

**MINUTES OF THE SENATE BUSINESS & LABOR STANDING COMMITTEE
TUESDAY, FEBRUARY 8, 2011
ROOM 215, SENATE BUILDING**

Members Present: Sen. John Valentine, Chair
Sen. Curt Bramble
Sen. David Hinkins
Sen. Dan Liljenquist
Sen. Steve Urquhart
Sen. Kevin VanTassell
Sen. Gene Davis
Sen. Karen Mayne

Staff Present: Bryant R. Howe, Assistant Director
Karen Allred, Committee Secretary

Public Speakers Present: Gary R. Williams, Ogden City Attorney
Rep. Holly Richardson, House of Representatives, District 57
Craig Frank, Citizen, Former Representative, District 57
Reed L. Martineau, Attorney, Snow Christensen & Martineau, P.C.
Justin Atwater, Attorney, Secretary, Business Section, Utah State Bar,
Associate, Durham Jones & Pinegar
Aleta Taylor, South Jordan City Council
Paul Allred, Deputy Director, Department of Financial Institutions
Bruce Olson, Attorney
John S. Treu, Attorney, Snow, Christensen & Martineau, CPA

A list of visitors and a copy of handouts are filed with the committee minutes.

Chair Valentine called the meeting to order at 4:14 p.m. and announced that, at the request of the sponsor, S.B. 88 would not be heard today.

Approval of Minutes

MOTION: Sen. Davis moved to approve minutes of the February 3, 2011, meeting.

The motion passed unanimously with Sens. Bramble, Liljenquist and Van Tassell absent for the vote.

1. **S.B. 87 Marketable Record Title Amendments** (*S. Reid*)

Sen. Reid explained the bil.

Gary R. Williams, Ogden City Attorney spoke in support of the bill.

MOTION: Sen. Hinkins moved to transmit S.B. 87 with a favorable recommendation.

The motion passed unanimously with Sens. Liljenquist and Van Tassell absent for the vote.

Sen. Bramble assumed the Committee Chair.

2. **S.B. 113 Election District Boundaries** (*J. Valentine*)

Sen. Valentine presented the bill.

MOTION: Sen. Davis moved to delete in title and body S.B.113 and replace it with 1st Sub. S.B. 113.

The motion passed unanimously with Sens. Liljenquist, Van Tassell and Urquhart absent for the vote.

Sen. Valentine explained the bill.

Rep. Holly Richardson, House of Representatives District 57 and Craig Frank, former Representative, District 57 spoke in support of the bill.

MOTION: Sen. Liljenquist moved to transmit 1st Sub S.B. 113 with a favorable recommendation.

The motion passed unanimously with Senator Van Tassell absent for the vote.

Sen. Valentine resumed the Committee Chair.

3. **S.B. 131 Unincorporated Business Entity Uniform Acts** (*L. Hillyard*)

Sen. Hillyard explained the bill.

The following amendment was proposed:

1. *Page 25, Line 763 through Page 26, Line 778:*

- 763 (i) the following [~~sections~~] do not apply to an institution that is described in
Subsection
764 (3)(a):
765 [~~(A) Subsection 48-2c-402(2)(a)(ii);~~]
766 [~~(B) Section 48-2c-604;~~]

- 767 [~~(C)~~ Section 48-2c-703;]
768 [~~(D)~~ Section 48-2c-708;]
769 [~~(E)~~ Subsection 48-2c-801(2);]
770 [~~(F)~~ Section 48-2c-1102;]
771 [~~(G)~~ Section 48-2c-1104; and]
772 [~~(H)~~ Subsections 48-2c-1201(2) through (5); and]
773 (A) Section 48-3-110;
(B) Section 48-3-112;
 ~~{(A)}~~ (C) Section 48-3-201;
774 ~~{(B) Subsection 48-3-401(3)}~~ (D) Section 48-3-401 ;
(E) Subsections 48-3-407(1) and (3)(d);
(F) Section 48-3-410;
775 ~~{(C)}~~ (G) Subsection 48-3-502(1)(c);
776 ~~{(D)}~~ (H) Title 48, Chapter 3, Part 6, Member's Dissociation; ~~{and}~~
777 ~~{(E) Subsections}~~ (I) Subsection 48-3-701(1) ~~{(a), (b), and (c)}~~ ; and
(J) Title 48, Chapter 3, Part 8, Foreign Limited Liability Companies; and
778 (ii) as otherwise provided in this title.

MOTION: Sen. Davis moved to adopt the amendment.

The motion passed unanimously with Sen. Van Tassell absent for the vote.

