

JOINT COMMITTEE ON COMMERCE - SENATE & ASSEMBLYMINUTES - PUBLIC HEARINGS.B. 39

Date: Wednesday, March 12, 1969

Committee Members Present: Senator White, Chairman
 Senator Hecht
 Senator Bunker
 Senator Titlow

Mr. Wood
 Mr. Mello
 Mr. Capurro
 Mr. T. Hafen
 Mr. Torvinen
 Mr. Bowler
 Mr. Espinoza

Committee Members Absent: Senator Swobe

Others Present: Louis T. Mastos, Commissioner of Insurance
 Douglas Erickson, Chief Deputy Commissioner of Insurance
 Russell W. McDonald, Director, Legislative Counsel Bureau
 Bob Williams, Attorney
 Richard R. Hanna, Legal Counsel for American Association
 of Life Insurance Companies
 Wm. D. Parish, Legislative Representative of the Northern
 Nevada Insurance Agents Association
 Oliver Bolton, Executive Secretary, Nevada Independent
 Agents Association
 Gordon Corn, Occidental Life Insurance Co., Reno
 Douglas Harvey, Charter Life Insurance, Reno
 Harvey N. Rose, Equitable Life Assurance, Reno
 Dexter T. Guio, Guardian Life Insurance, Reno
 Ron Gann, N.A.L.U, Reno
 Jerald Odens, Occidental Life Insurance, Reno

Chairman White called the meeting to order at 7:30 P.M.

After introducing the committee members and the State personnel to the others attending the meeting, the chairman gave a resume of the development of S.B. 39. It is the result of a resolution passed in the last session of the legislature, at which time an appropriation of \$25,000 was made for the study and revision of the present laws. Mr. Williams, and attorney from Washington, was engaged to study and research insurance laws and requirements and to draft a revision of the present insurance laws. About 40% of the new code is new language and new law; the balance is incorporated from the old law. Subsequent to the writing of the code, there was a first draft which was published and circulated to the industry and others interested. Then hearings were held - a week of hearings in Carson City and a couple of days in Las Vegas. Then, after taking into consideration the points of agreement and disagreement discussed at those hearings, a second draft was prepared - and that is the bill that is now being considered

for adoption. For expediency and economy, it was decided that one bill would be introduced by a joint committee from the Senate and the Assembly, rather than have each House introduce its own bill.

Following publication of the second draft, the proposed code was carefully studied and examined by the committee members and additional hearings were held to determine if any changes were required in the second draft. Amendments have been prepared; they have come from several sources. The purpose of this meeting is to consider those amendments and any other amendments that the committee or others may wish to offer for consideration. The chairman said it was hoped that agreement could be reached at this meeting on the adoption or elimination of these amendments.

Senator White said it was wished to avoid a second reprint of the code, if at all possible. So, it was proposed to prepare the agreements reached at this meeting, along with other insurance bills that are passed in this session of the legislature that will affect the code, in a separate bill. Once this is done, it is planned to go back to each House and recommend passage of S.B. 39, as it now stands, with the supplemental bill containing all the amendments that have been agreed upon.

The chairman then asked Mr. McDonald for any comments he might wish to make relative to the background of S.B. 39.

Mr. McDonald said the main thrust of the law directed the employment of an attorney by the Insurance Commissioner to draft new legislation and revise existing legislation that the State could live with. The intention was to update the code, in an attempt to at least avoid congressional inquiry and invasion into the insurance field, allowing the State, by a good piece of legislation, to control the insurance industry.

