

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-first Legislature – Second Regular Session

COMMITTEE ON INSURANCE AND RETIREMENT

Minutes of Meeting
Tuesday, February 18, 2014
House Hearing Room 3 -- 2:00 p.m.

Chairman Lovas called the meeting to order at 3:08 p.m. and attendance was noted by the secretary.

Members Present

Mr. Livingston	Mr. Robson	Mr. Allen, Vice-Chairman
Ms. McCune Davis	Ms. Steele	Mr. Lovas, Chairman
Mr. Mendez	Ms. Townsend	

Members Absent

None

Committee Action

HB2094 – DPA S/E (5-3-0-0)	HB2560 – DPA (5-3-0-0)
HB2331 – DPA S/E (7-0-0-1)	HB2598 – DPA (6-2-0-0)
HB2455 – DPA (4-3-0-1)	HB2693 – DP (8-0-0-0)

CONSIDERATION OF BILLS

HB2693 – PSPRS; employer liability; death benefits – DO PASS

Casey Baird, Majority Research Assistant Analyst, stated that HB2693 makes changes to the computation of Public Safety Personnel Retirement System (PSPRS) catastrophic disability benefits and death benefits for actuarial valuation purposes (Attachment 1). The bill defines *catastrophic disability*.

Representative Andy Tobin, sponsor, said that this legislation addresses losses where there is significant liability, such as with the Yarnell Hill fire. It changes the valuation methodology, applies to anyone killed or disabled in the line of duty, and protects all employers in the system. The purpose is to fund the loss of life or disability off the top of the revenue of the investment earnings of the Fund prior to distribution of earnings to an employer. The bill contains no appropriation; it ensures that those communities that are in the system have protections from such a loss. He answered questions on liability and disability.

Jared Smout, Deputy Administrator, Public Safety Personnel Retirement System (PSPRS), neutral on HB2693, further clarified the purpose of the legislation. He said the bill is the best approach to protect employers when there is a loss. He agreed with Mr. Livingston that this will spread the cost of the loss between all employer groups in the PSPRS. and said he believes the bill will be supported by all of the groups in the system.

Chairman Lovas announced the names of those who signed up as neutral on HB2693 but did not speak:

Leonard Clark, representing self

Rene Guillen, Lobbyist, League of Arizona Cities and Towns, in answer to Mr. Livingston, stated that the League is in support of the bill. The majority of the member employer groups are municipal fire and police departments and, in a catastrophic event, a municipality's budget will not be impacted alone but will be spread out. This helps mitigate the cost to some of the smaller communities.

Ms. McCune Davis asked whether there is concern that this will directly impact the earnings of the Fund and the ability to pay out benefits to retirees. Mr. Guillen answered that is one of the concerns.

Vice-Chairman Allen moved that HB2693 do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 2).

HB2094 – technical correction; Arbor day – DO PASS AMENDED S/E
S/E: workers' compensation; claim assignment

Marshall Young, Majority Research Intern, explained that the Lovas two-page strike-everything amendment dated 02/13/14 to HB2094 (Attachment 3) states that an employee who is entitled to workers' compensation must initiate action against a third person within one year or the claim will be assigned to the insurance carrier (Attachment 4).

Representative Kate Brophy McGee, sponsor, stated that she is bringing this bill forth on behalf of the Arizona School Alliance for Workers' Compensation. This proposal is a technical clarification.

Charles Rehling, representing self, in favor of the strike-everything amendment to HB2094, related that he is an attorney who practices workers' compensation law. He explained that when a worker is injured on the job, he receives workers' compensation benefits regardless of who is at fault and can sue the third party who caused the injury, called the *third-party tortfeasor*. An amendment to the statute in 2007 protected the compensation carrier's right to recovery. Subsequently, a Court of Appeals decision stated that the statute was unambiguous and took away that assignment to the compensation carrier. He claimed that the statute needs to be clarified to protect the compensation carrier's lien as it has existed for the last 40 years.

