

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

COMMITTEE ON BANKING AND INSURANCE

Minutes of Meeting
Monday, February 6, 2012
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

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

HB2365 - DISCUSSED AND HELD
HB2367 - DISCUSSED AND HELD

HB2368 - DPA (5-2-0-0)
HB2519 - DPA (5-2-0-0)

CONSIDERATION OF BILLS:

HB2519 - unemployment insurance; omnibus - DO PASS AMENDED

Vice-Chairman Dial moved that HB2519 do pass.

Vice-Chairman Dial moved that the McLain three-line amendment dated 2/1/12 be adopted (Attachment 1).

Sarah Wharton, Majority Research Analyst, stated that HB2519 makes changes to Unemployment Insurance (UI) regulations regarding payments of wages for discharged employees, the job training employer tax, work search requirements for UI recipients, and benefit eligibility for charter school employees (Attachment 2). The McLain three-line amendment dated 2/1/12 removes the requirement for employees to have received payment for wages for at least 20 weeks of their base period to be eligible for benefits (Attachment 1).

Representative Karen Fann, sponsor, advised that the bills on the agenda today have been introduced to help improve the unemployment and workers' compensation system, resulting in lower costs and the creation of new jobs. These bills are the reforms that came out of the

Governor's Office last summer. The purpose of HB2519 is to ensure that those individuals who deserve UI receive those benefits. She pointed out that language was added to this reform bill which allows employers to inform the Department of Economic Security (DES) that claimants have effectively refused an offer of suitable work if the offer is withdrawn due to a positive pre-employment drug test or refusal to submit to a drug test as a condition of employment.

Michelle Bolton, Vice President of Public Affairs, Greater Phoenix Chamber of Commerce, spoke in support of HB2519. She stated that the UI system is very important to the business community and the claimant. She listed the Chamber's goals: streamline the regulations, tie the claimant to the work search, fix the provision relating to charter schools, and ensure there is a dedicated funding source for job training.

Denise Blommel, representing self, testified that she is an attorney who represents both employers and employees. She advised that she is limiting her opposition to HB2519 to the section of the bill which deals with the dates on which the final pay for a discharged employee for any involuntary reason is based. An employee who is laid off potentially may wait 35 days for a final paycheck under this bill and that can be very hurtful to that person. In response to questions, she related that this practice happens frequently, so she hopes that the law remains the way it currently is: three working days or the next pay period, whichever is sooner.

Representative Fann pointed out that the language is permissible. The problem is that some employers use automated systems and may use outside people to do their payroll. Additionally, gathering all the payroll information may take more than three days. She noted that employers are subject to triple damages if they do not comply with the law, so there are protections in place for the employee.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council, Arizona Chamber of Commerce, in support of HB2519, expressed concern about the three-day window.

Discussion ensued on the timeframe.

Mr. Williams moved that HB2519 be amended as follows:
Page 1, line 7, strike "within three working days or"
Page 1, line 8, strike "whichever is sooner"
Page 1, line 7, strike "three" insert "SEVEN"
The motion carried.

Ellen Katz, Litigation Director, William E. Morris Institute for Justice, testified against HB2519 and provided a handout outlining the Institute's opposition to the bill (Attachment 3). She related that only about 25 percent of the unemployed qualify for UI now, and said she does not understand why this bill is needed because it further reduces the number of people who can collect. She encouraged Members to reject the entire bill. She answered questions on the number of people collecting, part-time workers, the drug-testing provision, and wages needed in a quarter to qualify for benefits. She stated that the Institute is neutral on the work search requirements; however, she said she believes it is an attempt to further reduce the number of persons eligible for benefits. The Institute is making no comment on the charter school provision. In conclusion, she said the Institute believes the provisions need to be looked at

further to see what the consequences are for the workers of Arizona, the proposal should be rejected and the entire process should start over.