The following amendment was proposed:

1. *Page 3, Lines 63 through 64:*

63 Other Special Clauses:

64 This bill takes effect on ~~{January}~~ July 1, 2012.

1. *Page 267, Lines 8265 through 8266:*

8265 Section 315. Effective date.

8266 This bill takes effect on ~~{January}~~ July 1, 2012.

MOTION: Sen. Davis moved to adopt the amendment.

The motion passed unanimously with Sen. Van Tassell absent for the vote.

Reed L. Martineau, Attorney, Snow Christensen & Martineau spoke in support of the bill.

Justin Atwater, Attorney, Secretary, Business Section, Utah State Bar, Associate, Durham Jones & Pinegar, expressed concerns with the bill.

Aleta Taylor, South Jordan City Council; Paul Allred, Attorney, Utah Division of Financial Institutions; Bruce Olsen, Tax Attorney and John S. Treu, Attorney, Snow Christensen & Martineau, CPA spoke in support of the bill.

MOTION: Sen. Urquhart moved to transmit the bill with a favorable recommendation.

The motion passed unanimously with Sens. Bramble and Liljenquist absent for the vote.

4. **S.B. 89 Homeowner Association Reserve Account** (*S. Urquhart*)

Sen. Urquhart explained the bill and proposed the following amendments:

1. *Page 2, Lines 52 through 56:*

52 (5) Subsections (2), (3), ~~{-and-}~~ (4) , and (6) do not apply to an association
of unit owners during
53 the period of declarant management.
54 (6) Beginning July 1, 2013, a management committee shall ensure that a reserve fund
55 ~~{-contains the appropriate amount of money-}~~ is being appropriately funded .
as determined by the reserve analysis, to meet the
56 needs for which the reserve fund is established.

2. *Page 3, Lines 82 through 86:*

82 (5) Subsections (2), (3), ~~{-and-}~~ (4) , and (6) do not apply to an association
during the period of
83 administrative control.
84 (6) Beginning July 1, 2013, a board shall ensure that a reserve fund ~~{-contains~~
the-}
85 ~~{-appropriate amount of money-}~~ is being appropriately funded , as
determined by the reserve analysis, to meet the needs for
86 which the reserve fund is established.

MOTION: Sen. Urquhart moved to adopt the amendment.

The motion passed unanimously.

MOTION: Sen. Urquhart moved to transmit the bill with a favorable recommendation.

The motion passed unanimously.

5. **S.B. 64 Workers' Compensation Fund Subsidiary Amendments** (*J.S. Adams*)

The following amendments were proposed:

1. *Page 1, Lines 13 through 16:*

- 13 This bill:
- 14 ▶ permits a subsidiary of the Workers' Compensation Fund to become licensed to
- 15 write and to write commercial property or casualty insurance on a risk located in Utah;
- and
- 16 ▶ makes technical and conforming amendments.

2. *Page 2, Line 55 through Page 3, Line 65:*

- 55 (II) without bearing any insurance risk; [~~and~~]
- 56 (b) offer workers' compensation products and services in Utah and other states[-]; and
- 57 (c) subject to Subsection (6), for a risk located in Utah:
- 58 (i) become licensed under this title to write:
- 59 (A) commercial property insurance; or
- 60 (B) commercial casualty insurance, including a surety or other bond; and
- 61 (ii) once licensed under this title, to write:
- 62 (A) commercial property insurance; or
- 63 (B) commercial casualty insurance, including a surety or other bond.
- 64 (4) The fund shall write workers' compensation insurance in accordance with Section
- 65 31A-22-1001.

3. *Page 3, Lines 74 through 77:*

- 74 (b) The fund or a subsidiary of the fund may not offer, or enter into a joint enterprise
- 75 that offers, or otherwise participate in the offering of accident and health insurance.
- 76 (6) The fund shall operate a subsidiary of the fund that writes
- commercial property or casualty
- 77 insurance under Subsection (3)(c):

MOTION: Sen. Hinkins moved to adopt the amendments.

The motion passed unanimously with Sens. Bramble and Liljenquist absent for the vote.

MOTION: Sen. Mayne moved to transmit S.B. 64 with a favorable recommendation.

The motion passed unanimously with Sens. Bramble and Liljenquist absent for the vote.

6. **1st Sub. H.B. 19 Insurance Law Related Amendments** (*J. Dunnigan*)

Rep. Dunnigan explained the bill.

