

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
June 2, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 3:50 p.m. on Thursday, June 2, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Senator Maurice E. Washington, Washoe County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Leslie K. Hamner, Committee Counsel
Kevin Powers, Committee Counsel
Donna Winter, Committee Secretary
Scott Young, Committee Policy Analyst
Jeanine M. Wittenberg, Committee Secretary

OTHERS PRESENT:

Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of
Business and Industry

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Van Mouradian, Chief Insurance Examiner, Division of Insurance, Department of
Business and Industry

CHAIR TOWNSEND:

The purpose of this meeting is Assembly Bill (A.B.) 338. As a result of activity on the Senate floor today, there is a new section being added to this bill. We adopted a technical amendment today, and on the heels of that came an amendment by Senator Washington to add a new section that is apparently the essence of Senate Bill (S.B.) 240, which this Committee passed earlier this Legislative Session. That bill did not make it through the Assembly. Therefore, I wanted the Committee to meet to understand the impact of what has occurred. You have before you an amendment to A.B. 338 ([Exhibit C](#)).

ASSEMBLY BILL 338 (3rd Reprint): Makes various changes relating to insurance. (BDR 57-232)

SENATE BILL 240 (1st Reprint): Enacts provisions relating to health benefit plans that have high deductibles and are in compliance with certain federal requirements for establishing health savings accounts. (BDR 57-47)

SENATOR LEE:

Is [Exhibit C](#) the latest amendment to come from the Legislative Counsel Bureau (LCB)?

CHAIR TOWNSEND:

No. I brought this from today's earlier Senate floor session.

KEVIN POWERS (Committee Counsel):

"I believe that Senator Washington is working with one of the attorneys in the Legal Division to craft a new amendment with different language that I believe the insurance commissioner would be comfortable with."

CHAIR TOWNSEND:

I want to work with the insurance commissioner on her concerns regarding policy issues. This has to do with health savings accounts (HSAs).

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ALICE A. MOLASKY-ARMAN (Commissioner, Division of Insurance, Department of Business and Industry):

[Exhibit C](#) deals with HSAs as they apply to high-deductible plans. One of our major concerns with [Exhibit C](#) is we believe it could possibly jeopardize our standing for certification under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). We discussed this issue with Senator Washington after today's Senate floor session. I have with me Mr. Mouradian, who is our Chief Insurance Examiner, Division of Insurance (DOI), Department of Business and Industry. He can express the specific concerns we have on the amendment.

CHAIR TOWNSEND:

Mr. Mouradian has distributed a list of insurance carriers ([Exhibit D](#)) that are marketing DOI-approved high-deductible health plans that are HIPAA-compliant. The issue contained in this amendment and [S.B. 240](#) is that there are companies that currently provide these types of plans under DOI authority.

MS. MOLASKY-ARMAN:

That is correct. They are enabled under federal law.

CHAIR TOWNSEND:

Even if it is written correctly, what would be the purpose for doing this, since they are already approved based on federal law?

MS. MOLASKY-ARMAN:

I do not know that it will make any difference other than we believe with the way it is currently written, the language may be suspect.

VAN MOURADIAN (Chief Insurance Examiner, Division of Insurance, Department of Business and Industry):

In 1997, the insurance commissioner at that time put a lot of effort into making this State federally compliant with the HIPAA laws so we would not have federal oversight.

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):

It is not our intent to cause hardship for the DOI and Ms. Molasky-Arman. We had a chance to meet with Ms. Molasky-Arman and Mr. Mouradian to address their concerns regarding HSAs that came out of [S.B. 240](#). We did not want to create a problem for them with the federal government and their HIPAA

programs. My understanding is that if S.B. 240 is passed in its current version, it may jeopardize those two programs. The oversight is not done by the insurance commissioner, but by the Internal Revenue Service (IRS). What we have done is asked the LCB to address the issues of the DOI. The language in the new amendment will allow us to offer high-deductible programs based on certain segments with the oversight given to the DOI.

CHAIR TOWNSEND:

The DOI expressed the concern that this might put them out of compliance with federal law. We already have ten currently licensed insurance carriers with DOI-approved high-deductible health plans that are HIPAA-compliant. I am not sure what we are trying to accomplish.

SENATOR WASHINGTON:

We are trying to put a program in statute. There is nothing in statute that deals with high-deductible programs, especially HSAs. This is attempting to take what is already on a federal level and put it into State statute. My intent was to ensure there is something in statute that says HSA programs are available with high deductibles.

SENATOR CARLTON:

Why do we need something in statute if these programs are already available federally and we have ten companies licensed?

SENATOR WASHINGTON:

Other states have already taken what is federally permissive and put it into statute. These programs are available to individuals, small groups and small businesses with high-deductible HSAs, but we have nothing on this in our statutes. We often take what is federally permissible and put it into state statute.

