

Conference Committee on June 29, 1991 - Page

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.

CONFERENCE COMMITTEE ON SB 1076

June 29, 1991Hearing Room H-174 8:00 a.m.Tapes 101 - 102

SENATE MEMBERS PRESENT: Sen. Kitzhaber, Chair Sen. Hannon Sen. Shoemaker

HOUSE MEMBERS PRESENT: Rep. Bauman Rep. Clark Rep. Parks

STAFF PRESENT: Barbara Coombs, Committee Administrator
Guadalupe Ramirez, Committee Assistant Holly Robinson, Legislative Counsel

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TAPE 101, SIDE A

CONFERENCE COMMITTEE ON SB 1076

002 CHAIR KITZHABER: Called the conference committee to order at 8:05 a.m. > Introduced the SB 1076-B39 amendments (EXHIBIT A). These contain language that addresses the concerns of smaller carriers concerning the voluntary/mandatory issue and the insurance pool. > Explained the difference between the House and Senate versions of the bill. > The senate position is that they are willing to adopt compromise language. > If age is the final outstanding issue, and is added to family size and composition in terms of the rate band, this expands it to such an extent that the objective is negated.

044 CHAIR KITZHABER: Recessed the meeting for a few minutes so that Rep. Clark could bring the amendments relating to age.

078 COOMBS: Explained SB 1076-B Hand Engrossed (EXHIBIT B).

108 GARY WEEKS, DEPARTMENT OF INSURANCE AND FINANCE: They have been supportive of purposes and principles of SB 1076. > Their only concern is turning around process of proving whether a carrier is capable of assuming the risk. > Explained how carriers would be affected by the new proposal for risk assuming carriers. There is concern because this is a guaranteed issue.

164 REP. CLARK: His concern is not about embarrassing the small insurance companies but whether or not a company will be placed in a risk category that shouldn't be there.

175 WEEKS: That is a potential. The concern is about a carrier coming in and saying that they will be a risk assuming carrier until the state proves, in a formal hearing, that they can't.

185 REP. BAUMAN: What is gained by doing it this way instead of having the carriers who want to be risk assuming carriers make an application up front?

190 COOMBS: When the burden of proof shifts there would be a gain in an adversarial relationship. The person who has the burden of coming forth with proof, bears the ultimate responsibility of swaying the decision maker. > Second, it would change from a relatively informal administrative process, which is not subject to challenge very easily, and changes it into a contested case.

204 CHAIR KITZHABER: Explaining what the difference is: The way the bill came over from the senate, the company had to demonstrate before marketing the plan, that they could be risk assuming, and under this one they can just start doing it. At some point DIF will step in and say this can't be done. DIF's concern is that by this point it will be too late.

212 REP. BAUMAN: Who is proposing this change?

213 CHAIR KITZHABER: Representatives of some of the smaller companies like PACC, and Rogue Valley Physicians.

216 SENATOR HANNON: Small insurance carriers felt that the responsibility should be placed upon the Insurance Commissioner to tell them that they cannot be engaged in marketing this type of product. > The Department of Insurance and Finance is aware of the different insurance companies. > The point being that if those carriers who were not as stable as others, requested to become risk assuming carriers, this would raise a flag, wouldn't it? > This would begin the hearing process for this carrier. If they claimed that they were capable of being risk assuming, because of your knowledge of their company, DIF would be able to deny them based on their prior knowledge, isn't that correct?

253 WEEKS: If a company comes in that they have a concern about, they would begin the hearing process. > They would be prepared to try to disprove that they didn't have the capacity to be a risk insuring insurer. > Until the hearing takes place, they would be the market place, they would try to expedite the hearing in this case.

263 SEN. HANNON: Asked about how much notice is given when there will be a hearing.

273 WEEKS: This wouldn't be publicized.

283 SEN. HANNON: Comments about where the responsibility of an insurance agent lies.

295 WEEKS: Agrees that an agent does have the responsibility to protect the policy holders.

298 SEN. SHOEMAKER: Once a carrier is certified as a risk assuming carrier, what are the reporting requirements, that would result from that? > Are they required to report to you on a specified basis?

312 WEEKS: All companies have financial reports to provide annually. > They audit tri-annually. They have companies that are on a quarterly reporting system, because they are watching them.

322 SEN. SHOEMAKER: So if a carrier that you didn't feel comfortable about, were able to complete the hearing process, would they be monitored more carefully?

329 WEEKS: Yes.

330 SEN. SHOEMAKER: If it turned out that they weren't complying with the regulations, or there was another problem, could you then challenge them again?

334 WEEKS: This is the part that is somewhat unclear. If, after the hearing process, an insurer was found to be risk assuming and they didn't follow through, would they be able to go through the hearing process again.

344 SEN. SHOEMAKER: Then what is the sanction?

348 WEEKS: Under other parts of the code, if surplus were to fall to certain levels, they have some authority in that way. > The problem could probably be managed in a different form which would be to take the company out of the market completely.

357 PARKS: What if the risk management aspect included every one in the pool. This is a disincentive for them to manage the risk. Do you agree with this?