Geoff Trachtenberg, Arizona Trial Lawyers Association, spoke in opposition to the strike-everything amendment to HB2094. He contended that this is not a technical amendment. In 2007, the statute was amended which joined Arizona with other states in the way they do their workers' compensation. The current law is clear; there is no reassignment but the carrier has

rights. He does not support amending the statute; however, if it is the will of the Legislature to change the law, he suggested the following:

- in exchange for the reassignment, the carrier cannot demand that the plaintiff give up any rights that the plaintiff has under existing statute
- if an assignment is required, the plaintiff shall have the medical assignment to which they are entitled

In response to Ms. McCune Davis' question, Mr. Trachtenberg explained that this does not change anyone's right to collect any money; this only changes who owns that right to collect and when they must take action.

Chairman Lovas announced the names of those who signed up in support of the strike-everything amendment to HB2094 but did not speak:

Todd Madeksza, Director of Legislative Affairs, County Supervisors Association
James Stabler, Lobbyist, CopperPoint Mutual Insurance Company
Ken Strobeck, Lobbyist, League of Arizona Cities and Towns
Chad Heinrich, Lobbyist, Greater Phoenix Chamber of Commerce
Gretchen Jacobs, Arizona School Alliance for Workers' Compensation
Jeff Gray, Lobbyist, Arizona Self-Insurers Association

Chairman Lovas announced the names of those who signed up in opposition to the strike-everything amendment to HB2094 but did not speak:

Rebekah Friend, Arizona State AFL-CIO

Vice-Chairman Allen moved that HB2094 do pass.

Vice-Chairman Allen moved that the Lovas two-page strike-everything amendment dated 02/13/14 be adopted (Attachment 3). The motion carried.

Vice-Chairman Allen moved that HB2094 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 5).

HB2455 – workers' compensation insurance; claim processing – DO PASS AMENDED

Courtney McKinstry, Majority Research Analyst, advised that HB2455 specifies the jurisdiction of the Industrial Commission of Arizona (ICA) and increases the penalties relating to workers' compensation unfair claim processing or bad faith claims (Attachment 6). The Livingston five-line amendment dated 02/14/14 clarifies that the Industrial Commission has exclusive jurisdiction over state civil actions arising out of contract or tort complaints and eliminates the civil penalty against the claimant when there is no evidence of wrongful or unfair claim processing or bad faith (Attachment 7).

Representative Eddie Farnsworth, sponsor, related that, in the past, the ICA had the original and exclusive jurisdiction on these types of claims. A court decision in the '90s said that they do not have exclusive jurisdiction when it comes to bad faith tort claims, and that resulted in a

proliferation of bad faith tort claims in workers' compensation. This legislation returns exclusive jurisdiction to the ICA.

Jeff Gray, Lobbyist, Arizona Chamber of Commerce and Industry; Arizona Self-Insurers Association, testified in support of HB2455 which attempts to reestablish the Industrial Commission as the jurisdiction for bad faith claims in the state, rather than in superior court. The bill also tries to increase the penalties that can be levied by the Industrial Commission. Workers' compensation bad faith tort claims filed in superior court are increasing at an alarming rate. Plaintiffs are avoiding the ICA for bad faith claim handling and the courts are being used as the regulator over the workers' compensation industry, usurping the ICA's regulatory role set forth in the Constitution and in statute. The amendment removes the reference to federal court cases; this will not impact public employees who file cases in federal court.

Richard Langerman, Arizona Trial Lawyers Association, opposed to HB2455, disagreed with testimony given by the sponsor and Mr. Gray. He stated that the only remedy for these claims is in the court system. In addition, if an injured worker is caused additional harm, the added harm will go uncompensated under this proposal. He urged Members to vote against this bill because it is bad public policy.

Mike Colletto, Professional Fire Fighters of Arizona, testified against HB2455. He advised that some of his injured members in Phoenix have complained about the care they were receiving by the third-party administrator: some lost their homes over slow payments, proper care was delayed for months, etc. This bill takes any effective remedy away for the second injury. He contended that this is a bad idea and will further injure already injured workers.