This wasn't done overnight. After Mr. Williams was employed by Mr. Mastos, he was furnished with what were thought to be certain fundamental documents updating what had been done in 1967 and by July of last year, Mr. Williams started to give to Mr. McDonald, pursuant to his contract, and after examination by the Commissioner, revisions of the code, chapter by chapter. It was Mr. McDonald's responsibility to conform his recommendations to the style of existing codes. Mr. McDonald, personally, spent in excess of six weeks going through the code line by line and, after meticulous examination and questioning, by telephone or letter, both the Commissioner and Mr. Williams as to whether what they said was what they meant, the code was worked out and a deadline of availability was set for September 1. Then the hearings were held. As a result of the hearings, certain amendments were given back to the Legislative Counsel. The bill was then redrafted and reprinted and was ready for introduction on the first day of this session of the legislature. And this is Senate Bill 39.

Mr. McDonald said that his position was not that of an advocate, but merely a mechanic and added that, as Senator White had explained, to reprint the bill and introduce it in the second House would cost over \$30,000 and would tie up the press for several weeks. So the device was developed of the selection of the joint committee and it was determined to hold only one

series of hearings - to avoid the multiplicity of reprints of two bills and then coming up with possibly the same thing at the end.

Mr. McDonald reminded the meeting that there were other insurance bills pertaining to the present insurance bill that may be passed in this session. So it is proposed to introduce S.B. 39 as written to take effect January 1, 1970, and follow with a "short" bill accommodating other insurance legislation passed this year, as well as amendments to S.B. 39 that may be agreed upon at this meeting.

Mr. Torvinen then asked Mr. McDonald if his understanding was correct that Mr. McDonald would recommend no amendment to S.B. 39 in any way. Mr. McDonald confirmed that to be his recommendation. (The need for reprinting was a governing factor - Mr. McDonald said it would depend on how "bulky" an amendment was whether or not a page would have to be remade. It is conceivable that an amendment could be absorbed without necessitating the remake of a page, but there could be no guarantee.) Mr. McDonald asked the meeting to consider the assumption that "we take S.B. 39 and buy it for the reason explained" - when it goes to both Houses for passage, it is accompanied by a second bill incorporating amendments that might come forward. The new code would become effective at midnight on December 31, and the amendment bill would become effective one minute later. In this way there would be a bill conceivably cheaper, shorter, and faster to operate with.

Senator White now asked for consideration of the amendments that had been proposed.

Mr. Woods was recognized and stated that before discussing the amendments he would like to say that, from letters and telephone calls he had received from various insurance representatives, there seemed to be a rather general feeling that some changes appeared in the second drafting of S.B. 39 which the industry had not been given an opportunity to discuss. Senator White here said he had met with representatives of the insurance industry, the Insurance Department, and other people in an effort to work out needed amendments. These amendments being presented at this meeting have all been agreed upon, with the exception of the proposal concerning the licensing of reciprocals. The problem of "reciprocals" seems to be the only problem not yet solved.

Here Mr. Mastos interjected to introduce an amendment changing Section 298, Subsection 2-e. It relates to the industrial insurer. He said he felt that the change takes care of the problem that has existed in this area and added that Mr. _____ Gray is agreeable to the subsection as he, Mr. Mastos, is now presenting it. Mr. Wood registered an objection. He said he thought Subparagraph "e" fails to give a definition of "industrial insurer." Mr. Williams said this had been researched and he had attempted to get examples of the law written throughout the country; language in amendment presented by Mr. Mastos conforms. Mr. Wood, in an aside to the Assembly members of the joint committee, asked them if they were satisfied

with the explanation given by Mr. Williams and then offered an amendment which he would propose to add as Subparagraph "f". He read his proposed amendment and, then, for comparison, read the amendment introduced by Mr. Mastos. Senator White said he found no objection to the language used in the Mastos amendment and added that he felt that the Wood amendment was too restrictive.

Senator said he thought the industry should be heard from. Mr. Parish, as spokesman, answered that the Agents Association had no objection to the new code and that their understanding of the particular section under discussion was that it would allow a firm to have a full-time insurance counselor to negotiate insurance for that company; if their understanding is correct, they have no objection.