MR. MOURADIAN:

It has come to our attention today that some of the states that codify these provisions do so for tax purposes because they have a state income tax. Under the IRS code, HSAs have tax benefits.

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CHAIR TOWNSEND:

As I recall, the original bill mandated that everyone licensed in the State of Nevada to offer health care also had to offer HSAs. The Committee changed the language to permissive.

SENATOR WASHINGTON:

That is correct.

CHAIR TOWNSEND:

In terms of the DOI's ability to regulate HSAs, is the insurance commissioner or the DOI telling us that there is something they cannot do or something would be harmed if they do not get this language?

Is the language in ([Exhibit E](#)), section 88.5, not repeated through the chapter?

SENATOR WASHINGTON:

It is, and it takes out the individual groups based on the chapter of the *Nevada Revised Statutes* (NRS) that applies to them.

MR. MOURADIAN:

[Exhibit E](#) is worded so it can be offered to HIPAA-eligible persons. What we intended, if you wanted to talk about HSAs, is to put the language in the individual chapter that applies. Do not put the language into the HIPAA side so that we may be subject to criticism when federal oversight is performed. The way this is worded in this chapter, "offered to eligible persons," makes it offered to the HIPAA-eligible persons, which now affects what the federal government approves for our state alternative mechanism every three years.

CHAIR TOWNSEND:

Are you saying you would not want it to say "26 U.S.C." — that is, Title 26 of the United States Code — as on the bottom of the first page of [Exhibit E](#)?

MR. MOURADIAN:

No. Remove the language "to eligible persons."

CHAIR TOWNSEND:

Do you want us to use the language "may offer a policy"?

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LESLIE K. HAMNER (Principal Deputy Legislative Counsel):
I believe that was the intent and that was a drafting error.

CHAIR TOWNSEND:

With that clarification, the rest of these do not have anything to do with the U.S. Code. Therefore, since they are under NRS chapters 689B, 689C, 695A, 695B, 695C and 695G, which include group, individual, fraternal and others, then it would be repetitive. Mr. Mouradian, would it be removing "to eligible persons" from all of those or only from the HIPAA component?

MR. MOURADIAN:

Remove "to eligible persons" from all. To be consistent, I recommend "offer a policy that has a high deductible" throughout instead of stating "policy" in one place and "health benefit plan" elsewhere, because "health benefit plan" is defined in our statutes.

CHAIR TOWNSEND:

Do you want to remove "to eligible persons" and use "offer a policy of health insurance" in each section, or would you have to draft it in a manner where you made reference to each chapter?

MR. MOURADIAN:

I would say "offer a policy of health insurance that has a high deductible that is in compliance with 26 U.S.C. § 223 for the purposes of establishing a health savings account." That way, with each of the chapters, either group or individual, as soon as you say "offer" in that chapter, that would be the type being offered.

SENATOR CARLTON:

What is a fraternal organization?

MR. MOURADIAN:

Fraternal organizations are defined under chapter 695A of the NRS. An example would be the Elks Club or the Lions Club.

CHAIR TOWNSEND:

Ms. Hamner, are you comfortable understanding what Senator Washington requires regarding the concerns of the DOI?

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MS. HAMNER:
Yes.

SENATOR LEE:

As I read the amendment, I see that HSAs are in Nevada and are working for the right people. Who would actually come to the insurance commissioner and ask for something new? Can a fraternal organization already buy one of those plans from one of the companies listed in [Exhibit D](#)?

MR. MOURADIAN:

No. The fraternal entity that is licensed under chapter 695A of the NRS is a licensed carrier. They could file for that product and have it approved under current statute.

SENATOR CARLTON:

Is this necessary for these accounts to go forward in this State, or are there enough options currently for people to be able to access these accounts?

MS. MOLASKY-ARMAN:

This does not impact the law, but it does establish a policy statement for the State of Nevada that reaffirms federal law.

CHAIR TOWNSEND:

The Committee is now informed and we will not take action on this bill in this meeting.

We will now discuss [A.B. 87](#). Mr. Young, did we already act on this?

[ASSEMBLY BILL 87 \(2nd Reprint\)](#): Establishes statutory minimum wage for employees in this State. (BDR 53-1110)

SCOTT YOUNG (Committee Policy Analyst):

I believe that earlier today the Assembly voted not to concur with our amendment. I do not show in my notes that the Committee has taken action on this so far.

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SENATOR HARDY MOVED TO NOT RECEDE FROM AMENDMENT
NO. 924 TO A.B. 87.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR TOWNSEND:

The meeting of the Senate Committee on Commerce and Labor is now
adjourned at 4:18 p.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____