

THE NINETY-SECOND DAY

CARSON CITY (Monday), May 4, 2009

Senate called to order at 11:26 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Craig Fuller.

Father, in Jesus' Name, we give thanks for the United States of America, the State of Nevada and the Nevada Legislature. We hold up in prayer before You the men and women who have been elected to represent the citizens of this great State. We pray and intercede for all the officials in our government who are in authority over us in any way. We pray that the Spirit of the Lord rests upon them.

Father, we ask that You be present with these men and women and make their hearts and ears attentive to godly counsel and do that which is right in Your sight. We pray that You cause them to be men and women of integrity who are obedient concerning us that we may lead a quiet and peaceable life in all godliness and honesty. We pray that the upright shall dwell in our government—that men and women blameless and complete in Your sight, Father, shall remain in these positions of authority.

We give thanks for this land and the leaders You have given to us, in Jesus' name.

Jesus is Lord over Nevada!

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 71, 176, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Commerce and Labor, to which was referred Assembly Bill No. 410, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MAGGIE CARLTON, *Chair*

Mr. President:

Your Committee on Finance, to which were referred Senate Bill No. 411; Assembly Bill No. 429, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which was rereferred Senate Bill No. 182, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

BERNICE MATHEWS, *Cochair*

Mr. President:

Your Committee on Government Affairs, to which were referred Assembly Bills Nos. 97, 415, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Government Affairs, to which was referred Assembly Bill No. 293, has had the same under consideration, and begs leave to report the same back with the recommendation: Rerefer to the Committee on Legislative Operations and Elections.

JOHN J. LEE, *Chair*

Mr. President:

Your Committee on Judiciary, to which was referred Assembly Bill No. 389, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

TERRY CARE, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 2, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 48, 156, 314.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 238, 446.

Also, I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 83, Amendment No. 572, and respectfully requests your honorable body to concur in said amendment.

DIANE M. KEETCH

Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Lee moved that Assembly Bill No. 293 be rereferred to the Committee on Legislative Operations and Elections.

Remarks by Senator Lee.

Motion carried.

Senator Care moved that Senate Bills Nos. 201, 412, 414; Assembly Bills Nos. 29, 47, 48, 49, 85, 122, 168, 174, 177, 194, 209, 230, 231, 242, 257, 259, 274, 353, 362, 516 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Finance:

Senate Bill No. 418—AN ACT relating to state financial administration; temporarily suspending the requirement to transfer money from the Abandoned Property Trust Account in the State General Fund to the Millennium Scholarship Trust Fund; and providing other matters properly relating thereto.

Senator Mathews moved that the bill be referred to the Committee on Finance.

Motion carried.

By the Committee on Finance:

Senate Bill No. 419—AN ACT relating to prescription drugs; revising provisions governing prescription drugs used in the Medicaid program; authorizing the addition of certain drugs to the list of preferred prescription drugs used in the program; and providing other matters properly relating thereto.

Senator Mathews moved that the bill be referred to the Committee on Finance.

Motion carried.

Assembly Bill No. 238.

Senator Care moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 446.

Senator Care moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Senator Care moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 11:33 a.m.

SENATE IN SESSION

At 11:34 a.m.

President Krolicki presiding.

Quorum present.

Senator Care moved that the motion whereby Assembly Bill No. 446 was referred to the Committee on Government Affairs be rescinded.

Motion carried.

Senator Care moved that the bill be referred to the Committee on Finance.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 213.

Bill read second time and ordered to third reading.

Assembly Bill No. 248.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 574.

"SUMMARY—Revises provisions governing holding companies. (BDR 57-997)"

"AN ACT relating to holding companies; revising provisions relating to the approval of certain mergers or acquisitions of control; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

~~{Section 1 of this bill removes the requirement that the Commissioner of Insurance must approve certain mergers or acquisitions of control under certain circumstances and instead authorizes the Commissioner of Insurance to approve those mergers and acquisitions under those circumstances. Section 2 also revises}~~ *Sections 1 and 2 of this bill revise* the circumstances under which the Commissioner ~~{may}~~ *of Insurance shall* approve certain mergers or acquisitions and changes the process used by the Commissioner to approve those mergers or acquisitions. (NRS 692C.210, ~~692C.256~~)

Section 2 of this bill revises existing law so that certain circumstances related to competition which would have prevented the Commissioner from stopping an acquisition will only need to be considered by the Commissioner before stopping an acquisition. Section 2 also moves the burden from the Commissioner to the acquiring person to prove that no violation of competitive standards will exist after the acquisition. (NRS 692C.256)