Ms. Bolton returned to the podium to answer questions. She explained how wages are computed to determine benefits, advised that the Chamber did not estimate the number of people that will be impacted by increasing the amount of wages needed, effective date of the legislation, and the impact on current and future benefit recipients and employers.

In reference to Mr. Williams' verbal amendment, Chairman McLain announced that substantive amendments have to be presented in writing. Without objection, she waived the Rules to allow for a verbal amendment. Mrs. McCune Davis expressed objection to waiving the Rules.

Mr. Williams stated that, in light of the objection, he would feel more comfortable offering his amendment on the Floor. He offered to withdraw his motion. Chairman McLain agreed, stating that staff advised her that the verbal amendment was not properly presented.

Without objection, Mr. Williams withdrew the motion for his verbal amendment to the bill.

Erin Raden, Legislative Liaison, Department of Economic Security (DES), testified that the Department is neutral on HB2519. She introduced Joseph Edwards, a specialist in the Unemployment Insurance Administration.

Joseph Edwards, Policy Specialist, Unemployment Insurance Administration, Department of Economic Security (DES), replied to questions:

- he does not have numbers on the average amount of income to qualify for UI
- the average amount paid to an Arizona UI recipient is \$216 a week: the minimum amount is \$60 a week and the maximum amount is \$240 a week
- if this legislation had been in effect in FY2011, 8,341 people would not have been eligible for UI
- DES does not have the resources to verify that every person is looking for work; it does random sampling
- 11,000 charter school employees will be affected by the proposed legislation

Vice-Chairman Dial announced the names of those who signed up in support of HB2519 but did not speak:

Teresa Lopez, Government Relations Representative, SRP

Farrell Quinlan, State Director, National Federation of Independent Business

Katie Whitchurch, Director of Government Relations, Arizona Chamber of Commerce and Industry

Eric Emmert, East Valley Chambers of Commerce Alliance

John Mangum, Arizona Food Marketing Alliance

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

Deanna Kupcik, President and CEO, Buckeye Valley Chamber of Commerce

Joe Galli, Flagstaff Chamber of Commerce

Vice-Chairman Dial announced the names of those who signed up in opposition to HB2519 but did not speak:

Timothy Schmaltz, Coordinator, Protecting Arizona's Family Coalition
Rivko Knox, representing self
Seth Apfel, representing self
Eric Ehst, representing self
Suzanne Schunk, Director, Family Support Services, representing self
Jeremy Arp, Social Worker, National Association of Social Workers Arizona
Ginny Hildebrand, Executive Director, Association of Arizona Food Banks
Cynthia Zwick, Executive Director, Arizona Community Action Association
Susan Wilkins, representing self
Chris Fike, representing self
Maureen Casey, representing self
Krysta Laureano, representing self
Angela Schultz, representing self
Karen McLaughlin, Director of Budget and Research, Children's Action Alliance
Lorena Valle, representing self
Stephen Jennings, Associate State Director, AARP Arizona

Question was called on the motion that the McLain three-line amendment dated 2/1/12 be adopted (Attachment 1). The motion carried.

Vice-Chairman Dial moved that HB2519 as amended do pass. The motion carried by a roll call vote of 5-2-0-0 (Attachment 4).

HB2368 - workers' compensation; omnibus - DO PASS AMENDED

Vice-Chairman Dial moved that HB2368 do pass.

Vice-Chairman Dial moved that the McLain eight-line amendment dated 2/3/12 be adopted (Attachment 5).

Traci Long, Majority Intern, explained that HB2368 establishes guidelines and regulations in relation to subrogation as applied to workers' compensation cases, and changes current calculation from no later than January 1, 2010 to August 1 of each calendar year, based on the Bureau of Labor Statistics (Attachment 6). The bill contains a delayed effective date of January 1, 2013. The McLain eight-line amendment dated 2/3/12 contains the following provisions:

- requires approval of the U.S. Department of Labor in order for the Industrial Commission of Arizona (ICA) to allow insurance carriers and employers processing a workers' compensation claim to access the contribution and wage reports from the Department of Economic Security (DES)
- eliminates the eligibility requirements for Unemployment Insurance benefits
- eliminates the delayed effective date

Representative Karen Fann, sponsor, deferred her time to Jeff Gray, Arizona Self-Insurers Association.

