Chairman Dial moved that the McLain four-line amendment dated 1/28/11 be adopted (Attachment 2).

Ms. Olguin explained that the McLain four-line amendment deletes the last two sections of the bill, eliminating the assertion that the debt agreement entered into in Arizona is governed by the laws of Arizona (Attachment 2). It also makes a technical change.

Ms. McCune Davis asked Ms. Olguin to point out in statute where the term “revolving debt agreement” is referred to. Ms. Olguin said she is not sure that term is in statute.

Mr. Seel asked what the motivation is for striking Arizona as the controlling state. Ms. Olguin referred Mr. Seel to the sponsor to answer the question.

Ms. McCune Davis asked what the intent is of the amendment language “with a citizen of this state.” Ms. Olguin explained that the language was left out of the original statute.

Representative James Weiers, sponsor, testified that the genesis of the legislation is to correct ambiguity within statute. He was informed that not all judges interpret the statute as it was intended. The intent of this legislation is to eliminate the ambiguity to make sure it is clearly understood by the judges who hear these cases.

Richard Reed, representing self, advised that he is a collections attorney and is in support of the bill. He related that the change in the amendment addresses concerns by credit card companies as to whether the provisions within their contracts would be changed. He related that this legislation is necessary because of how current statute is interpreted in the justice courts. He said the courts have confused a revolving debt agreement with an installment contract with an open account and have also used case law on an installment contract to govern cases using credit card agreements. He maintained that this confusion is resulting in discourse and absolute incorrect rulings, based on incorrect interpretation of the statute. Passing this legislation will clarify the statute. The intent of the amendment is to explain that the subject state included in the contract will govern the contract.

Ms. McCune Davis commented that she cannot find the term “revolving debt agreement” in statute. She asked whether a definition is included in the statute. Mr. Reed replied in the negative. Certain courts interpret these devices as an open account or an installment contract which carry a three-year statute of limitation.

Mr. Reed answered questions on statute of limitations, State Bar review of cases, which state has controlling law, breach of contract, credit card agreements, etc.

Representative Weiers stated that the original intent of the proposal was to clarify the law. Because of the many questions on the legislation as well as the amendment, he asked Chairman McLain to allow him one week to address the issues.

Vice-Chairman Dial moved to withdraw the motion that the McLain four-line amendment be adopted (Attachment 2). The motion carried.

Vice-Chairman Dial moved to withdraw the motion that HB2412 do pass. The motion carried.

Chairman McLain announced that HB2412 will be held one week.

HB2109 – bail bond agents; civil; licensing – DO PASS AMENDED

Vice-Chairman Dial moved that HB2109 do pass.

Jennifer Londono, Majority Intern, stated that HB2109 clarifies the limits of practice of a bail bond agent (Attachment 3). The bill stipulates that any person licensed as a bail bond agent in Arizona is not authorized to transact civil bonds unless also licensed as a property and casualty producer in Arizona.

Mike Low, representing Gonzales & Gonzales Insurance Agency, in support of HB2109, advised that most states require that a property and casualty (P and C) insurance agent's license is needed before a civil bond can be written. Civil bonds relate to contracts such as performance bonds and administrative proceedings, i.e., immigration bonds. The bail bond statutes in Arizona relate exclusively to criminal matters. This legislation ensures that before a bail bondsman can write a civil bond, he must be properly licensed as a P and C insurance agent. He contended that this makes for more consumer protection and does not injure any bail bondsmen. It clarifies and ensures that Arizona is in the mainstream with other states that have this requirement.

Mr. Low answered questions on immigration bonds. He related that bonds guarantee attendance of the person at a hearing. He does not have figures on the number of bonds issued each year and the number of people who do not show up for the hearing. The standard immigration bond is \$5,000 to \$10,000 and the money goes to Immigration and Customs Enforcement (ICE) if the person is a no-show.

In response to Mr. Smith's questions about bail bond agents, Mr. Low advised that this statute creates a definition of bail bond agents. Additionally, it does not restrict bondsmen to criminal proceedings nor does it take anything away from them; it clarifies that immigration matters are not criminal proceedings.

John Burns, President, Arizona Bail Bondsmen Association, testified as being neutral on HB2109. He explained that this is an issue between a company in California and a company in Florida. He maintained that this proposal does hurt bail bondsmen because they will lose their ability to write immigration bonds. The Association has no objection to the legislation as long as bail bond agents can continue to post immigration bonds. He noted that immigration is a criminal act heard in a civil proceeding.

In response to Mr. Seel, Mr. Burns related that there are about 500 to 700 immigration cases a year, with a 20 percent failure-to-appear rate.

In reply to Mr. Smith, Mr. Burns stated that if the bill passes, it will take revenue out of the pockets of bondsmen and will confuse the public because they will not know who to contact when a bond is required. He opined that it will kill an industry.