Section 3 of this bill allows the Commissioner to consider the effect of an acquisition on the ~~{public}~~ interest *of the insurance-buying public* before issuing an order related to that acquisition. (NRS 692C.258)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 692C.210 is hereby amended to read as follows:

692C.210 1. Except as otherwise provided in subsection 5, the Commissioner shall ~~{may}~~ approve any merger or other acquisition of control referred to in NRS 692C.180 unless, after a public hearing thereon, he finds that:

(a) After the change of control, the domestic insurer specified in NRS 692C.180 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly;

(c) The financial condition of any acquiring party may jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(d) The terms of the offer, request, invitation, agreement or acquisition referred to in NRS 692C.180 are unfair and unreasonable to the security holders of the insurer;

(e) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or

management, are unfair and unreasonable to policyholders of the insurer ~~and~~ or not in the public interest;

(f) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer ~~and~~ or of the public to permit the merger or other acquisition of control; ~~or~~

(g) If approved, the merger or acquisition of control would likely be harmful or prejudicial to the members of the public who purchase insurance ~~;~~; or

(h) The practices of the applicant ~~does not possess the ability to manage~~ in managing claims ~~according to applicable standards of market conduct.~~ have evidenced a pattern in which the applicant has knowingly committed, or performed with such frequency as to indicate a general business practice of:

(1) Misrepresentation of pertinent facts or provisions of policies of insurance as they relate to coverages at issue;

(2) Failure to affirm or deny coverage of claims within a reasonable time after written proofs of loss have been furnished; or

(3) Failure to pay claims in a timely manner.

2. The public hearing specified in subsection 1 must be held within ~~30~~60 days after the statement required by NRS 692C.180 has been filed, and at least 20 days' notice thereof must be given by the Commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to any other person designated by the Commissioner. The insurer shall give such notice to its security holders. The Commissioner shall make a determination within ~~30~~ 60 days after the conclusion of the hearing. If he determines that an infusion of capital to restore capital in connection with the change in control is required, the requirement must be met within 60 days after notification is given of the determination. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent and any other person whose interests may be affected thereby may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, may conduct discovery proceedings in the same manner as is presently allowed in the district court of this State. All discovery proceedings must be concluded not later than 3 days before the commencement of the public hearing.

3. The Commissioner may retain at the acquiring party's expense attorneys, actuaries, accountants and other experts not otherwise a part of his staff as may be reasonably necessary to assist him in reviewing the proposed acquisition of control.

4. The period for review by the Commissioner must not exceed the 60 days allowed between the filing of the notice of intent to acquire required pursuant to subsection 2 of NRS 692C.180 and the date of the proposed acquisition if the proposed affiliation or change of control involves a financial institution, or an affiliate of a financial institution, and an insured.

5. When making a determination pursuant to paragraph (b) of subsection 1, the Commissioner:

(a) Shall require the submission of the information specified in subsection 2 of NRS 692C.254; *and*

(b) ~~Shall not disapprove the merger or acquisition of control if he finds that any of the circumstances specified in subsection 3 of NRS 692C.256 exist; and~~

~~(c)~~ May condition his approval of the merger or acquisition of control in the manner provided in subsection 4 of NRS 692C.258.

6. If, in connection with a change of control of a domestic insurer, the Commissioner determines that the person who is acquiring control of the domestic insurer must maintain or restore the capital of the domestic insurer in an amount that is required by the laws and regulations of this State, the Commissioner shall make the determination not later than 60 days after the notice of intent to acquire required pursuant to subsection 2 of NRS 692C.180 is filed with the Commissioner.

Sec. 2. NRS 692C.256 is hereby amended to read as follows:

692C.256 1. The Commissioner may issue an order pursuant to NRS 692C.258 relating to an acquisition if:

(a) The effect of the acquisition may substantially lessen competition in any line of insurance in this State or tend to create a monopoly; or

(b) The acquiring person fails to file sufficient materials or information pursuant to NRS 692C.254.

2. In determining whether to issue an order pursuant to subsection 1, the Commissioner shall consider the standards set forth in the Horizontal Merger Guidelines issued by the United States Department of Justice and the Federal Trade Commission and in effect at the time the Commissioner receives the notice required pursuant to NRS 692C.254.

3. The Commissioner shall ~~not issue~~, *before issuing* an order specified in subsection 1 ~~+~~, *consider*:

(a) If:

(1) The acquisition creates substantial economies of scale or economies in the use of resources that may not be created in any other manner; and

(2) The public benefit received from those economies exceeds the public benefit received from not lessening competition; or

(b) If:

(1) The acquisition substantially increases the availability of insurance; and

(2) The public benefit received by that increase exceeds the public benefit received from not lessening competition.