Jeff Gray, Legislative Liaison, Arizona Self-Insurers Association (ASIA), stated support for HB2368 and the McLain amendment. He explained that there was a provision in the bill dealing with UI that was mistakenly added to this bill and the amendment corrects that. He addressed the three sections of the bill:

- verification of outside income: currently the State Compensation Fund and other state entities are permitted access to DES unemployment payroll tax wage data to verify if an injured worker has outside employment that is not being reported, resulting in fraud. That access to data is not available to a private regional insurance company. This bill will allow employers and insurance carriers to access DES records to determine if fraud is occurring.
- subrogation rights: currently the subrogation rights of an insurance carrier or a self-insured employer are limited to an employee injured by the negligence of a third party but not if a worker is re-injured in a non-work related setting to that same area. This bill extends the rights for subrogation in those instances. If a subsequent non-work injury occurs, a previous workers' compensation claim can be re-opened if the injury to that area made the person more susceptible to that injury.
- computing compensation: substitutes the Bureau of Labor Statistic Occupational Employment Statistics (OES) for the Arizona Mean Wage (AMW) in adopting compensation that reflects the annual percentage of the prior year.

Mr. Gray responded to questions on restriction of data to other entities, lien rights and settlements, definition of aggravated injury, Health Insurance Portability and Accountability Act (HIPAA) compliance and other privacy laws.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council, Arizona Chamber of Commerce, expressed support of HB2368. He said he will work with Ms. McCune Davis on the subrogation issue.

Mr. Williams noted that law enforcement signed in against the bill. Mr. Osborn said the only issue they have is the one raised by Ms. McCune Davis. He volunteered to meet to address their concerns.

Vice-Chairman Dial announced the names of those who signed up in support of HB2368 but did not speak:

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

Farrell Quinlan, State Director, National Federation of Independent Business

Allison Bell, Senior Government Affairs Representative, APS

Teresa Lopez, Government Relations Representative, SRP

Karlene Wenz, Government Affairs Specialist, Property & Casualty Insurers Association of America

Deanna Kupcik, President and CEO, Buckeye Valley Chamber of Commerce

Katie Whitchurch, Director of Government Relations, Arizona Chamber of Commerce and Industry

Eric Emmert, East Valley Chambers of Commerce Alliance

Kerry Hayden, Government Affairs Representative, Farmers Insurance Group of Companies

Susan Cannata, Attorney, SCF Arizona

Michelle Ahlmer, Executive Director, Arizona Retailers Association

Wendy Briggs, Lobbyist, American Insurance Association

Lyn White, Manager, Government Relations, Freeport-McMoRan Copper & Gold
John Mangum, Arizona Food Marketing Alliance
Jason Bezozo, Senior Program Director, Government Relations, Banner Health

Vice-Chairman Dial announced the names of those who signed up in opposition to HB2368 but did not speak:

Janice Goldstein, Arizona Trial Lawyers Association

Thomas Parker, representing self

Pat VanMaanen, representing self

Brian Livingston, Executive Director, Arizona Police Association

Levi Bolton, Vice President, Phoenix Law Enforcement Association

Brian Clymer, representing self

Seth Apfel, representing self

Luis Ebratt, President, Arizona Probation Officers Association, Arizona Conference of Police and Sheriffs

Question was called on the motion that the McLain eight-line amendment dated 2/3/12 be adopted (Attachment 5). The motion carried.

Vice-Chairman Dial moved that HB2368 as amended do pass. The motion carried by a roll call vote of 5-2-0-0 (Attachment 7).