Mr. Low commented that there is nothing to prevent bondsmen from taking the P and C exam.

Mr. Smith expressed concern that this legislation limits bondsmen to criminal proceedings. Mr. Low commented that there is no intent to take away from bondsmen and he said he would be

happy to agree to an amendment that will remove the *criminal proceedings* language and insert *judicial*. The focus of the bill is on administrative contract bonds, i.e., immigration bonds.

Mr. Low answered questions about the P and C license exam.

Mr. Low reiterated that the purpose of the bill is to clarify that bail bondsmen should be limited to judicial proceedings, and that if they are going to write civil bonds, they should have a property and casualty agent's license.

Chairman McLain announced the names of those who signed up in support of HB2109 but did not speak:

Lanny Hair, Executive Vice President, Independent Insurance Agents & Brokers of Arizona

Chairman McLain announced the names of those who signed up as neutral on HB2109 but did not speak:

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

Chairman McLain announced that a verbal amendment will clarify the issue.

Mr. Smith moved that HB2109 be amended as follows:

Page 1, line 13, strike “~~judicial~~ CRIMINAL” and insert “judicial”

The motion carried.

Vice-Chairman Dial moved that HB2109 as amended do pass. The motion carried by a roll call vote of 7-0-0-0 (Attachment 4).

HB2112 – insurance; surplus lines – DO PASS

Vice-Chairman Dial moved that HB2112 do pass.

Brooke Olguin, Majority Research Analyst, explained that HB2112 authorizes the Director of the Department of Insurance (DOI) to enter into a compact to provide for the reporting, payment, collection and allocation of taxes imposed on unauthorized surplus lines insurance covering multistate risks, in accordance with the Nonadmitted and Reinsurance Reform Act of 2010 (Attachment 5).

Don Hughes, representing Arizona Surplus Lines Association, in support of HB2112, explained that last year, Congress passed the Financial Services Reform Act that included the Nonadmitted and Reinsurance Reform Act. This legislation brings Arizona laws into conformity with federal law and authorizes the Department of Insurance (DOI) to join an interstate compact for the collection and distribution of premium taxes on companies doing business in multiple states. Federal law requires that states create an interstate compact in order to receive their share of the distribution of those multistate premium taxes. The clearinghouse will determine a state's share of the premium tax from the multistate risks. The federal law's intent is to provide uniformity and consistency in the collection and distribution of premium taxes.

In response to Mr. Seel, Mr. Hughes explained how multistate premium taxes are now distributed. Currently, some states are more diligent than others in paying the taxes to other

states. Joining the compact will insure that Arizona is receiving all of the premiums for which it is entitled for multistate risk. Participating states will pay a nominal fee per transaction for administrative costs under this compact.

In reply to Mr. Smith's query, Mr. Hughes advised that the brokers and the insurance industry as well as the regulators recognized the problem and came up with a solution to ensure that every state will receive the premium taxes they are entitled to.

Chairman McLain announced the names of those who signed up in support of HB2112 but did not speak:

Lanny Hair, Executive Vice President, Independent Insurance Agents & Brokers of Arizona

David Childers, representing Arizona Surplus Lines Association

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

Question was called on the motion that HB2112 do pass. The motion carried by a roll call vote of 7-0-0-0 (Attachment 6).

HB2113 – qualified financial contracts; receivership – DO PASS

Vice-Chairman Dial moved that HB2113 do pass.

Brooke Olguin, Majority Research Analyst, explained that HB2113 establishes laws relating to qualified financial contracts (QFCs) entered into by Arizona-domiciled insurers (Attachment 7). The bill will amend Arizona's insurer receivership laws to enact the National Association of Insurance Commissioners (NAIC) Insurers Rehabilitation and Liquidation Model Act.

Mike Low, representing SunAmerica Annuity & Life Assurance Company and American Council of Life Insurers (ACLI), spoke in support of HB2113. He advised that this is the National Association of Insurance Commissioners (NAIC) model language that sets forth the procedures relating to how qualified financial contracts (QFCs) are handled between an insurance company that is in receivership and an outside third party. This language has been adopted in ten states and a number of other states are considering similar legislation for the purpose of providing uniformity. It relates to variable annuities which contain a floor guarantee amount that the insurance company negotiates with the counter party to take part of the risk. He said it promotes insurance company solvency concerns.

Mr. Seel asked whether this will have a net positive effect on consumers in the state.

Karlene Wenz, Legislative Liaison, Department of Insurance (DOI), neutral on HB2113, answered in the affirmative. She stated that this will ensure that things will be as fair as possible.

Question was called on the motion that HB2113 do pass. The motion carried by a roll call vote of 7-0-0-0 (Attachment 8).

Without objection, the meeting adjourned at 3:15 p.m.

Joanne Bell, Committee Secretary
February 1, 2011

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