

The meeting was called to order at 7:30 p.m. in Room 213.
Senator Thomas R. C. Wilson was in the chair.

PRESENT: Senator Thomas R.C. Wilson, Chairman
Senator Richard E. Blakemore, Vice Chairman
Senator Don Ashworth
Senator Clifford E. McCorkle
Senator Melvin D. Close
Senator C. Clifton Young
Senator William H. Hernstadt

ABSENT: None

OTHERS John Reiser, Chairman, NIC
PRESENT: Don Heath, Commissioner, Insurance Division
James Wadhams, Director, Department of Commerce
Mark Solomon, Las Vegas Hilton and Flamingo Hotel-Casinos
Chuck Knaus, Supervisor, Property Casualty, Insurance Division
John D. Taylor, Assistant Personnel Director, MGM Grand Hotel
Las Vegas
Norman Anthonison, SUMMA Corporation
Richard Lance, The Gibbons Corporation
Allan Kaufman, Peat, Marwick, Mitchell and Company
Patty Becker, Nevada Industrial Attorney

Chairman Wilson announced that this evening's meeting is not a hearing but a work session on Assembly Bill 84.

AB 84 Permits self-insurance of workmen's compensation risks; modifies administrative procedures.

Chairman Wilson referred to section 2.

John Reiser, Chairman, Nevada Industrial Commission, presented Exhibit A, and suggested that "and administrative" be added after "financial" on line 6, page 1, section 2.

Don Heath, Commissioner, Insurance Division, explained that this would be covered in other parts of of the bill.

It was decided to delete "financial" from line 6, section 2, page 1; and deal with it elsewhere; line 10, section 3, page 1, refers to NRS 617, not NRS 616.

Don Heath suggested a revolving type fund that would handle additional actuaries.

James Wadhams, Director, Department of Commerce, explained that insurers must account for reserves funded by assets which are reported on a financial statement on an annual basis and are subject to examination. Mr. Wadhams explained that the reason for the reserve requirement is to insure that the claims are not paid out of the cash flow coming in and out from the other business operations.

Date: April 25, 1979

Page: 2

Mark Solomon, representing the Las Vegas Hilton and Flamingo Hotel-Casinos, explained that workmen's compensation requires a higher degree of responsibility than any other insurance. Employers he has worked and talked with, agree that the 120 percent referred to on page 9, section 4, is not an unreasonable amount for the first deposit.

Mr. Reiser suggested that "incurred" be inserted after "annual" on line 10, page 2. Mr. Solomon disagreed with that suggestion.

Chuck Knaus, Supervisor, Property Casualty, Insurance Division, explained "incurred" as follows: "if you have a quadriplegic who is going to have a certain amount of income over his life expectancy, plus a certain amount of money to pay his medical bills, you fully fund that now." He continued that the intent of the bill is to still have the claims fully funded.

John D. Taylor, Assistant Personnel Director, MGM Grand Hotel, Las Vegas, referred to his letter of April 13, 1979, in which he explained agreements between the Commissioner of Insurance, employer spokesmen, and certain members of the Assembly's Labor and Management Committee (see Exhibit B).

Mr. Knaus further explained that the initial deposit is only 1 dimension of making sure that the employer's liability is fully funded; he continued that the Insurance Division would have the discretion to increase or decrease the deposits.

Mr. Wadhams referred to lines 19, 20, and 21, page 2, and explained that there is some flexibility in this calculation, but that the reserve requirement is to insure the continued ability of the self-insured employer to pay the claim.

Mr. Solomon explained that there is no need for the 120 percent deposit of incurred claims, because they will be handled by the prior insurer, which is the NIC.

Mr. Wadhams explained that when an employer applies for self-insurance, the Insurance Division will look at how much the first deposit should be; to arrive at that, the last five years' experience will be reviewed. Their expected annual cost of claims for the next year will be 10 percent over the average for the past 3 years.

Discussion followed during which time it was decided to amend the language in section 4, paragraph 2, line 9, to read as follows: "The first deposit must be in an amount reasonably sufficient to insure payment of compensation; but in no event may it be less than 105 percent of the employer's expected annual incurred cost."