HB2367 - workers' compensation; health care organizations - DISCUSSED AND HELD

Vice-Chairman Dial moved that HB2367 do pass.

Vice-Chairman Dial moved that the McLain 19-line amendment dated 2/3/12 be adopted (Attachment 8).

Sarah Wharton, Majority Research Analyst, said that HB2367 permits the establishment of workers' compensation health care organizations (HCOs) and allows employers, if insured, to form or contract with an HCO to provide workers' compensation benefits to injured employees (Attachment 9). The bill contains a delayed effective date of December 31, 2012. She reviewed the provisions of the McLain 19-line amendment dated 2/3/12: requires each organization to file an annual statement that describes the proposed network, defines *insurer*, directs the Industrial Commission to adopt rules to implement the provisions, and makes technical and conforming changes (Attachment 8).

Representative Karen Fann, sponsor, stated that this bill will set up a network to ensure that employees will get qualified medical attention at reasonable rates. It will accomplish the same goal as the current Workers' Compensation system: protect employees and get them well and back to work quickly. She advised that a number of stakeholder meetings were held, concerns addressed and many concessions were made.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council, Arizona Chamber of Commerce, in favor of HB2367, provided background information on this issue. He reviewed the provisions of the bill: allows a local government to self-insure to direct care or allows local governments to enter into medical networks. Self-insured employers for

workers' compensation that are private companies can direct care, and this model has worked very successfully. He advised that 16 to 18 states allow directed care or medical networks, in order to provide care in a more streamlined, cost-effective way. The fiscal impact to implement this model is estimated at approximately \$1 million per year in cost savings to the state. He pointed out that the bill provides an option to a city or local government to provide care; it is not a mandate. He stated that the proponents of this plan will be happy to work with the Industrial Commission and other stakeholders.

Karlene Wenz, Government Affairs Specialist, Property Casualty Insurers Association of America, in support of HB2367, offered to answer questions about network adequacy and that an appropriate number of providers are available. In response to Ms. McCune Davis' question relating to adequate rural providers, Ms. Wenz said she cannot say there is evidence of adequate specialized physicians in rural communities. What all the parties involved agree to pursue is the existing Arizona Healthcare Service Organization network already in place and adapt it to the workers' compensation model.

Jeff Gray, Legislative Liaison, Arizona Self-Insurers Association, stated support of HB2367. In response to Ms. McCune Davis' query about access to care in rural Arizona, he advised that medical networks within the private self-insured companies operate throughout Arizona and have been very successful for a number of years.

Mike Colletto, Executive Director, Professional Fire Fighters of Arizona, testified in opposition to HB2367. He made reference to past stakeholder meetings on this subject and advised that the Legislature chose not to move forward on the issue. This is a very complex system. He said his organization believes great harm will result from implementing this proposal.

Barry Aarons, Lobbyist, Injured Workers Pharmacy, Arizona Association of Chiropractic, urged Members to vote against HB2367 because he believes this is a draconian solution to a problem that will have unintended consequences for workers suffering from workplace injuries and for the providers who treat them. He agreed that this proposal will drive down costs; however, it will be at the expense of utilization. He maintained that this legislation will curtail utilization of pharmaceutical and chiropractic care. He suggested that this level of change requires further conscientious study to determine the consequences that could result from such a change. In reply to questions, he advised that limited physicians and treatment are the disadvantages of managed care; it reduces the type of care that patients receive. Over time it can reduce the utilization of chiropractors. He said the current workers' compensation system is the proper way to handle workers' injuries. He maintained that this bill is very broad in scope and he believes the sunset process is a more appropriate course of action to handle this issue.

Mr. Williams commented that this is a highly complex and technical issue. He is looking forward to hearing more testimony. As it stands now, he said it is difficult for him to support this bill in Committee.

Chairman McLain asked whether this proposal gives employees the option to opt out of the plan. Mr. Osborn replied that some states have such an exemption provision. Currently, under the self-insured model, there is no option to do so. He said it is an issue the proponents are willing to consider.

