

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS SUBCOMMITTEE NO. 2

April 4, 1991
P.M.

Hearing Room F 3:00
Tapes 7 - 8

MEMBERS PRESENT:Rep. Beverly Stein, Chair Rep. Carolyn Oakley Rep. John Schoon

MEMBER EXCUSED:Rep. Hedy L. Rijken

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta Mullins, Committee Assistant

MEASURES CONSIDERED: HB 2214 WS HB 2215 WS

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TAPE 7, SIDE A

010 CHAIR STEIN calls the meeting to order at 3:21 p.m. and opens the work session on HB 2214.

HB 2214 - REQUIRES THIRD PARTY ADMINISTRATORS OF HEALTH AND LIFE INSURANCE PLANS TO BE LICENSED BY DEPARTMENT OF INSURANCE AND FINANCE AFTER JANUARY 1, 1992. Witnesses:Jim Swenson, Insurance Division Lewis Littlehales, Insurance Division Chuck Gress, Oregon State Pharmacists Association

010 JIM SWENSON, Administrator, Insurance Division, Department of Insurance and Fiance, introduces Lewis Littlehales and offers background on HB 2214 and HB 2215 >Purpose of two bills is to help assure the solvency of insurance companies. >Both bills are based on NAIC models. >Models included extensive input from the insurance industry as well as the TPA organization and managing agents. The state regulator who spearheaded the development was manager of one of the largest TPAs in the country.

033 NAIC has recently agreed to a solvency certification process where each state's solvency surveillance capability is going to be evaluated by the NAIC in terms of laws and regulations and its professionalisMincluding examination of staff. There are a number of model laws that we must have on our books to become certified. One of those laws is HB 2215, the managing general agent bill. We want to be certified so we can demonstrate we are doing the job of regulating for solvency.

044 Managing general agents (MGAs) and third party administrators (TPAs) are intermediaries that serve between the insurer and insured and manage many of the affairs of the insurance companies. When properly controlled and managed, MGAs and TPAs are of great value to insurers. Insurers authorize MGAs and TPAs to perform duties which typically extend beyond the sale of insurance products and include underwriting, premium collection, claims processing or reinsurance transactions. A MGA may manage most of the affairs of an insurer in a geographic region, operating much like a branch office of the company. MGAs are also insurance agents. A TPA may or may not be an insurance agent. The MGA is typically most directly associated with the property and casualty lines of insurance. The TPA is involved with life and health insurance business. HB 2214 is specifically related to life and health insurance business. Neither are insurers, however, they can place an insurance company at risk.

A number of instances have arisen where insolvencies can be related to the improper monitoring of a managing general agency. Mission Insurance was a good example. Locally, part of First Far West Insurance Companies' problems can be attributed to the TPAs that were working on their behalf.

Both bills require licensure beginning January 1, 1992 and require written contracts between the insurer and the MGA or TPA and the bill specifies what is to be included in the contracts. The insurers are required to examine the operations of the MGAs and the TPAs to make certain they are performing their duties in a prudent fashion on behalf of the insurance company. The director is also given authority if the director chooses to examine the operations of the MGA or TPA.

The bills also require the MGAs and TPAs to purchase errors and omissions insurance in an amount to be determined by rule.

Mr. Littlehales is prepared to take you through the HB 2214-2 amendments and the hand-engrossed version of the bill to assist your review (EXHIBIT A).

097 LEWIS LITTLEHALES, Insurance Division: The amendments incorporate the changes suggested at the public hearing as well as related changes. >The first amendments amend Section 4 which establishes exemptions to the third party administrator licensing requirement. (c) at lines 7 and 8 is the Les Schwab situation; the amendment after line 20 is the Oregon Bankers Association situation; the new (n) is the hospital association exemption and (o) is the exemption for trusts between governmental bodies--AOC, League of Oregon Cities and school districts.

123 CHAIR STEIN: What standard do you use for accepting the amendments and the other exemptions?

127 MR. SWENSON: The problems that most insurers have had with TPAs involve TPAs marketing to the general public. The exceptions are those that I would characterize the evolution of the relationship to come from an existing organization--there is no marketing at large to the general public. We are comfortable with the exceptions that have been made. I think there has been almost too much concern from TPAs as to how this bill is going to be administered. There is a licensing requirement and certain standards that the TPA would have to demonstrate in order to be licensed. We do not characterize that as an onerous requirement. However, if a TPA were to come into Oregon and had been involved with problems, that is the kind of organization we would scrutinize very carefully and may not license. There is almost an undue level of concern of the licensing requirements. The contractual relationship described in this bill is a very logical relationship the insurance company should have with the TPA.

171 REP. SCHOON: Are you comfortable there won't be other groups who want to be excepted?

175 MR. SWENSON: There may be additional groups come to our attention. We could exempt them by rule. We would apply the same kind of standards I have generally described at this hearing when required.

188 5MR. LITTLEHALES: Section 6 provides authority of the director to waive licensing application information of a TPA licensed elsewhere. If the requirements of the home state are sufficient, the director may waive some of the filing information if it would serve no regulatory purpose.

199 CHAIR STEIN: Section 9 indicates that even though a person is exempt under Section 4 they need to register with you. Why must the person register under this exemption and not the rest.