Mr. Wadhams suggested that on line 21, after "with", "chapter 618B of NRS and his" be inserted.

Mr. Reiser suggested that in section 5, there should be language such as: "the insurance commissioner may assess all self-insurers

(AB 84 - continued)

to fund losses by an insolvent self-insurer."

Senator Young suggested that on line 31, page 2, after "order" insert "payment of any claim" and delete "of an appeals officer or a court of competent jurisdiction".

Senator Close suggested that on line 37, page 3, after "insurance" insert "gives 10 days' notice" and delete "take action".

Discussion followed regarding the amount of time allowed a company providing a surety bond for termination of liability to give notice to the commissioner of insurance and the employer. Thirty days was decided to be an acceptable period.

Mr. Wadhams explained that if a self-insured employer doesn't requalify by putting up cash after the surety bond has been terminated, within 30 days the employer must obtain insurance from NIC.

Mr. Reiser suggested that the insurance commissioner be empowered to impose an administrative fine if a self-insured employer violates any of the subsections of section 7.

Chairman Wilson stated that sections 13 through 21, the hearings and appeals procedure, has been taken out of NIC and placed with the Department of Administration.

Mr. Wadhams explained to Senator Close that lines 13 and 14, of page 3, are intended to track with the trade practice act that relates to insurance companies. This act provides that if an employer makes a practice of offering substantially less than any reasonable person would feel that that benefit was entitled to. Mr. Wadhams referred to the unfair trade practice act as follows: "compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered."

Senator Close asked, once the money is due, what does the employee have to do to get his money?

Chairman Wilson observed that if the claimant is at staff level, he may be dissuaded from a reasonable settlement by threat of sanctions against his job; if he's in the hearings level, and the settlement is not due, and even if it is due, and the claim is final; he should not be forced to settle the claim in fear for his job. Chairman Wilson stated that is the intent of this legislation; but it is not explicit.

Discussion followed during which it was decided that the commissioner of insurance may impose an administrative fine, not to exceed \$500 for each violation, and may withdraw the certification of a self-insured employer (see subparagraphs in section 7).

Mr. Wadhams referred back to section 5 and suggested additional language after "thereunder" as follows: "makes a general or special assignment for the benefit of creditors".

(AB 84 - continued)

It was additionally decided to amend the language on line 15, page 2, to read as follows: "the commissioner of insurance may consider the nature of the employer's business, the financial ability of the employer to pay compensation and his probable continuity of operation."

In section 8, Mr. Heath offered the following language for an amendment: "Before any action may be taken pursuant to subsection 2, the commissioner of insurance shall arrange an informal meeting with the self-insured employer to discuss and seek correction of any conduct which would be grounds for withdrawal of the self-insured employer's certificate of self-insurance."

Mr. Wadhams suggested language as follows: "Before the withdrawal of the certification of any self-insured employer, the commissioner of insurance shall give written notice to that employer by certified mail, that his certification will be withdrawn 10 days after receipt of the notice, unless, within that time, the employer corrects the conduct set forth in the notice as the reason for the withdrawal or submits a written request for a hearing to the commissioner of insurance."

Discussion followed regarding section 9.

Norman Anthonison, representing SUMMA, and John Taylor explained that during the conference between the insurance division and the employers, a compromise had been reached that provides that "the security deposited under section 4 of this act must remain on deposit for a period of at least 36 months."

Discussion followed regarding section 11. Numbers 1 and 2 were amended to read as follows: "1. There is hereby created in the state treasury the administrative fund for workmen's compensation provided by self-insured employers as a special revenue fund. The commissioner of insurance shall promptly deposit into the fund all money collected under this section. The money must be used for the purpose of defraying all costs and expenses of administering self-insurance programs of workmen's compensation. 2. The commissioner of insurance shall establish by regulation the application fee for prospective self-insured employers. The fee must reimburse the commissioner for expenses incurred in acting upon the application."

Mr. Heath suggested deleting the language after "than" on page 4, line 36, and ending inclusively with "coverage" on line 37; adding "2 1/2% of the employer's expected annual claims expenditures."