Rene Guillen, League of Arizona Cities and Towns, testified in support of HB2367. In response to Mr. Seel's query whether, under this plan, some doctors will be excluded or not qualified to participate, he said someone will get back to him with that answer.

Chairman McLain announced the names of those who signed up in support of HB2367 but did not speak:

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

Farrell Quinlan, State Director, National Federation of Independent Business

Ryan Peters, Intergovernmental Programs Coordinator, City of Glendale

Jim Ogsbury, Legislative Director, League of Arizona Cities and Towns

Allison Bell, Senior Government Affairs Representative, APS

Todd Madeksza, Director of Legislative Affairs, representing self

Scott Butler, City of Mesa

Teresa Lopez, Government Relations Representative, SRP

Chad Heinrich, Government Relations Coordinator, City of Tempe

Katie Whitchurch, Director of Government Relations, Arizona Chamber of Commerce and Industry

Scott Butler, City of Mesa

Deanna Kupcik, President and CEO, Buckeye Valley Chamber of Commerce

Kerry Hayden, Government Affairs Representative, Farmers Insurance Group of Companies

Michelle Ahlmer, Executive Director, Arizona Retailers Association

J. Michael Low, Attorney, American Family and SeaBright

John Mangum, Arizona Food Marketing Alliance

Wendy Briggs, American Insurance Association, in support of HB2367, testified that there is no basis for allowing self-insureds to direct care while commercial insurance companies who are covering workers' compensation claims cannot. She commented that there seems to be no incentive for insurance companies who pay claims to get the injured employee back to work. She said there is a huge cost to medical care in the workers' compensation system. In order to manage that care, this proposal will be a great help to insurance companies and the employers who have purchased policies from those companies. In response to questions, she said she is not aware of any studies that show patients are suffering by going to a managed care system.

Ms. McCune Davis expressed concern about some of the language in the bill. She opined that this proposal is not as straight forward as it appears.

Chairman McLain announced that she has been asked by the sponsor to hold the bill.

Jeffrey Scott, representing self, spoke in opposition to HB2367. He related his experience as a doctor who has participated in some HCO's in California and been excluded from others. He expressed concern about treatment of injured workers, accountability, fees, terms and conditions that physicians must accept, level of authority that an HCO has and continuity of care.

Patrick McNamara, representing self, expressed strong opposition to HB2367. He advised that he is an attorney and 80 percent of his practice involves workers' compensation. He stated that this bill has financial consequences to the state. It transfers much of the financial burden of medical care from the workers' compensation insurance carriers to the taxpayers. It allows the industrial insurance carriers to designate doctors; however, they will only pick doctors who are

favorable to them, which can be harmful to injured workers. He said it is a basic right of workers to choose their treating physician. He said that under the Constitution, workers' compensation benefits cannot be reduced without a Referendum, and this would require a Referendum of the voters, not an act of the Legislature.

Chairman McLain announced the names of those who signed up in opposition to HB2367 but did not speak:

David Landrith, Vice President of Policy and Political Affairs, Arizona Medical Association

Scot Butler, Industrial Commission of Arizona

Robert Wisniewski, representing self

Denise Blommel, representing self

Rory Hays, Lobbyist, Arizona Nurses Association

Seth Apfel, representing self

Mary Griffith, Director, Legislation, Arizona Nurses Association, representing self

Raymond Kronenbitter, representing self

Brian Clymer, representing self

Norman Moore, Attorney, Fraternal Order of Police

Janice Goldstein, Arizona Trial Lawyers Association

Thomas Parker, representing self

Don Isaacson, Arizona Fraternal Order of Police

Pat VanMaanen, representing self

Brian Livingston, Executive Director, Arizona Police Association

Debra Runbeck, representing self

Levi Bolton, Vice President, Phoenix Law Enforcement Association

Chad Snow, representing self

Anna Thompson, Senior Manager, State Government Affairs, Medtronic

Richard Bitner, Legislative Counsel, Arizona State Association of Physician Assistants