207 MR. SWENSON: I believe with respect to the groups that would be exempt because of the Employee Retirement Income Security Act, we merely want to know what TPAs are transacting business with respect to those organizations. We would have no regulatory authority over them. I do not have a good response as to why we should not require similar requirement of those that would otherwise be exempted other than we are comfortable with the exemptions we have made.

245 MR. LITTLEHALES: On page 5 of the hand-engrossed bill we add to the section on contents of contract, the requirement for arbitration. We meant generally any means of dispute resolution, other than the judicial route.

268 CHAIR STEIN: Arbitration has a pretty specific meaning and it should probably be "arbitration, mediation or other methods of alternative dispute resolution."

271 MR. SWENSON: That is a very reasonable and improving amendment.

281 MR. LITTLEHALES: The change on page 6 adds language for the errors and omission coverage.

280 MR. SWENSON: At the present time errors and omissions insurance is generally available. However, the commercial liability market is one that is subject to cycles and we would like to have the latitude to recognize the fact if the market hardened again.

315 MR. LITTLEHALES: On page 7, we added an exception that the section does not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services. We also added a provision requiring the TPA to disclose to the insurer all charges, fees and commissions.

365 MR. LITTLEHALES: At the last work session, representatives of the Pharmaceutical Service Group requested an exemption. We met with them. They were concerned about themselves and their subcontractors being licensed. As we reviewed the organization, it seemed they should be licensed as a TPA, but not their subcontractor.

426 CHAIR STEIN: Is the license fee in the bill?

MR. LITTLEHALES: No. We set all our fees by rule.

TAPE 8, SIDE A

006 CHUCK GRESS, Executive Director, Oregon State Pharmacists Association: Since we proposed the amendment, we have had numerous discussions with the Insurance Division and agree to drop our proposal

in that our subcontractor would not be required to be licensed. We would prefer our subsidiary not to be licensed, but if the provision comes down and requires licensure we have no problem with being incorporated into the act.

024 MOTION: REP. SCHOON moves that the HB 2214-2 amendments be amended on page 2, line 7, after arbitration, insert ", mediation or other means of dispute resolution" and that the amendments BE ADOPTED.

VOTE: CHAIR STEIN, hearing no objection to the motion, declares the amendments ADOPTED. REP. RIJKEN is EXCUSED.

050 MOTION: REP. SCHOON moves that HB 2214, as amended, be sent to the full

committee with a DO PASS recommendation.

054 VOTE: In a roll call vote, REPS. OAKLEY, SCHOON AND CHAIR STEIN vote AYE. REP. RIJKEN is EXCUSED.

057 CHAIR STEIN declares the motion PASSED.

058 CHAIR STEIN opens the work session on HB 2215.

(Tape 8, Side A) HB 2215 - DEFINES AND REGULATES MANAGING GENERAL AGENTS. Witnesses: Jim Swenson, Insurance Division Lewis Littlehailes, Insurance Division

061 JIM SWENSON, Administrator, Insurance Division: We have provided the overview of the necessity for the MGA bill based on the NAIC model. It is one of the bills we need in order for our state to be certified.

068 LEWIS LITTLEHAILES reviews the HB 2215-2 amendments contained in the hand engrossed version of HB 2215 (EXHIBIT B). The amendment on page 2 relates to errors and omissions insurance. The amendment on page 3 is a contractual provisions regarding restriction of sharing interim profits of the MGA. The standard is made applicable to the surety insurance business as well as property. Other provisions were added to the contract. One is the arbitration provision. (L) incorporates Section 8 of the bill which requires if the MGA calculates the loss reserves, the contract must state that the insurer is ultimately responsible and the insurer must obtain annually an actuary opinion that the loss reserves are adequate.

The amendment on page 4 again states the insurer is ultimately responsible for the loss reserves. The requirement that the insurer conduct an on-site review of underwriting and claims procedures by the MGA is made annually rather than every six months. On page 5, Section 10 is deleted. It said if the director determined that a person violated any provision, in addition to any other authority, the director could direct the person to reimburse the person suffering the loss because of the violation. It seemed to be a determination of damages and was something that was properly left to the courts. Other changes are references to sections.

121 REP. SCHOON: What kind of enforcement ability do you have if we delete Section 10?

123 MR. LITTLEHAILES: Because this is made part of the Insurance Code, we have all the enforcement authority including cease and desist and civil penalties

128 MOTION: REP. SCHOON moves that the HB 2215-2 amendments, with the addition of page 1, line 12, "mediation or other method of dispute resolution" BE ADOPTED.

134 VOTE: CHAIR STEIN, hearing no objection to the motion, declares the motion PASSED. REP. RIJKEN is EXCUSED.

136 MOTION: REP. SCHOON moves that the subcommittee recommend to the full committee that HB 2215, as amended, be sent to the Floor with a DO PASS recommendation.

140 VOTE: In a roll call vote REPS. OAKLEY, SCHOON and CHAIR STEIN vote AYE. REP. RIJKEN is EXCUSED.

136 CHAIR STEIN declares the motion PASSED and the meeting adjourned at 4:00 p.m.

Respectfully submitted, Reviewed by,

Annetta MullinsTerry Connolly AssistantAdministrator

EXHIBIT SUMMARY

A -HB 2214, HB 2214-2 amendments and hand-engrossed bill, Lewis Littlehales B -HB 2215, HB 2215-2 amendments and hand-engrossed bill, Lewis Littlehales