Mr. Reiser referred to his proposed amendment and suggested the new language for section 12 (see Exhibit A)

Mr. Solomon objected to the January 1, 1980 deadline.

Discussion followed regarding the January 1, 1980, deadline, and it was decided to omit it.

Chairman Wilson announced that the amendments would be submitted to the bill drafter and copies distributed among those present and then

(AB 84 - continued)

AB 84 would be re-referred to the Committee for review.

Mr. Reiser referred to section 14 and suggested that it be deleted or amended to provide that the self-insurer would share in an adverse change in experience as well as sharing in dividends. He agreed to review this section with the self-insured employers and report back to the Committee.

Mr. Heath suggested that on line 23, page 5, after "records" insert "interview the employees"; on line 26, page 5, after "sioner," insert "the sufficiency of reserves and the reporting, handling and processing of injuries or clames."

Mr. Wadhams suggested that line 37, page 5, should refer to NRS 679.310 rather than NRS 679.370.

Mr. Heath explained that the insurance division had done a fiscal note on AB 84 and learned that in the fiscal year of 1978-79 an expense of \$85,000; in 1979-80, an expense of \$90,000; and in 1980-81, an expense of \$100,000, would be necessary.

Mr. Reiser referred back to section 16 and suggested that "without cost to the commissioner" be deleted. Mr. Heath disagreed with this deletion and explained that the insurance division hasn't the budget to provide for that cost.

Chairman Wilson closed public hearing on AB 84.

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| <u>BDR 32-1803</u>
(SB 525) | Increases types of buildings for which allowances against property tax is granted for systems of heating or cooling using renewable sources of energy. |
| <u>BDR 48-1800</u>
(SB 523) | Declares that geothermal resources belong to the public and requires state engineer to adopt regulations governing development of those resources. |
| <u>BDR 46-1802</u>
(SB 524) | Requires department of energy to adopt regulations to govern marketing of devices for reducing consumption of energy and devices for use of solar energy. |
| <u>BDR S-1805</u>
(SB 526) | Makes appropriation to department of energy for research and demonstrations in solar energy. |
| <u>BDR 2125</u>
(SCR 39) | Directs legislative commission to conduct study of organizational structure and administrative practices of NIC. |
| <u>BDR 58-1776</u>
(SB 528) | Makes technical correction to provision of law relating to underground utility services. |
| <u>BDR 54-2101</u>
(SB 529) | Corrects reference to another section of NRS in provision of law relating to physical therapists. |

Minutes of the Nevada State Legislature

Senate Committee on.....Commerce and Labor.....

Date:.....April 25, 1979

Page:.....6.....

BDR 54-2103 Makes technical correction concerning terms of
(SB 530) members of Oriental medicine advisory committee.

Senator Close moved for Committee introduction
of the eight BDRs listed above.

Seconded by Senator Young.

Motion carried.

Senator Hernstadt absent.

There was no further business. Meeting adjourned at 10:30 p.m.

Senate Committee on.....

Date: April 25, 1979

Page: 7

RESPECTFULLY SUBMITTED

Betty L. Kalicki
Betty L. Kalicki, Secretary

APPROVED:

Thomas R. C. Wilson, Chairman

Proposed Amendments to AB 34

Section 1-

Section 2- Add "and administrative" after financial on line 6

Section 3, paragraph 3- Does the insurance department have staff and funding to do this?

Section 4- Add "incurred" after annual on line 10

Section 5-

Section 6-

Section 7-

Section 8-

Section 9-

Section 10-

Section 11-

Section 12- Add "and other employers covered under provisions of NRS 616.255 and NRS 616.256" after employer on line 39.

 A. Add "the State Industrial Attorney, the OSHA Review Board or the Appeals Officer" after Commission on line 40.
 (Commission services include uninsured employer, subsequent injury, OSHA enforcement)

 B. Page 5, line 3 after hearing add January 1, 1980

Section 13- (within 30 days) .

Section 14-

Section 15-

Section 16- Costs must be paid by self-insurers to provide equitable cost apportionment and avoid constitutional problems.