Darryl Engle, representing self

Luis Ebratt, President, Arizona Probation Officers Association, Arizona Conference of Police and Sheriffs

Jerry Ienuso, Teamsters Union

Mike Williams, Arizona Police Association, Phoenix Law Enforcement Association

Ryan Harper, Medtronic

Weston Montrose, representing self

Chairman McLain announced the names of those who signed up as neutral on HB2367 but did not speak:

Susan Cannata, Attorney, SCF Arizona

Chairman McLain announced that HB2367 will be held at the request of the sponsor.

Without objection, Vice-Chairman Dial withdrew the motion that the McLain 19-line amendment dated 2/3/12 be adopted (Attachment 8).

Without objection, Vice-Chairman Dial withdrew the motion that HB2367 do pass.

HB2365 - workers' compensation; evidence based treatment - DISCUSSED AND HELD

Vice-Chairman Dial moved that HB2365 do pass.

Vice-Chairman Dial moved that the McLain 14-line amendment dated 2/3/12 be adopted (Attachment 10).

Vice-Chairman Dial moved that the McLain 14-line amendment dated 2/3/12 be amended as follows:

Line 9, after “MEDICINE” strike “FOR” insert “OR”

Chairman McLain advised that the verbal amendment to the 14-line amendment is technical in nature.

Sarah Wharton, Majority Research Analyst, explained that HB2365 requires the use of the American College of Occupational and Environmental Medicine’s (ACOEM) occupational medicine practice guidelines to establish evidence-based treatment for workers’ compensation cases (Attachment 11). The McLain 14-line amendment dated 2/3/12 removes all references to the ACOEM guidelines and replaces them with the requirement for the Industrial Commission to adopt a separate set of evidence-based medical treatment guidelines on or before July 1, 2014 (Attachment 10). If the Commission does not adopt evidence-based medical treatment standards by July 1, 2014, the treatment guidelines developed by the American College of Occupational and Environmental Medicine or the Official Disabilities Guidelines (ODG) shall be regarded as the applicable guidelines.

Representative Karen Fann, sponsor, advised that the original intent of the bill was to use either the ACOEM or the ODG guidelines, or for the Industrial Commission to develop its own guidelines.

Discussion ensued on the guidelines and date for adoption of guidelines. Representative Fann again stated that the preference is for the Commission to develop its own guidelines.

Chairman McLain announced that testimony will be taken; however, the bill will be held per the sponsor’s request.

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council, Arizona Chamber of Commerce, in favor of HB2365, said the intent of the bill is to have an Arizona-based process that defines guidelines. He introduced Dr. Marjorie Eskay-Auerbach and Lucinda Saxon, Texas Star Alliance.

Dr. Marjorie Eskay-Auerbach, representing self, testified in support of HB2365. She advised that as an orthopedic surgeon, she has treated injured workers for more than 25 years. She stated that evidence-based medicine is the first step to ensure that each patient gets the safest and most appropriate treatment available for their condition. The guidelines are written based on the latest recommendations on safe and effective therapies for specific conditions. Clinical practice guidelines are developed to provide user-friendly summaries of treatment recommendations based on their safety and efficacy. Good doctors use their clinical expertise and the best available clinical evidence together. Most physicians do not have time to stay current with the

literature on all the conditions that they see. User-friendly guidelines make current information on treatment options available to the physician, improve the physician's ability to provide effective care and allow the patient to understand what treatment options are available.