The following amendments were proposed:

1. *Page 2, Lines 29 through 30:*

- 29 ▶ modifies provisions related to disbursements from escrow accounts;
- 30 ▶ modifies title insurance related assessments;
- ▶ **addresses licensee compensation;**

2. *Page 3, Lines 80 through 82:*

- 80 31A-23a-415, as last amended by Laws of Utah 2010, Chapter 10 and last amended
 by
- 81 Coordination Clause, Laws of Utah 2010, Chapter 265
 31A-23a-501, as last amended by Laws of Utah 2010, Chapter 10
- 82 31A-25-208, as last amended by Laws of Utah 2009, Chapter 349

3. *Page 102, Line 3137:*

3137 assessment imposed under Subsection 59-9-101(3).

Section 26. Section 31A-23A-501 is amended to read:

31A-23a-501. Licensee compensation.

- (1) As used in this section:
 - (a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:
 - (i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee; or
 - (ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance.

- (b) (i) "Compensation from an insurer or third party administrator" means commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:
 - (A) whether or not payable pursuant to a written agreement; and
 - (B) received from:
 - (I) an insurer; or
 - (II) a third party to the transaction for the sale or placement of insurance.
- (ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:
 - (A) a fee or pass-through costs as provided in Subsection (1)(e); or
 - (B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.
- (c) (i) "Customer" means:
 - (A) the person signing the application or submission for insurance; or
 - (B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.
- (ii) "Customer" does not mean a person who is a participant or beneficiary of:
 - (A) an employee benefit plan; or
 - (B) a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.
- (d) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.
- (ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.
- (e) "Pass-through costs" include:
 - (i) costs for copying documents to be submitted to the insurer; and
 - (ii) bank costs for processing cash or credit card payments.
- (2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.
 - (a) The disclosure required by this Subsection (2) shall:
 - (i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;
 - (ii) clearly specify the amount or extent of the noncommission compensation;

and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure required by this Subsection (2) must be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

(d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

(3) (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:

(i) the producer and the insured have agreed on the producer's noncommission compensation; and

(ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.

(b) The disclosure required by this Subsection (3) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation and the existence and source of any other compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

(i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the

occurrence of the claim;

(iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or

(iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.

(4) (a) For purposes of this Subsection (4), "producer" includes:

(i) a producer;

(ii) an affiliate of a producer; or

(iii) a consultant.

(b) Beginning January 1, 2010, in addition to any other disclosures required by this section, a producer may not accept or receive any compensation from an insurer or third party administrator for the placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to the customer's purchase of the health benefit plan the producer:

(i) except as provided in Subsection (4)(c), discloses in writing to the customer that the producer will receive compensation from the insurer or third party administrator for the placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure; and

(ii) except as provided in Subsection (4)(c):

(A) obtains the customer's signed acknowledgment that the disclosure under Subsection (4)(b)(i) was made to the customer; or

(B) (I) signs a statement that the disclosure required by Subsection (4)(b)(i) was made to the customer; and

(II) keeps the signed statement on file in the producer's office while the health benefit plan placed with the customer is in force.

(c) If the compensation to the producer from an insurer or third party administrator is for the renewal of a health benefit plan, once the producer has made an initial disclosure that complies with Subsection (4)(b), the producer does not have to disclose compensation received for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal period immediately following 36 months after the initial disclosure.

(d) (i) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit shall, while the health benefit plan placed with the customer is in force, maintain a

copy of:

- (A) the signed acknowledgment described in Subsection (4)(b)(i); or
- (B) the signed statement described in Subsection (4)(b)(ii).
- (ii) The standard application developed in accordance with Section 31A-22-635 shall include a place for a producer to provide the disclosure required by this Subsection (4), and if completed, shall satisfy the requirement of Subsection (4)(d)(i).
- (e) Subsection (4)(b)(ii) does not apply to:
 - (i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or
 - (ii) the placement of insurance in a secondary or residual market.
- (5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or through that licensee or to charge a reasonable rate of interest upon past-due accounts.
- (6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.

(7) A licensee may not receive noncommission compensation for providing a service or engaging in an act that is required to be provided or performed in order to receive commission compensation.

Renumber remaining sections accordingly.

MOTION: Sen. Bramble moved to adopt the amendments.

The motion passed unanimously with Sens. Liljenquist and Urquhart absent for the vote.

MOTION: Sen. Bramble moved to transmit 1st Sub. H.B. 19 with a favorable recommendation.

The motion passed unanimously with Sen. Liljenquist absent for the vote.

MOTION: Sen. Bramble moved that 1st Sub. H.B. 19 be placed on the Consent Callendar.

The motion passed unanimously with Sen. Liljenquist absent for the vote.

MOTION: Sen. Van Tassell moved to adjourn.

The motion passed unanimously.

Chair Valentine adjourned the meeting at 5:43 p.m.

Sen. John Valentine, Committee Chair