Senator White said he understood the wording used in the Mastos amendment was more or less uniform and that the amendment as written was ~~prepared~~ APPROVED by Howard Gray. Mr. Mastos added that the language came about as a recommendation from the American Association of Insurance Management.

Mr. Capurro moved the adoption of the Mastos amendment; Senator Bunker seconded; motion passed. (Copy of amendment is attached.)

Discussion in the meeting now moved to the amendments suggested by the general agents. (Copy of amendments attached.) Mr. Parish, acting as spokesman for the group, distributed copies of the amendments. He said that all three of the amendments have to do with reciprocal insurers. He stated his group had had no objection to the code as presented in November, but the sections they want eliminated or changed were not a part of that code. He said that they felt, very simply, that the way the code is now written it allows a certain portion of the insurance industry to come into the State, negotiate, solicit, and write insurance without being licensed. They think that anybody who negotiates and sells insurance in the State should be licensed to do so. Admittedly, the reciprocal business is a very small portion of the insurance business in the State. The majority of the business written in the State and the majority of the premium tax written in the State is written by licensed agents. Mr. Parish said there was only something like \$140,000 written by reciprocals at this time, but his group feels they should have no special treatment under the code and they should be licensed.

In rebuttal, Mr. Hanna was recognized.

Mr. Hanna said he represented the reciprocal insurance industry in this matter - adding that he is a paid representative. He said this subject had been bounced back and forth since last November, and so he didn't intend to spend a lot of time in discussing it further. He said the subject was first considered at the meetings in November which were called by the Insurance Commissioner. The conditions appearing in the bill are acceptable to the reciprocals, but the conditions being objected to by the general agents are the exemption provisions which would permit an employee of the reciprocals to come in on specialized risks and work on a special project to design and provide insurance. It is a very small segment of the industry - a specialized segment of the industry, but one which, in the public interest, is needed where you have a lumber industry

or something that is out of the ordinary and where the insurance is not written by an agent, but is written, after a study, by a specialist. The agents have objected on the basis that everybody who writes insurance should be licensed. The reciprocals say, "No," because in this type of insurance project, they send a man through a number of states. He is a specialist and the volume isn't big enough to have one man in one state writing the business. As a matter of protection against this being a "foot in the door," which seems to be the worry or complaint of the agents, Mr. Hanna said he would call the joint committee's attention to the limitations or restrictions to this sort of operation contained in Section 197-b. This operation cannot be carried on by one who doesn't meet the limitations set forth in Section 197-b and Mr. Hanna said he thought if the members of the committee would give that consideration, they would realize this will not provide for competition with the agents' business by people who are not licensed. To qualify under these reciprocal provisions, the person - the specialist - working for the reciprocal must be salaried; he must be a non-resident in the State of Nevada; he must be regularly employed as a traveling representative of a property or casualty insurer not generally using resident agents for solicitation of business; he is a specialist who inspects risks or solicits insurance in the State and receives no commission thereon. "In other words," Mr. Hanna said, "there are all of these limitations and I just feel that the agents are wrong when they think, or believe, or state that this is an opening for, or a possibility of, unregistered people to come in and compete with them." Mr. Hanna said he felt it was a question of public interest on the one hand, protection of the agents on the other. Again Mr. Hanna said the matter had been considered and reconsidered and he would submit it on the basis that it has been presented and that as S.B./is written, the reciprocal insurance companies can operate in this State; as proposed by the agents' three amendments, they would be, to a greater or lesser extent, restricted from operating in this state because reciprocals, having these limited provisions, just would not license, as he understood the operation of their business.

Referring to Mr. Hanna's reference to special risks which were unable to be handled by normal agents, Mr. Capurro asked Mr. Hanna for a specific example. Mr. replied that he could not answer specifically, but he understood it would be the sort of risk, for example, written for casualty coverage on a lumber operation where, to determine the premium and cost of the insurance, it would be necessary to send someone in who knows the lumber business to look over the entire operation and report back to the insurer.