366 WEEKS: They believe that the voluntary pool could work. It is actuarially sound and is workable. Mandatory reinsurance does not necessarily result in dumping because they have a market conduct responsibility in the department.

378 CRAIG URBANE, RATES INFORMS ANALYST, DEPARTMENT OF INSURANCE AND FINANCE: The voluntary pool would probably enhance risk management and competition because there wouldn't be a general pool to cover everything. Gave example.

394 REP. PARKS: Is uncomfortable with putting them in a situation where they are compelled to assume risk in order to be competitive. This could jeopardize this program and the policy holders you already have. > He made the amendment that it be mandatory because it makes a more liberal opt out situation. The burden of proof is about 20% in a contested case. > What does the risk pool amount to in a percentage if the blues have to be in it?

415 WEEKS: Depends on if you have a mandatory pool and a minimum threshold is set, they would have to do some actuarial examination. Can't really tell right now what the minimum contribution would be.

431 REP. PARKS: Why couldn't this be given to you as a mandatory reinsurance and let you design an actuarially sound pool?

446 PARKS: There is no problem figuring it out actuarially. It is a practical way of doing it.

TAPE 102, SIDE A

011 REP. PARKS: Is this a safer way to approach the reinsurance pool?

012 WEEKS: They support having a voluntary pool. A mandatory pool may be just another layer of protection.

019 URBANE: The division is not persuaded that participation in a voluntary pool is a competitive disadvantage. A risk assuming carrier pays its cost to claims. A reinsuring carrier pays some portion of the cost of claims plus premiums. The division feels that those things are roughly a wash so that there is no competitive disadvantage for the carrier for being in the pool necessarily. > If risk is managed properly by the risk assuming carriers and the seeding carriers the ones in the pool, it creates no competitive disadvantage.

036 REP. CLARK: How and does the first level of assessment work? When are the assessments made?

039 URBANE: The first level of money into the pool is the premium that the seeding carrier pays. The next level of assessment is if there is a shortfall in the pool at the end of the year, up to 4% of premium can be assessed against the participating carriers, occurring on a retroactive basis. > If that 4% were not sufficient, there is an additional 1% against all carriers in the state to help make up the shortfall. > The pool is authorized as an insurer and has all the privileges of one.

052 REP. CLARK: Are different individuals or whole groups seeded?

053 URBANE: Either way. Explained further how the premium would be determined.

060 There was further discussion about the risk of going into the pool.

065 REP. BAUMAN: Small insurance companies are writing for small employers. > Are they risk assuming now or are they reinsuring?

078 URBANE: There are some small carriers that currently do buy reinsurance in the commercial market place. This voluntary pool assures the availability of reinsurance even if the commercial market for reinsurance were to dry up.

080 WEEKS: There are some group health insurers buying reinsurance now. > Those who don't buy it are risk assuming.

084 REP. BAUMAN: If they are not risk assuming then what is the disadvantage?

088 WEEKS: For some of them, we would like them to continue participating in the reinsurance pool and not reinsure because some of them are not presently able to assume the risk.

092 CHAIR KITZHABER: Used the black board to demonstrate how reinsurance works. > What happens today is if you are a small group carrier, you can purchase reinsurance and if you don't buy reinsurance you are assuming the risk. > The way risk is managed in the small group market today is by avoiding it by making sure you don't get anyone into your group that

is high risk. > If you would require mandatory participation, they would have to pay more. > If everyone contributes to the reinsurance pool the incentive is reduced to manage risk. > Reiterates the purpose of the debate, which is to benefit the large community of small employers that are going to be required to purchase insurance in about 2 years.

141 WEEKS: Their concern is where the burden of proof lies.

151 SEN. SHOEMAKER: How do premiums for reinsurance policies relate to the reinsurance charge that are being discussed here?

156 CRAIG: The premiums that are in the current market can't be equated to the ones being proposed. Explained further.

164 SEN. SHOEMAKER: The present reinsurance market is driving companies to screen out the people who need health care.

166 PARKS: Reinsurers have an impact on what risks are assumed by smaller carriers.

167 WEEKS: The private insurance market is very volatile.

172 REP. PARKS: Is the criteria that you are in the pool or you're out. Are there any conditional latitudes?

177 WEEKS: They have to elect one way or the other.

180 REP. PARKS: Is there any way to say that based upon the hearing results you will be able to be risk assuming subject on certain conditions?

182 WEEKS: Not under this particular law. There may something under the insurance code that would allow this.

190 There was further discussion about how the reinsuring process would work in the risk assuming process.

220 WEEKS: Explained the liquidation of Greater Oregon Health Care from Grants Pass because it was being referenced to in preceding testimony.

246 URBANE: One of the things this bill does is gives them some way of reviewing the rates which may be a way to prevent what has happened at Greater Oregon Health Care.

252 WEEKS: Formal hearings will require funding, will have to go to Emergency Board.

257 REP. BAUMAN: Commented about the division's access to information and how that would affect the hearing process.

279 WEEKS: They do have full access as a department to company records.

284 URBANE: Companies are required to provide them with complete factual information regarding their operation.

293 REP. CLARK: If you had a contested case hearing under Chapter 183, won't they be able to take it to the court of appeals.