Marc Osborn, representing Property Casualty Insurers Association of America, testified in support of HB2455. Under this bill, there is better access to justice. Insurance companies understand the penalties for bad behavior and he opined that the dramatic increase of penalties stipulated in this legislation will improve the behavior of insurers. He noted that insurance companies understand they are responsible for medical damages and long-term benefits, so it is not in their best interest to delay claims. This proposal returns the workers' compensation system back to the Legislature's original intent, which is to keep these issues contained within the Industrial Commission.

Peter Dunn, representing Arizona Association of Lawyers for Injured Workers, opposed to HB2455, contended that this is an overreach by the workers' compensation carriers. It gives the carriers immunity from bad faith at the expense of defenseless workers: those who have been severely injured on the job. He urged Members to look at this proposal more carefully and vote against this legislation.

Kevin Boyle, representing self, spoke in opposition to HB2455. He advised that he is a City of Phoenix firefighter who was injured on the job and has received countless delays on the status of his claim. He said he believes that this bill will restrict his ability to take any action against his employer or third-party administrator if he does not get timely, appropriate treatment.

John Teefy, Fire Captain, representing self, in opposition to HB2455, related that under the old system, he got treatment for an injury and was back on the job within two weeks. With the change to a third-party administrator, his claim was delayed for three months when he was

reinjured. He advised that claims are being systematically denied that are clearly on-the-job injuries and injured workers are being advised of the option to process the claim through their private health carrier. He related that if a person seeks medical care through private insurance, it is deemed as voluntarily leaving the workers' compensation system.

Representative Farnsworth noted that the amendment removes firefighters from the provisions of the bill because they would go through the federal system. He discounted claims that this gives immunity, and said that bringing action in superior court takes years whereas processing claims through the workers' compensation system takes a relatively short time. He reminded Members that this is a no-fault system that pays lifetime claims.

Scot Butler, representing Industrial Commission of Arizona, neutral on HB2455, advised that the Commissioners have not taken a formal position on this legislation. They have asked staff to look at this proposal, including the Claims Division that does the bad faith investigations, the Legal Division that looks at the standards being used to determine bad faith and the Administrative Law Judge Division which holds the hearings. He listed concerns:

- the Commission has no resources to implement this since there is a hiring freeze
- changes language in the bad faith standards, some of which need clarification
- imposition of a penalty on an injured worker because of filing a bad-faith complaint runs counter to the workers' compensation system

He advised that staff recommended that the bad-faith standard be left as it is in existing law and appropriate money to the ICA for the additional investigations and hearings.

Names of those who signed up in support of HB2455 but did not speak:

Wendy Briggs, American Insurance Association
Todd Madeksza, Director of Legislative Affairs, County Supervisors Association
Garrick Taylor, Arizona Chamber of Commerce and Industry
Helen Heiden, Arizona Manufacturers Council
Ken Strobeck, Lobbyist, League of Arizona Cities and Towns
Kerry L. Hayden, Lobbyist, Farmers Insurance Group of Companies
David Childers, Lobbyist, Property Casualty Insurers Association of America
James Norton, Lobbyist, Arizona Manufacturers Council
Chad Heinrich, Lobbyist, Greater Phoenix Chamber of Commerce

Names of those who signed up in opposition to HB2455 but did not speak:

Rebekah Friend, Arizona State AFL-CIO
Weston Montrose, representing self
Kevin Boyle, representing self

Vice-Chairman Allen moved that HB2455 do pass.

Vice-Chairman Allen moved that the Livingston five-line amendment dated 02/14/14 be adopted (Attachment 7). The motion carried.

Vice-Chairman Allen moved that HB2455 as amended do pass. The motion carried by a roll call vote of 4-3-0-1 (Attachment 8).

HB2331 – tax credit; just compensation – DO PASS AMENDED S/E
S/E: life care contracts; in-home care

Casey Baird, Majority Research Assistant Analyst, explained that a *life care contract* is a contract to provide nursing services, medical services, or health-related services, as well as housing in a long-term care facility to a person for a minimum of one year (Attachment 9). The proposed Livingston 18-page strike-everything amendment dated 02/14/14 to HB2331 outlines requirements for life care contract providers relating to services received by a person in their private residence (Attachment 10).