Section 17-

Section 18- What is an example of a matter within the Commission's authority?

Section 19-

Section 20-

Section 21-

Section 22- Delete paragraph 4, line 41 and 42

Section 23- Delete section 23

Section 24- Delete "or who qualified as self-insured employers"

Section 25-

Section 26- Delete new language and remain with present provision.
 Who determines rehabilitation responsibility of self-insurer?

Section 27-

Section 28-

Section 29-

Section 30-

Section 31- See attached

Section 32-

Section 33-

Section 34-

Section 35-

Section 36- Establish subsequent injury fund with contributions from self-insured.

Section 37, page 13- notice except when death occurs.

Section 38- page 14- Add "If additional information is necessary to determine liability, written notice must be provided to claimant and insurance commissioner explaining investigation".

Section 39-

Section 40-

Section 41-

Section 42-

Section 43-

Section 44-

Section 45-

Section 46-

Section 47- Delete or add "the present value of" after of

Page 19, line 46- Why NIC jurisdiction?

Page 20- Delete lines 8, 9, 10

Proposed Amendment

AB 84 - Section 31

Paragraph 2. No change in original language. Delete brackets and new proposed language, line 40 and 41.

Rewrite of Paragraph 3.

The rating system provided by this section is subject to the further limitation that:

1. All studies conducted by the Commission for the purpose of determining the adequacy of rate levels, the equity of rates between and among classifications, and the rating of individual accounts on the basis of their experience shall be conducted in the presence of an actuary designated by the Commissioner of Insurance.
2. No increase or reduction of premium rate or additional charge or rebate of premium contribution may become effective for 60 days after adoption by the Commission. Upon adoption of any increase or reduction of premium rate or additional charge or rebate of premium contributions provided by this section, the Commission must file the revised rates with the Commissioner of Insurance and give written notice thereof to the employer affected by such rate change, charge or rebate.

The Commissioner of Insurance will grant the employer, if requested by him, a hearing prior to the effective date of the rate change. At such hearing, consideration must be given to the objections as made by the parties appearing, and all matters in dispute must be resolved after such hearing by the Commissioner of Insurance in a manner which will not unjustly affect the objecting party or the State Insurance Fund. Following the hearing, the Commission shall make such adjustments in rates as are ordered by the Commissioner. The objective to be accomplished is to prescribe and collect only such premiums as may be necessary to pay the obligations created by this chapter, administrative expenses, and to carry such reasonable reserves as may be prescribed by law or deemed necessary to meet such contingencies as may reasonably be expected.

Sec. 31. NRS 616.380 is hereby amended to read as follows:

616.380. 1. In addition to the authority given the commission to determine and fix premium rates of employers as provided in NRS 616.395 to 616.405, inclusive, the commission:

(a) Shall apply that form of rating system which, in its judgment, is best calculated to merit or rate individually the risk more equitably, predicated upon the basis of the employer's individual experience;

(b) Shall adopt equitable [rules and] regulations controlling the same, which [rules and] regulations, however, [shall] must conserve to each risk the basic principles of [workmen's compensation] industrial insurance; and

(c) May subscribe to a rating service of any rating organization for casualty, fidelity and surety insurance rating.

2. The rating system or any rating by a rating organization pursuant to this section is subject to the limitation that the amount of any increase or reduction of premium rate or additional charge or rebate of premium contributions shall be in the discretion of the commission.

3. [The rating system provided by this section is subject to the further limitation that no increase or reduction of premium rate or additional charge or rebate of premium contributions shall become effective for 60 days after adoption by the commission. Upon the adoption of any increase or reduction of premium rate or additional charge or rebate of premium contributions provided by this section the commission shall give written notice thereof to the employer affected by such rate change, charge or rebate, and grant the employer, if requested by him, a hearing before the commission prior to the effective

date of such rate change, charge or rebate. At such hearing consideration shall be given to the objections as made by the parties appearing, and all matters in dispute shall be resolved after such hearing by the commission in a manner which will not unjustly affect the objecting party. The objective to be accomplished by the commission shall be to prescribe and collect only such premiums as may be necessary to pay the obligations created by this chapter, administrative expenses, and to carry such reasonable reserves as may be prescribed by law or may be deemed necessary to meet such contingencies as may be reasonably expected.] The rating system provided by this section is subject to the further limitation that:

(a) All studies conducted by the commission for the purpose of determining the adequacy of rate levels, the equity of rates between and among classifications, and the rating of individual accounts on the basis of their experience shall be conducted in the presence of an actuary designated by the commissioner of insurance.