299 WEEKS: We don't have a formal hearing process in the procedures now. They are without the remedy of an appeals process.

310 REP. CLARK: So none of your decisions are ever reviewed in the courts?

313 WEEKS: Not aware of anyone ever taking them to court.

329 REP. BAUMAN: Isn't there the possibility that there would be a need for an appeal process?

334 WEEKS: That is why this discussion is taking place and the reason behind the shift in the burden of proof.

339 REP. BAUMAN: There will be some overseeing aspect in the proposed rules.

350 URBANE: There are other cases that have been appealed. They haven't been taken to court on the certificate of authority process.

363 WEEKS: They aren't going to unreasonably deny anyone.

390 JOHN POWELL, BLUE CROSS/BLUE SHIELD: Repeated his earlier testimony about allowing age as a rating factor (EXHIBIT C).

426 REP. PARKS: What is the relationship of the two amendments to SB 1076?

428 POWELL: Currently in the version passed by the House, age is allowed. > These amendments would continue age as a rating factor.

TAPE 101, SIDE B

010 REP. BAUMAN: Insurance is not equitable because only those that can pay have it.

022 POWELL: The concept of insurance is to pay some sort of premium to protect yourself against a future loss. Age does not make a difference in whether one gets sick or not. > The older one gets, the higher the medical costs are. > Talked about "swings" in premiums and the conditions by which the occur.

039 CHAIR KITZHABER: Explained why he didn't agree with this concept. > This legislation is fulfilling obligations to small employers. > Not against requiring Department of Insurance and Finance looking at the question of age and making a report to the 1991 legislature.

065 POWELL: Responds to the comments made by Chair Kitzhaber.

074 CHAIR KITZHABER: What is the percentage?

076 POWELL: This doesn't mean that the insurers raise any more money, they only raise it differently. > They still believe that the major reason that people don't have insurance is cost. > Repeated previous testimony on who this legislation affects and how it would be beneficial to people without insurance.

101 MOTION:REP. CLARK moved that the conference committee adopt the SB 107 6-B39 amendments, with the exception of lines 21 and 22 of page 1 (EXHIBIT A), the effect of which would be to separate the question of the reinsurance pool from age.

117 VOTE:Hearing no objection, Chair Kitzhaber so moved.

129 MOTION:SENATOR SHOEMAKER moved the deletion of the references to age wherever it appears in SB 1076-B39, lines 4, 21 and 22 (EXHIBIT A).

DISCUSSION TO THE MOTION:

140 CHAIR KITZHABER: The effect of this would essentially be to exclude age as a rate band criteria.

148 REP. BAUMAN: Suggested that a study be done through the Department of Insurance and Finance of what the effects on rates would be if age were allowed outside the band.

156 MOTION:REP. BAUMAN moved that Senator Shoemaker's motion be amended to include the language in SB 1076-B38 amendments (EXHIBIT C), lines 4 - 9. This would require the Department of Insurance and Finance to provide to the next legislative assembly, a study of the effect of using age as a rating factor.

DISCUSSION TO THE MOTION:

162 SEN. SHOEMAKER: The way the amendment was drafted assumed that age would be a rating factor. If it is not, the study has nothing to focus on.

174 MOTION:REP. BAUMAN withdrew her earlier motion.

176 VOTE:Senator Shoemaker's motion carried with Rep. Clark objecting.

183 CHAIR KITZHABER: Explained what was in SB 1076 at this point.

191 REP. BAUMAN: Expressed her dissatisfaction with the bill.

203 MOTION:REP. BAUMAN moved an amendment to section 9 eliminating Subsection 1 and changing the terminology in Subsection 2, to read a small employer carrier shall not be approved as a risk assuming carrier unless the director establishes that the carrier is capable of assuming the status.

212 COOMBS: This could be achieved by moving Section 9 of the A-engrossed.

216 VOTE:The motion failed with Senators Kitzhaber, Clark and Parks objecting to the motion.

223 CHAIR KITZHABER: Prefers the language that came from the senate side, there is some inherent risk in the change that has been made. > On the other hand, the insurance industry that proposed this amendment needs to be aware that this risk assuming mandate cannot be taken lightly because of the consequences.

233 MOTION:SEN. SHOEMAKER moved that the conference committee concur in the SB 107 6 B-39 amendments to the respective floors with a {"do pass" recommendation}.

247 VOTE:The motion carried with all members present voting AYE. Senator Hannon was excused.

250 CHAIR KITZHABER: Adjourned the conference committee.

Submitted by: Reviewed by:

Guadalupe C. Ramirez Barbara Coombs AssistantAdministrator

EXHIBIT LOG:

A - Amendments to SB 1076-B39 - Staff - 5 pp. B - Amendments
to SB 1076- B-Engrossed, dated 6/29/91 - staff - 23 pp.
C - Amendments to SB 1076-B38 - Powell - 1 p.