Marc Osborn, representing Sun Health Senior Living, testified in favor of the strike-everything amendment to HB2331. This legislation allows individuals to receive care in their own home and allows them to move into more intensive facilities when the need arises. He said the industry is heavily regulated and provides home-based care.

David Childers, representing Sun Health Senior Living, in support of the strike-everything amendment to HB2331, offered to answer questions on the regulation of life care contracts or life care facilities. This proposal allows an individual to obtain services without going to a facility. He advised that he is working with the Department of Insurance (DOI) to make sure the language is satisfactory. The legislation will satisfy a significant consumer demand and provide a less expensive way to obtain life care services. This is a fully-regulated business, inspections are performed annually and contracts are subject to the review and approval by the Department.

Chairman Lovas announced the names of those who signed up in support of the strike-everything amendment to HB2331 but did not speak:

Genny Rose, representing self

Nicholas Dranias, representing self

Sharon Grambow, representing self

Chairman Lovas announced the names of those who signed up as neutral on the strike-everything amendment to HB2331 but did not speak:

Andrew Carlson, Executive Assistant for Policy Affairs, Arizona Department of Insurance

Vice-Chairman Allen moved that HB2331 do pass.

Vice-Chairman Allen moved that the Livingston 18-page strike-everything amendment dated 02/14/14 be adopted (Attachment 10). The motion carried.

Vice-Chairman Allen moved that HB2331 as amended do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 11).

HB2560 – insurance; self-evaluative privilege – DO PASS AMENDED

Casey Baird, Majority Research Assistant Analyst, said that HB2560 permits a company to conduct an insurance compliance audit and outlines procedures related to confidentiality of audit findings (Attachment 12). She reviewed the provisions of the Allen two-page amendment dated 02/17/14 (Attachment 13):

- specifies the type of organization to which an internal compliance audit applies
- moves references to criminal proceedings as they relate to confidentiality privileges of an audit document
- allows the Director of the Department of Insurance to obtain audit documents to ensure that a company will correct deficiencies and allows the Director to issue sanctions against companies based on these documents
- stipulates that the bill does not provide civil or criminal immunity in other areas of laws
- specifies that a person who participates in the audit may be compelled to testify regarding the events of the audit but may not be compelled to testify or produce documents related to any privileged part of the audit

Vice-Chairman Allen, sponsor, stated that this legislation will allow insurance companies to examine their own processes and procedures and, if they find a flaw, to make corrections.

Don Isaacson, representing State Farm Insurance Company, in favor of HB2560, advised that State Farm plans to locate a major hub of its national operations in Tempe, Arizona. In connection with that, they will do regular reviews of program areas. He advised that a number of states have already enacted legislation providing for protection of audit results of those reviews. The model for this legislation was the National Conference of Insurance Legislators (NCOIL) bill. This proposal narrows that model bill.

Richard Langerman, Arizona Trial Lawyers Association, in opposition to HB2560, advised that this bill raises several concerns. He said that the insurance companies want immunity to self-audit to discover improper activities so they can correct them. Corrective action of the improper conduct is required in other states that have passed similar legislation before the privilege will apply, and that should apply to this legislation. Another concern is the procedure on how to determine whether the privilege applies. The bill allows a dispute between DOI and the insurance company to be resolved by a court; however, it does not provide the same procedure if there is a dispute between a private litigant and an insurance company, which other states have. He maintained that if insurance companies want protection from exposure, citizens need to know that any improper conduct that is discovered will be corrected and if a privilege is going to be granted, there must be a neutral third party to make an informed decision on whether the privilege applies. He urged Members to vote against this legislation because it will not serve the public.

Noel Young, Regional Counsel, Allstate Insurance Company, testified in support of HB2560. He said that the objections made against the bill are already addressed in the legislation. The bill is reasonable and contains transparency provisions. Allstate wants to protect its internal audits and that is the purpose of this proposal.