Mr. Titlow commented that he had had no problems in buying insurance through people licensed in the State and then asked Mr. Hafen if he had experienced any problem in securing coverage for his cotton gin (which could be considered a specialized industry); Mr. Hafen replied in the negative. Mr. Capurro said he could see no reason for writing special legislation for reciprocal insurers.

Mr. Raymond Fortine, an independent insurance agent, reminded the committee that there are many kinds of specialists in all companies and said he believed

that reciprocals, whoc can give cheaper premiums, are being given special in this legislation as proposed and he thinks it unfair.

A Mr. Russ Adams, in response to Mr. Wood's invitation to speak, said he supported the statements made by Mr. Fortine and felt that S.B. 39, as written, is unfair to state agents.

There being no further comments, Senator Titlow moved for the adoption of the amendments submitted by the independent agents; motion was seconded and passed.

The chairman commented that the adoption of these amendments would necessiate changes in other amendments that have been drawn and submitted. Mr. McDonald will handle.

The chairman announced there had been one other amendment presented which had not been included in the amendments previously discussed. It was submitted by Mr. Mastos and has to do with Section 92 (General Premium Tax; Penalty). Senator White read the proposed amendment (copy attached) and commented that he felt this change had been agreed upon. Mr. Mastos commented that the language used further clarifies a situation which his department had originally tried to cover; the language used is the language used in Idaho. Mr. Williams agreed that the change was merely a clarification, but it was a change that was thought necessary. The effect of the measure is that if a company has been authorized to do business in the State and then withdraws from business in the State, it still has to pay tax on business written while operating in the State.

Senator Titlow moved adoption of the amendment; it was seconded and passed.

The chairman announced that he had been informed that there were people present who wished to talk on Sections 312-315. These sections have to do with Misrepresentation, False Advertising of Policies; False Information, Advertising; "Twisting" Prohibited.

The chairman recognized Mr. Jerry Odens, who said he would like to speak on these sections. (Mr. Odens identified himself as a C.L.U. and as being associated with the Occidental Life Insurance Company.)

Mr. Odens then launched into a rather long statement regarding S.B. 39 vis-a-vis Regulation 42. Basically, he said he thought the code is fine as far as it goes, the definitions are good, etc., but he thinks it misses the point. It speaks of misrepresentation, false advertising, twisting, and replacement of life insurance - all of which are important in the insurance field. The sections being discussed pertain to any kind of life insurance; Regulation 42 discusses replacement of existing insurance and "then turns right around and says for certain types it is not required to tell the policyholder what you are doing." He then produced about 17 examples of misrepresentation he had prepared - from a variety of companies, but all being misrepresentative in one way or another. For instance, one example purportedly guaranteed a profit of 157% at age 65; another purp rtedly guaranteed net cost. In essence , he said what he was talking about was that he thought there should be a section added to the code to protect the buying public from misrepresentation and requiring full disclosure at time of original sale of the policy.

Mr. Mastos interrupted to explain that Regulation 42 pertains only to the existing law and has no bearing whatsoever on S.B. No. 39 nor has it any bearing whatsoever on the passage of S.B. No. 39. When S.B. No. 39 becomes effective, Regulation 42 becomes ineffective. There is no "twisting" section, per se, in existing statutes and Regulation 42 was drawn in an attempt to define something compatible with existing law.

Mr. Capurro asked if it was the intention to draft another regulation, similar to Regulation 42, after the passage of S.B. No. 39. Mr. Mastos answered that that was the intention if it later appeared that supplemental regulations were necessary. Mr. Capurro then asked why such regulations couldn't be included in S.B. No. 39 itself. Mr. Mastos reminded him that S.B. No. 39 was not law yet and it was impossible to forecast what might be required after passage of the bill. Chairman White commented that it was his feeling that discretionary power should be left to the Insurance Department to draft whatever regulations were thought necessary to supplement the law.