Lucinda Saxon, Texas Star Alliance, testified in support of HB2365. She provided handouts on Medical Treatment Guideline Activity (Attachment 12) and Official Disability Guidelines (ODG) (Attachment 13). She said she became involved with ODG when Texas was going through its reform in 2005. ODG is updated continuously to ensure a true standard of care. In addition to treatment recommendations, other options are available. She advised that doctors like treatment guidelines to keep them current on new treatment options. Adoption of ODG has driven costs down but has not adversely affected health care. She answered questions on disagreement by doctors on the recommendations and whether a person can sue if dissatisfied with the treatment.

Mike Colletto, Executive Director, Professional Fire Fighters of Arizona, testified against HB2365. He related that this issue was dealt with several years ago, stakeholder meetings were held and the final decision was not to move forward. In response to Vice-Chairman Dial, Mr. Colletto said the discussions stopped because the plan limited the ability of doctors. He stated that the issue is not as clear as it seems. Everyone's care is different and this takes flexibility away from doctors. He advised that California introduced standards in 2005 and its costs have gone up 21 percent. Mr. Williams asked whether other factors were involved in the increase. Mr. Colletto said he does not know.

In reply to Mr. Seel, Mr. Colletto said he believes California is using ACOEM.

In reply to Vice-Chairman Dial, Mr. Colletto advised that Arizona uses the reasonable and necessary standard which allows the doctor to prove that treatment is reasonable and necessary. He said he is not familiar with the processes used in California and Texas.

Dennis Kurth, representing self, in opposition to HB2365, testified that he is an attorney and has been handling workers' compensation cases for 36 years. He advised that he attended stakeholder meetings in the past and one reason that the proposal for evidence-based medicine did not move forward was because of a constitutional problem. Additionally, unlike California, Arizona did not have a financial crisis in its workers' compensation system, so there was no justification for a wholesale change in the statute. He maintained that the current workers' compensation system is a very good law and is working quite well. He believes that the focus should be on protecting the injured worker and developing cost-effective savings for the carriers of the self-insured.

Dr. Jeffrey Scott, representing self, spoke against HB2365. He agreed with Vice-Chairman Dial on his comments on the appeals process, and said there is nothing in this legislation that outlines who decides what the process is. He pointed out that every state has adopted different processes. He believes doctors do not like guidelines; they do not want to be told what to do. His concern is that guidelines can be used as weapons to deny care.

In reply to Ms. McCune Davis' question about multiple conditions, Dr. Scott stated that guidelines are fragmented by body part. Ms. McCune Davis commented that guidelines give

limited options based on studies. She said she cannot tell how old the studies are, they do not address new technology, nor do they seem to be adaptable to a changing medical market.

Dr. Mitchell Lipton, representing self, testified in opposition to HB2365. He said he is a hand surgeon and although he has many years of knowledge, training and experience, he stays up to date by attending courses every year and reading hand and elbow journals. He submitted that a very small number of patients would want him to consult a book to determine treatment. He believes that treatment should be based on what he knows, not on guidelines. He admitted that the ACOEM guidelines might help inexperienced doctors decide how to treat a particular problem until they gain experience.

Denise Blommel, representing self, in opposition to HB2365, summarized ACOEM remarks about treatment decisions: guidelines should not be used to arbitrarily deny authorization for coverage, there is the potential that organizations may misapply the guidelines in their coverage decisions, guidelines should never replace the judgment of physicians and only physicians should deny care. She believes this bill is a “job killer” because physicians will opt out of providing workers’ compensation treatment. She urged Members to think carefully before changing the system.

Anna Thompson, Senior Manager, State Government Affairs, Medtronic, spoke against HB2365. She advised that Medtronic is a global leader in medical technology. She said the amendment is a step in the right direction; however, she remains opposed to the use of ACOEM as a treatment back-up approach. ACOEM guidelines reflect a narrow perspective of one professional group not considered experts in most areas of the therapies they review. The lack of involvement of a fair and balanced group of physician experts is the reason it is believed that ACOEM conclusions do not reflect the majority of others who reviewed the same evidence. She said Medtronic appreciates the bill being held because it is a very substantial change and she looks forward to actively engaging in the stakeholder process.