Andrew Carlson, Executive Assistant for Policy Affairs, Arizona Department of Insurance (DOI), neutral on HB2560, offered to answer questions.

Mr. Robson asked for a definition of *reasonable time*. Mr. Carlson said he could not answer that at this time; he said it is subjective.

Ms. McCune Davis expressed concern about the Department's lack of resources and said she is hesitant to add additional responsibilities on the agency without an additional appropriation. Mr. Carlson advised that the Department is limited in manpower and resources. The provisions of the bill are duplicative to the Department's market conduct examinations. He advised that Mr. Isaacson has agreed to work on eliminating the duplications of the bill.

To that point, Vice-Chairman Allen said he is committed to addressing the Department's concerns about this bill.

Mr. Livingston wondered whether the Department will have more audits to look at if this passes. Mr. Carlson said he is not sure; he will have to look into that.

Names of those who signed up in support of HB2560 but did not speak:

David Childers, Lobbyist, America's Health Insurance Plans; Farmers Insurance Group of Companies; Property Casualty Insurers Association of America

J. Michael Low, representing American Council of Life Insurers; American International Group, Property and Casualty Insurance Company; Allstate Insurance Company; American Family Insurance; Prudential Insurance

Sara Sparman, Lobbyist, Property Casualty Insurers Association of America

Norman Moore, representing State Farm Insurance Companies

Kerry L. Hayden, Lobbyist, Farmers Insurance Group of Companies

Rebecca Sanchez, representing self

Gregory Harris, Delta Dental of Arizona

James Stabler, Lobbyist, CopperPoint Mutual Insurance Company

Lanny Hair, Lobbyist, Independent Insurance Agents and Brokers of Arizona

Amy Cronkhite, Lobbyist, Independent Insurance Agents and Brokers of Arizona

Names of those who signed up in opposition to HB2560 but did not speak:

Barry Aarons, representing Arizona Trial Lawyers Association

Vice-Chairman Allen moved that HB2560 do pass.

Vice-Chairman Allen moved that the Allen two-page amendment dated 02/17/14 be adopted (Attachment 13). The motion carried.

Vice-Chairman Allen moved that HB2560 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 14).

HB2598 – blanket disability insurance; special groups – DO PASS AMENDED

Courtney McKinstry, Majority Research Analyst, related that HB2598 expands the types of groups that could obtain a blanket disability insurance policy (Attachment 15). The Livingston seven-line amendment dated 02/17/14 further defines *blanket disability insurance* (Attachment 16).

Mr. Livingston, sponsor, explained that this legislation expands a blanket disability policy to other groups. It opens up more markets, such as religious groups, education associations, athletic events, etc. This is for a group that is having an event and wants more insurance coverage; it offers more protection for the group.

J. Michael Low, representing American International Group, Property and Casualty Insurance Company (AIG), testified in favor of HB2598. This proposal broadens the eligibility for these groups. It is basically accident insurance, is related to the activities of the group and is a less expensive type of insurance. It provides specific payments for specific types of medical expenses. Many small associations like to offer this type of coverage to its members. Currently, blanket disability insurance is limited to four categories. This expansion is consistent with what is going on nationwide. It is market-driven and is an option.

Chairman Lovas announced the names of those who signed up as neutral on HB2598 but did not speak:

Andrew Carlson, Executive Assistant for Policy Affairs, Arizona Department of Insurance
Chuck Bassett, Blue Cross Blue Shield of Arizona

Vice-Chairman Allen moved that HB2598 do pass.

Vice-Chairman Allen moved that the Livingston seven-line amendment dated 02/17/14 be adopted (Attachment 16). The motion carried.

Vice-Chairman Allen moved that HB2598 as amended do pass. The motion carried by a roll call vote of 6-2-0-0 (Attachment 17).

Without objection, the meeting adjourned at 5:19 p.m.

Joanne Bell, Committee Secretary
March 6, 2014

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