There followed a lengthy discussion about the actual possibility of preparing "full disclosure" statements, with representatives of the insurance industry making statements both pro and con - there was no unanimous agreement among them.

Mr. Torvinen made a motion to amend Section 33, and other appropriate sections, to provide that rules and regulations governing the insurance industry be made by an insurance advisory commission consisting of five members, all appointed by the Governor - two from the insurance industry and three representing the insurance consumer.

Mr. Torvinen's motion was not accepted. The general feeling seemed to be that having such a commission was not necessary. Mr. Williams submitted that ordinarily a state had only an insurance commissioner and added that anytime you have more than one man, you have a division of responsibility. Mr. Torvinen said he agreed that the executive responsibility had to rest in one man, but his suggestion for an advisory commission had to do only with the making of rules and regulations and, obviously, from previous discussion concerning Regulation 42, there are problems in the rule making. Mr. Mastos said he did not think an advisory group is needed and any capable administrator can follow the basics of the law and can, with the advice of counsel, develop whatever rules and regulations may be deemed necessary. Mr. Torvinen maintained his disapproval of allowing law to be made by just one man, but added that since his motion had died for lack of seconding, he would say no more on the subject.

Mr. Harvey Rose was recognized. Speaking for 200 life insurance agents, he said his groups, which represent the majority of the professional insurance men in the life insurance business in the state, had been canvassed and "we sat in on all the hearings on Regulation 42 and back it 99%." This is why they introduced the suggestion that something along the lines of Regulation 42 to give the public "a fair shake." He said that he felt Regulation 42 could be improved upon, but he added that he also felt that if any individual firm or individual person felt changes should be made

they should attend the insurance hearings and make their feelings and suggestions known.

The meeting then moved to a consideration of the amendments that had been submitted. The chairman asked Mr. Mastos to identify them and make whatever comment he thought appropriate.

Section 79, Page 29. Mr. Mastos said the requirement for publishing annual statements had been eliminated in S.B. No. 39 because it was thought unnecessary and probably no one would read them if published. This amendment reinstates the publication requirement and the change is proposed through the insistence of the newspapers, who want this provision retained.

Section 90, Page 36, Line 4. The Insurance Department felt the fee of \$1.00 was inadequate and suggested the change to \$3.00.

(Chairman White reminded those present that anyone who might wish to speak in opposition to any of the amendments was welcome to do so.)

Section 92, Page 38, Lines 45 through 49. This amendment was instigated by the title insurance companies. Mr. Emerson Wilson, President of Land Title Association, has reviewed this amendment and has conceded it is the language to use. (Mr. Mastos said the word "underwriting" in the last line of the proposed insertion should be "underwritten.")

Section 113, Page 48, Line 50. This amendment has been requested by Lloyds of London. Mr. Mastos finds no objection.

Section 155, Page 68, Line 13. This corrects a misprint in the first draft of the code.

Section 222, Page 93, Line 46-50. Mr. Mastos said this amendment might not be necessary in light of adoption of the three amendments submitted by the independent agents at this meeting.

Section 255, Page 107, Lines 1-2. This amendment was requested by the adjusters' association. For clarification of language.

Section 255, Page 107, Line 6. Reason for amendment is the same as for next preceding amendment.

Section 264.5, Page 110, Line 37. This change was believed necessary to include every resident adjuster. It is simply a clarification as to who must hang a license in his office.

Section 278, Page 114, Lines 6-8. This amendment requested by Lloyds of London. It eliminates redundancy in language.

Section 281, Page 115, Line 9. This backs up request from Lloyds of London, to which we agreed for clarification.

Section 412, Page 164, Lines 22-26. Change recommended to eliminate redundancy.

Section 444, Page 181, Line 37. Here, again, the language is more definitive and makes for greater clarification. Under the current law, the Insurance Department has had a number of complaints because of the operation of so-called "crapshooter plans."