(b) No increase or reduction of premium rate or additional charge or rebate of premium contribution may become effective for 60 days after adoption by the commission. Upon adoption of any increase or reduction of premium rate or additional charge or rebate of premium contributions provided by this section, the commission must file the revised rates with the commissioner of insurance and give written notice thereof to the employer affected by such rate change, charge or rebate.

The commissioner of insurance will grant the employer, if requested by him, a hearing prior to the effective date of the rate change. At such hearing,

consideration must be given to the objections as made by the parties appearing, and all matters in dispute must be resolved after such hearing by the commissioner of insurance in a manner which will not unjustly affect the objecting party or the state insurance fund. Following the hearing, the commission shall make such adjustments in rates as are ordered by the commissioner. The objective to be accomplished is to prescribe and collect only such premiums as may be necessary to pay the obligations created by this chapter, administrative expenses, and to carry such reasonable reserves as may be prescribed by law or deemed necessary to meet such contingencies as may reasonably be expected.

4. Subsections 2 and 3 of this section [shall] do not apply to rating plans made by voluntary agreement between the commission and employer which increases or reduces premium contributions for [employers. Such] the employer. The voluntary rating plans may be retrospective in nature. A voluntary rating plan must be in writing and signed by both the commission and the employer.

April 13, 1979



The Honorable Thomas Wilson
The State Senate
Capitol Mill Complex
401 South Carson Street
Carson City, Nevada 89710

Dear Senator Wilson:

Thank you for your interest in AB 84, Nevada Worker's Compensation system, and other alternative methods of industrial insurance coverage. Unfortunately, time did not permit us to closely analyze each section of AB 84 during the hearing on Wednesday, April 11, 1979. Although AB 84 is a good bill, there are some important word changes and other considerations that should be covered before it is referred out of committee. Please see Attachment 1.

As I am sure you are aware, the first 18 sections (as submitted in the Insurance Commissioner's amendment) are the product of the combined efforts of employer spokesmen, the Commissioner of Insurance and certain members of the Assembly's Labor and Management Committee. In light of that, it is somewhat unique in that the parties were able to resolve a substantial number of potential problem areas before it ever became law. MGM endorses the first eighteen sections as amended with the verbal understanding between MGM and the Commissioner of Insurance that some method of refunding on a pro rata basis, surpluses generated under Section 11 be resolved by regulation after passage of the bill.

As mentioned by Claude Evans, spokesman for AFL-CIO, the sections addressing the adjudicatory process must be revised. This was a problem we foresaw before AB 84 even came to your committee and as you will recall, this is why we were pushing SB 382 as amended to substantially improve the entire hearing process. Again, this bill (SB 382) is unique in that employer representatives and the State Industrial Attorney negotiated a vastly superior hearing system with the endorsement of labor (Claude Evans).

Finally, I would like to reiterate the absolute necessity of separating the administrative and regulatory control of self insureds from the Nevada Industrial Commission. As I mentioned in the hearing if the NIC for whatever reason decides to retain the premium income and future liability reserves of any employer,

Senator Thomas Wilson
April 13, 1979
Page 2

it can deny the application for self insurance; set excessively high deposit requirements; cancel certifications for judgmental "repeated or intentional" infractions, etc. The inherent conflict of interest is too great to overcome.

Once again I would like to thank you for your interest and continuing support of AB 84.

Sincerely yours,

John D. Taylor
Asst. Personnel Director

JDT/dml

ccs: Jim Banner, Chairman, Labor Management Committee, Assembly
Don Heath, Commissioner of Insurance
Patty Becker, State Industrial Attorney

Attachments: (1) Amendments to AB 84
(2) SB 382