4. The public benefits set forth in subparagraph 2 of paragraphs (a) and (b) of subsection 3 may be considered together, as applicable, in assessing whether the public benefits received from the acquisition exceed any benefit to competition that would arise from disapproving the acquisition.

5. The ~~Commissioner~~ *acquiring person* has the burden of establishing that the acquisition will not result in a violation of the competitive standard set forth in subsection 1.

Sec. 3. NRS 692C.258 is hereby amended to read as follows:

692C.258 1. Except as otherwise provided in this section, if the Commissioner determines that an acquisition may substantially lessen competition in any line of insurance in this State, ~~for~~ tends to create a monopoly ~~or is not in the public interest of members of the public who purchase insurance~~, he may issue an order:

- (a) Requiring an involved insurer to cease and desist from doing business in this State relating to that line of insurance; or
- (b) Denying the application of an acquired or acquiring insurer for a license or authority to do business in this State.

2. The Commissioner shall not issue an order pursuant to subsection 1 unless:

- (a) He conducts a hearing concerning the acquisition in accordance with NRS 679B.310 to 679B.370, inclusive;
- (b) A notice of the hearing is issued before the expiration of the waiting period for the acquisition specified in NRS 692C.254, but not less than 15 days before the hearing; and
- (c) The hearing is conducted and the order is issued not later than 60 days after the expiration of the waiting period.

3. Each order issued pursuant to subsection 1 must include a written decision of the Commissioner setting forth his findings of fact and conclusions of law relating to the acquisition.

4. An order issued pursuant to this section does not become final until 30 days after it is issued, during which time the involved insurer may submit to the Commissioner a plan to remedy, within a reasonable period, the anticompetitive effect of the acquisition ~~or the failure to protect the public interest of members of the public who purchase insurance~~. As soon as practicable after receiving the plan, the Commissioner shall, based upon the plan and any information included in the plan, issue a written determination setting forth:

- (a) The conditions or actions, if any, required to:
 - (1) Eliminate the anticompetitive effect of the acquisition ~~or protect the public interest of members of the public who purchase insurance~~; and
 - (2) Vacate or modify the order; and
- (b) The period in which the conditions or actions specified in paragraph (a) must be performed.

5. An order issued pursuant to subsection 1 does not apply to an acquisition that is not consummated.

6. A person who violates a cease and desist order issued pursuant to this section during any period in which the order is in effect is subject, at the discretion of the Commissioner, to:

(a) The imposition of a civil penalty of not more than \$10,000 per day for each day the violation continues;

(b) The suspension or revocation of the person's license or certificate of authority; or

(c) Both the imposition of a civil penalty pursuant to paragraph (a) and the suspension or revocation of the person's license or certificate of authority pursuant to paragraph (b).

7. In addition to any fine imposed pursuant to NRS 692C.480, any insurer or other person who fails to make any filing required by NRS 692C.252 to 692C.258, inclusive, and who fails to make a good faith effort to comply with any such requirement is subject to a fine of not more than \$50,000.

8. The provisions of NRS 692C.430, 692C.440 and 692C.460 do not apply to an acquisition to which the provisions of NRS 692C.252 apply.

Senator Carlton moved the adoption of the amendment.

Remarks by Senators Carlton and Townsend.

Senator Carlton requested that the following remarks be entered in the Journal.

SENATOR CARLTON:

This was the amendment brought to our attention last Friday by the former Chair of Senate Commerce and Labor who had some questions. It is my understanding that those questions have been answered.

Amendment No. 574 to Assembly Bill No. 248 requires the Commissioner of Insurance to approve a merger or other acquisition if the Commissioner fails to make certain findings concerning such a transaction. The amendment makes changes to the standard for assessing the claims management practices of an applicant for such a transaction. The amendment also allows the Commissioner to deny a license or issue a cease-and-desist order if an acquisition is not in the interest of the members of the public who buy insurance.

SENATOR TOWNSEND:

Thank you, Mr. President. I would like to underscore the statements made by the Chair that I did have my questions answered. I appreciate her giving me the time to do so.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 364.

Bill read second time and ordered to third reading.

Assembly Bill No. 459.

Bill read second time and ordered to third reading.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 199, 223, 342, 344; Senate Concurrent Resolution No. 2; Assembly Bills Nos. 59, 120, 237, 462.

REMARKS FROM THE FLOOR

Senator Hardy requested that the following remarks be entered in the Journal.