Section 453, Page 188, Lines 7-14. Subsection 2-c is deleted. Subsection 2-d becomes Subsection 2-c. Relative to employee group insurance, it eliminates the stipulation of age groupings within the class.

Section 455, Page 189, Line 6. Gives conversion rights to children, as well as to husband and wife. Mr. Mastos said he could see no objection.

Section 493, Page 203, Line 33. Change in language. The net effect of the change is to restrict the categories of other insurance which must be taken into consideration in prorating benefits under health insurance policies. The code as drawn allows for very broad categories, and this change is for the benefit of the insured. This amendment was fashioned on model language submitted by N.A.I.C. On Mr. Capurro's questioning, it was confirmed that if there is an over-insurance clause in a policy, this is the basic language that must be used.

Section 493, Page 203, Lines 42-49 and Section 493, Page 204, Lines 1-6. Purpose of the two amendments is the same - "just to clean up objectionable language in the old code."

Section 494, Page 205, Line 1. Corrects typographical error.

Section 494, Page 205, Lines 36-47. This also has to do with over-insurance. Language is related to changes in Section 493.

Section 512, Page 210, Line 22. This, again is clarification of language, specifying that a director of a company, a proprietor, or partner shall not be eligible for group coverage unless he is actively engaged in the operation of the business.

Section 514, Page 212, Lines 1-3. Provision is the same as in the old code. Merely a change of language.

The balance of the amendments were not discussed individually. Mr. Wood made a motion to "Do Pass" on the amendments as submitted; seconded by Mr. Capurro; motion carried.

Mr. Parish requested recognition. He asked the committee to redirect their attention to the agents' amendment concerning Section 85, Subsection 4. As the amendment was submitted, it would not allow a licensed employee of a company to countersign a policy. That was not the intention of the agents; they feel that as long as the employee is licensed he should be allowed to countersign a policy and Mr. Parish asked that the period as recommended to follow "employee" on Line 38 be moved to Line 36 and inserted after the word "agent"; the subsection would then end at that point.

A motion to accept this change was made, seconded, and passed.

Chairman here stated there was one other item to be resolved - the procedure to be adopted in the presentation and passage of S.B. No. 39 - and requested Mr. McDonald to again outline the two possible avenues of action.

Mr. Wood then moved adoption and "do pass" of S.B. No. 39 in its present form; at the same time, he moved that amendments be prepared in bill form subject to enactment one minute after S.B. No. 39 becomes effective at midnight December 31, 1969.

Mr. Torvinen asked that consideration of Mr. Wood's motions be delayed temporarily, inasmuch as he had two motions for amending S.B. No. 39 which he would like to put before the committee.

His first motion had to do with Section 344. He moved that it be deleted in toto and that the following be inserted in place thereof: "Rates shall not be excessive, arbitrary or discriminatory." This motion met with expressed opposition and there followed a rather prolonged discussion of semantics. It was then seconded by Mr. Mello, but failed in getting a pass vote from the committee.

Mr. Torvinen's second motion had to do with Subsection 3 of Section 351. This would permit an aggrieved person being given a right to a hearing by the Insurance Commissioner. He suggested the following wording: "..... upon finding that the application is made in good faith and in his economic interest, the applicant shall be granted a hearing within thirty days." The motion was seconded by Mr. Wood and was carried on a show-of-hands vote.

Mr. Hanna called the committee's attention to a grammatical error in Lines 32 and 35 of Section 92, Page 38. Reference is made to "gross premium income" - it should be "total premium income." Mr. Torvinen moved that the correction be made; Mr. Capurro seconded; motion carried.

Mr. Wood renewed his motion that the committee vote for adoption and "do pass" of S.B. No. 39 in its present form, with all amendments to be put in bill form for enactment one minute after S.B. No. 39 becomes effective. Mr. Bowler seconded; motion carried.

The chairman adjourned the meeting at 10:00 P.M.

Approved:

Marvin L. White