In reply to Mr. Seel’s question about the ODG model, Ms. Thompson answered that Medtronic is more supportive of a local versus a national guideline.

Jeff Gray, Legislative Liaison, Arizona Self-Insurers Association, testified in support of HB2365. He concurred with the comment made about the social contract employers have with workers. He disagreed with the statement that an employer has an incentive to limit care to the injured worker and said it is in the best interest of both the employer and the employee for the injured worker to return to work as soon as practical. He also disagreed with the constitutional issue that was raised as well as the high cost of the guideline materials, and advised that the guidelines are provided to physicians at a discounted rate.

In response to Vice-Chairman Dial, Mr. Gray noted that Arizona has lifetime benefits; the insurance carriers will pay for the care of an injured worker for his lifetime.

Chairman McLain announced the names of those who signed up in support of HB2365 but did not speak:

Marcus Osborn, Manager of Government and Public Affairs, Arizona Manufacturers Council,
Arizona Chamber of Commerce

Wendy Briggs, Lobbyist, American Insurance Association

Michelle Bolton, Vice President of Public Affairs, Greater Phoenix Chamber of Commerce
Teresa Lopez, Government Relations Representative, SRP
Allison Bell, Senior Government Affairs Representative, APS
Karlene Wenz, Government Affairs Specialist, Property and Casualty Insurers Association of America
John Mangum, Arizona Food Marketing Alliance
Farrell Quinlan, State Director, National Federation of Independent Business
Jim Ogsbury, Legislative Director, League of Arizona Cities and Towns
Deanna Kupcik, President and CEO, Buckeye Valley Chamber of Commerce
J. Michael Low, Attorney, American Family and SeaBright Insurance Company
Kerry Hayden, Government Affairs Representative, Farmers Insurance Group of Companies
Michelle Ahlmer, Executive Director, Arizona Retailers Association

Chairman McLain announced the names of those who signed up in opposition to HB2365 but did not speak:

David Landrith, Vice President of Policy and Political Affairs, Arizona Medical Association
Robert Wisniewski, representing self
Sanjay Patel, representing self
Rory Hays, representing self
Seth Apfel, representing self
Mary Griffith, Director, Legislation, Arizona Nurses Association, representing self
Raymond Kronenbitter, representing self
Brian Clymer, representing self
Norman Moore, Attorney, Fraternal Order of Police
Janice Goldstein, Arizona Trial Lawyers Association
Thomas Parker, representing self
Don Isaacson, Arizona Fraternal Order of Police
Pat VanMaanen, representing self
Brian Livingston, Executive Director, Arizona Police Association
Levi Bolton, Vice President, Phoenix Law Enforcement Association
Debra Runbeck, representing self
Chad Snow, representing self
Terry Fox, representing self
Darryl Engle, representing self
Luis Ebratt, President, Arizona Probation Officers Association, Arizona Conference of Police and Sheriffs
Mike Williams, Arizona Police Association, Phoenix Law Enforcement Association
Ryan Harper, Medtronic
Briana Chua, representing self
Weston Montrose, representing self

Chairman McLain announced the names of those who signed up as neutral on HB2365 but did not speak:

Susan Cannata, Attorney, SCF Arizona

Scot Butler, Industrial Commission of Arizona, neutral on HB2365, offered to answer questions.

Chairman McLain announced that HB2365 will be held at the sponsor's request.

Vice-Chairman Dial withdrew the motion that the McLain 14-line amendment dated 2/3/12 be amended as follows:

Line 9, after "MEDICINE" strike "FOR" insert "OR"

Vice-Chairman Dial withdrew the motion that the McLain 14-line amendment dated 2/3/12 be adopted (Attachment 10).

Vice-Chairman Dial withdrew the motion that HB2365 do pass.

Without objection, the meeting adjourned at 7:16 p.m.

Joanne Bell, Committee Secretary
February 14, 2012

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