SENATOR HARDY:

It is with sadness this morning that I ask the body to join me in mourning the passing of Jack Kemp, national political figure, former vice-presidential candidate in 1996 and retired professional football player.

All of us can point to individuals in our life who have helped to shape our political beliefs and who helped to socialize who we are as public servants and individuals. For me, Jack Kemp was one of those people.

I remember when he was a professional football player, first with the Buffalo Bills, then as a San Diego Charger. I was a big football fan and was interested in him as he entered his political career. He often described himself as a bleeding-heart conservative. I think that was a great definition of Congressman and former Secretary Jack Kemp.

He was one of the first national figures I had the privilege of knowing while I was involved in the Young Republicans. He always had a special place in his heart for the young people coming up in politics. He encouraged us to become involved. He was involved in a number of events we had as Nevada Young Republicans. On one occasion, he made a special trip here to be part of that.

I did not want to let this day pass without marking the remarkable life of this man who had a great deal of influence in my life. He was a Reagan Republican whose principles we, as a Republican Party, really need to gravitate back towards.

Mr. President, I respectfully request that when we adjourn today, and that we do so in the memory of Congressman Jack Kemp.

SENATOR RAGGIO:

For many years, Jack Kemp was a friend. I worked with him on a number of occasions, particularly, through the American Legislative Exchange Council. He considered himself a compassionate conservative. His career spanned not only his athletic years as quarterback for the Buffalo Bills, but then he went into politics where he served in Congress for many years. Some of us attended the Republican Convention in San Diego when he was selected as the running mate for Bob Dole. Over the years, he came to Nevada on many occasions.

I also request that we place partisanship aside and adjourn in the memory of Jack Kemp.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Care, the privilege of the floor of the Senate Chamber for this day was extended to Elliot Anderson.

On request of Senator Mathews, the privilege of the floor of the Senate Chamber for this day was extended to the following students and teachers from the Agnes Risley Elementary School: Carlos Aguilar, Maria Jose Arana Centeno, Carlos Arreola Lopez, Armando Ayala, Oscar Barajas, Vaness Cisneros Martinez, Jesus Guadalu Contreras, Juana Dominguez Rubio, Aizik Espinosa, Hilda Espinoza, Michael Gonzales, Alonso Gonzalez, Ivan Hernandez, Hernan Hidalgo, Rosaiset Jaramillo, Diana Lopez Jimenez, Jackeline Magana-Perez, Leslie Medina Gil, William Najera, Alberto Nunez, Vanessa Nunez Reyes, Nancy Santos, Darin Sentillas, Daniel Silva-Ayala, Precious Taylan, Jesus Adame, Mireya Barrientos, Miguel Bedolla, Jose Carrillo-Caballero, Aliyah Clark, Christian Dale De Vera, Justin Gomez-Marquez, Alejandro Gonzalez, Jose Medina, Liz Mendez, Rene Navarro, Ismael Palma, Eymi Quintino, Lezete Rios, Frank Rios Ramirez, Nancy Rodriguez Aguirre, Cesar Gabriel Rodriguez-Macias, Vanessa

Saldana Perez, Maria Elena Serrano, Nicholas Silva, Elijah Stein Gardner, Shelby Tremblay, Mahria Wells, Daisy Zurita, Jonathan Bader, Karen Bautista, Douglas Calderon, Sergio Campos, Josep Carbajal Infante, Juan Castillo, Billy Joe De Vera, Giovanni Delagarza, Stephanie Espino-Vega, Jessica Garcia, Karina Garcia, Rene Mayorga-Correa, Jorge Medina, Susan Moron, Jose Munguia Ramirez, Jose Partida, Diana Pina Cerritos, Esmeralda Ramirez Cerda, Damien Rios, Lucero Rios, Ashlye Santos, Joshua Sazo, Adriana Vargas, Ubaldo Vazquez-Reyes, Rosa Villegas Ruvalcaba; teachers: Patty Harders, Anne Voss and Amanda Ferris.

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to Sam Palazzolo and the Reno High School ROTC Color Guard: Destini Hine, Brenda Martinez, Mariah Flint, Iain Dover, Ryan Menicucci, Lauren Perdue, Garrett Sanford, Israel Arauz-Rosiles, Sean Bristow, Karyma Ariz, Vanessa Staats, Evan Tolley and Billy Iorg.

Senator Horsford moved that the Senate adjourn until Tuesday, May 5, 2009, at 11 a.m. and that it do so in memory of former Congressman Jack Kemp as requested by Senators Hardy and Raggio.

Motion carried.

Senate adjourned at 11:44 a.m.

Approved:

BRIAN K. KROLICKI
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate