

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – First Regular Session

COMMITTEE ON BANKING AND INSURANCE

Minutes of Meeting
Monday, March 7, 2011
House Hearing Room 5 -- 2:00 p.m.

Chairman McLain called the meeting to order at 4:56 p.m. and attendance was noted by the secretary.

Members Present

Ms. McCune Davis
Mr. Seel

Mr. Smith D
Mr. Williams

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

Members Absent

Mr. Miranda R

Committee Action

SB1122 - DP (5-1-0-1)
SB1214 - DP (5-1-0-1)
SB1264 - DPA (5-1-0-1)
SB1400 - DP (6-0-0-1)

SB1590 - HELD BY CHAIRMAN
SB1591 - NOT ASSIGNED
SB1593 - NOT ASSIGNED

CONSIDERATION OF BILLS:

SB1590 - employers; group insurance pooling - HELD BY CHAIRMAN

Chairman McLain announced that SB1590 will be held.

SB1591 - health insurance claims; information; disclosure - NOT ASSIGNED

Chairman McLain announced that SB1591 was not assigned to the Committee on Banking and Insurance.

SB1593 - health insurance; interstate purchase - NOT ASSIGNED

Chairman McLain announced that SB1593 was not assigned to the Committee on Banking and Insurance.

SB1264 - workers' compensation; reasonable accommodations - DO PASS AMENDED

Vice-Chairman Dial moved that SB1264 do pass.

Jennifer Londono, Majority Intern, stated that SB1264 stipulates that if an employer has made reasonable compensation under the Americans with Disabilities Act (ADA), wages payable for the modified job position shall be included in the determination of any temporary partial or permanent partial earning capacity, notwithstanding that the modified position is not available in the open competitive labor market (Attachment 1). The bill defines *Americans with Disabilities Act* and *reasonable accommodations*.

Vice-Chairman Dial moved that the McLain three-line amendment dated 3/4/11 be adopted (Attachment 2).

Ms. Londono explained that the McLain three-line amendment dated 3/4/11 specifies that the term *reasonable accommodations* refers to accommodations made by the date of injury employer (Attachment 2).

Senator John McComish, sponsor, asked Jeff Gray to describe why the bill is needed and the problem it solves. He expressed support of the McLain amendment and offered to answer questions.

Jeff Gray, Legislative Liaison, Arizona Self Insurers Association (ASIA), in support of SB1264, declared that this legislation attempts to address a conflict between state and federal law. He advised that when the Americans with Disabilities Act was amended in 2008, the definition of *disability* was expanded and there was an increase in the number of injuries for which employees eligible to receive workers' compensation could also pursue an ADA claim. Federal ADA law requires employers to provide reasonable accommodations for workers with disabilities. This leads to a conflict because state law requires that when an employer places an injured worker back into a position after returning to work after an injury, that position has to be available on the open labor market. If the employer abides by the federal law, he can be penalized by the state; if he complies with state law, he can be penalized under the ADA law. This bill attempts to address that situation. The Association supports the McLain amendment; it is a technical amendment recommended by the Industrial Commission.

Chairman McLain announced the names of those who signed up in support of SB1264 but did not speak:

Farrell Quinlan, State Director, National Federation of Independent Business

David Childers, Lobbyist, PCIAA, Liberty Mutual Insurance Group

Heather Bernacki, Government Relations Associate, East Valley Chambers of Commerce Alliance

Lorna Romero, Director of Government Relations, Arizona Chamber of Commerce & Industry

Courtney Gilstrap LeVinus, Tucson Metropolitan Chamber of Commerce

James Stabler, Chief Counsel, SCF Arizona

Trish Hart, Lobbyist, Arizona Food Marketing Alliance

Michelle Bolton, Vice President of Public Affairs, Greater Phoenix Chamber of Commerce

Lyn White, Manager, Government Relations, Freeport McMoRan Copper & Gold

Teresa Lopez, Government Relations Representative, SRP

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council
Stan Barnes, Freeport McMoRan Copper & Gold
Penny Allee Taylor, Specialist/Government Affairs, Southwest Gas Corporation
David Kimball, Gallagher & Kennedy, P.A.
Kerry Hayden, Government Affairs Representative, Farmers Insurance Group of Companies
Jason Bezozo, Senior Program Director, Government Relations, Banner Health

Chairman McLain announced the names of those who signed up in opposition to SB1264 but did not speak:

Don Isaacson, Fraternal Order of Police

Question was called on the motion that the McLain three-line amendment dated 3/4/11 be adopted (Attachment 2). The motion carried.

Vice-Chairman Dial moved that SB1264 as amended do pass. The motion carried by a roll call vote of 5-1-0-1 (Attachment 3).

SB1400 - insurance adjusters; licensure; examination - DO PASS

Vice-Chairman Dial moved that SB1400 do pass.

Jennifer Londono, Majority Intern, stated that SB1400 makes various changes to the qualifications and licensing of insurance adjusters as follows (Attachment 4):

- Stipulates that an *adjuster* does not include a person who collects claim information from or furnishes claim information to insureds or claimants and who conducts data entry if not more than 25 persons are under the supervision of a single licensed adjuster.
- States that a licensed insurance producer supervising no more than 25 persons is not required to be licensed as an adjuster.
- Defines *automated claims adjudication system* as a pre-programmed computer system that is designed for the collection, data entry, calculation and final resolution of portable consumer electronic products insurance claims and that:
 - May be used only by a licensed adjuster or producer.
 - Must comply with all claims payment requirements under the Insurance Title and be certified as compliant by a licensed adjuster.
- Removes the qualification that an adjuster applicant have and maintain a public-accessible office in Arizona and keep records pertaining to transactions under the license at the office.
- Removes language that allows any firm or corporation to be licensed as an adjuster if each individual to exercise the license powers is qualified individually for a license.
- States that the Director of the Department of Insurance (DOI) may:
 - Require fingerprints of applicants and submit the fee and fingerprints to the Department of Public Safety (DPS) to obtain state and federal criminal record checks.
 - Contract with nongovernmental entities to perform any ministerial functions that the DOI Director deems appropriate.

- Stipulates that a resident of Canada may not be licensed as a nonresident adjuster unless that person has obtained a resident adjuster license in another state that the person has designated as their home state.
- Asserts that a Canadian resident who qualifies for licensure as an adjuster need not comply with statute requiring the applicant's social security number on the licensing application to aid DES in enforcing child support orders.
- Defines *portable consumer electronic products*.
- Makes technical and conforming changes.

In response to Mr. Seel, Ms. Londono explained that the company that brought this forward has a call center in Canada and wants to make sure that the Canadian call center will be able to handle these kinds of adjustment claims.

Senator John McComish, sponsor, explained that SB1400 allows for reciprocity from state to state for adjusters. When a call center's lines are busy, calls roll over to another call center in another state, so that kind of reciprocity is important. Additionally, individuals who enter data do not have to be licensed. He noted that there can be no more than 25 people who enter data and they have to be supervised by a licensed adjuster.

Wendy Briggs, Asurion, in support of SB1400, advised that Asurion is a company that performs third-party administration of claims. She reviewed the bill's changes to the adjuster laws. In answer to Mr. Seel's question, she related that Asurion has a call center in Canada. When the call center in the United States gets too busy, calls roll over to the Canadian call center, so this will permit a Canadian resident who is licensed in another U.S. state to have reciprocity and it permits those calls to be answered in Canada.

Chairman McLain clarified that the licensed adjuster will be the supervising adjuster. Ms. Briggs concurred.

Mr. Smith mentioned that the in-house adjusters who actually work for a company do not have to be licensed. Ms. Briggs said that is correct.

Chairman McLain announced the names of those who signed up as neutral on SB1400 but did not speak:

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

Question was called on the motion that SB1400 do pass. The motion carried by a roll call vote of 6-0-0-1 (Attachment 5).

SB1122 - insurance; health care sharing ministries - DO PASS

Vice-Chairman Dial moved that SB1122 do pass.

Brooke Olguin, Majority Research Analyst, stated that SB1122 exempts health care sharing ministries (HCSM) from regulation under the Department of Insurance (DOI) and requires a

monthly statement and written disclaimer be provided to all members (Attachment 6). She reviewed the provisions of the bill:

- Exempts a HCSM from regulation under DOI.
- Defines a HCSM as a faith-based, nonprofit organization that is exempt from federal income tax and that:
 - Limits its participants to those who are of a similar faith.
 - Acts as a facilitator among participants who have financial or medical needs and matches those participants with others who have the ability to assist those with financial or medical needs consistent with the criteria established by the HCSM.
 - Provides for the financial and medical needs of a participant through contributions from one participant to another.
 - Suggests amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the HCSM to the participants.
 - Provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the HCSM and the amount actually published or assigned to participants for their contribution.
 - Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the ministry that contains specific language.

Mr. Seel asked whether health care sharing ministries operate different than insurance companies in that they do not take on risk. Ms. Olguin replied in the affirmative.

Senator Nancy Barto, sponsor, stated that SB1122 is an option for people of like-faith and belief to have their health care costs taken care of. The bill permits people to help one another with large medical expenses through a ministerial alliance administrator; there is no contract involved; it is completely voluntary; and there is no guarantee by the members who participate that their health care costs will be paid by another member. She related that there are three major HCSM organizations nationally with about 110,000 members. She revealed that the largest organization has been taken to court 39 times by different insurance departments and accused of being insurance companies and, being ministry-based, they do not have the resources to defend themselves. This legislation provides protection for consumers as well as the ministries. She called Members' attention to the handouts (Attachments 7 and 8).

Mr. Smith queried whether this is a simple contractual relationship that members have with the HCSM. Senator Barto replied that it is an alliance but not a contractual alliance, and is completely voluntary.

Ms. McCune Davis wondered why the bill says this is an insurance company when the documentation stipulates that it is not an insurance company. Senator Barto answered that accusations continue, and that is why protection is needed. She advised that 11 states are moving in this direction.

Ms. McCune Davis stated concern about exempting these ministries from insurance regulation. She submitted that they need to operate independently from government. She said there is potential for abuse because an unethical person may use this for personal benefit. She submitted that it is unsettling that the Legislature is creating an exemption if this is not used properly.

Senator Barto disagreed and said the ministries believe they need statutory protection because they cannot afford to defend themselves.

Chairman McLain mentioned that the federal government recognizes that these ministries have a place. She related that the checks to pay the claims are sent directly to the person who has the medical need; nothing goes through the ministry itself. She said that to her knowledge, there have been no problems so far.

Chairman McLain announced the names of those who signed up as neutral on SB1122 but did not speak:

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

Question was called on the motion that SB1122 do pass. The motion carried by a roll call vote of 5-1-0-1 (Attachment 9).

SB1214 - interstate compact; health care.. - DO PASS

Vice-Chairman Dial moved that SB1214 do pass.

Brooke Olguin, Majority Research Analyst, reviewed the provisions of SB1214 which authorizes and directs the Governor to enter into an Interstate Health Care Freedom Compact on behalf of Arizona with other states (Attachment 10). The bill provides for enforcement and administration of the Compact and permits any party state to withdraw from the Compact four years after the Compact becomes effective. The bill contains a severability clause.

Senator Sylvia Allen, sponsor, stated that SB1214 mirrors the Health Care Freedom Act passed by Arizona voters in the November election. She read from a paper prepared by the Goldwater Institute outlining what an Interstate Compact is, what the Interstate Health Care Freedom Company does, the reason for an Interstate Health Care Freedom Compact, and what will make the Interstate Health Care Freedom Compact effective (Attachment 11). She advised that she is working with Montana and North Dakota who are enacting the same legislation. Two other states are interested in entering into the Interstate Compact. Other information on Interstate Compacts prepared by the Goldwater Institute was distributed (Attachment 12).

Senator Allen said the intent is to put federalism back in its proper place and the balance between the federal government and the state. An Interstate Compact is the way a state can join with another state, share information and work together on an issue that is important to both states.

In reply to Mr. Seel, Senator Allen explained that states that have real concerns about issues and want to protect their sovereignty can use Interstate Compacts to strength that.

Chairman McLain asked Senator Allen to explain the language that has to do with enforcement issues. Senator Allen said that interference of the Compact is criminalized. The criminal prosecution language is contained on Page 3 of the bill; enforcement language is on Page 1.

Senator Allen noted that this proposal is asking the Governor to set up the Compact. The actual Compact is still being written. Some parts of the criminalization language are still being drafted.

To that point, Mr. Seel stated that the assertion is that to interfere with an individual's right to freedom of health care choice would be a crime and the Compact will enforce that provision of the Arizona Constitution.

Chairman McLain noted that this is just authorization for the Compact and the Compact will have to be written. Senator Allen stated that this will be the foundation of the Compact.

Chairman McLain announced the names of those who signed up in support of SB1214 but did not speak:

Dave Kopp, Manager, Americans for Prosperity
Tom Jenney, Director, Americans for Prosperity, Arizona
John Wentling, Vice President, Americans for Prosperity

Chairman McLain announced the names of those who signed up as neutral on SB1214 but did not speak:

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

Question was called on the motion that SB1214 do pass. The motion carried by a roll call vote of 5-1-0-1 (Attachment 13).

Without objection, the meeting adjourned at 5:43 p.m.

Joanne Bell, Committee Secretary
March 15, 2011

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