BRYON H. SHORT
STATE REPRESENTATIVE
7th District

COMMITTEES
Economic Development, Banking, Insurance & Commerce, Chair
Revenue & Finance, Vice Chair
Housing & Community Affairs
Veterans Affairs

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

House Economic Development, Banking, Insurance & Commerce Committee Meeting Minutes

6.6.18

Chair B. Short called the meeting to order at 2:55 p.m. Members present included Vice Chair Bennett and Reps. Paradee, Q. Johnson, Keeley, Baumbach, Matthews, Ramone, Gray, Spiegelman, Yearick, and Hensley. Speaker Schwartzkopf and Representative Smyk were also present. For a list of guests present, please see the attendance list below.

Chair B. Short introduced **HB 434, AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PROFESSIONAL ATHLETES.** He explained that the bill regulates a practice recently developed which provides support to highly talented athletes at the beginning of their career during a time when their compensation does not meet their daily need to take care of themselves. This is applicable to athletes such as Minor League Baseball players, who have a promising future in the sport but currently make little income from the sport. Chair B. Short invited Michael Schwimer and Paul DePodesta to speak.

Mr. Schwimer, representing Big League Advance, explained his experience as a Minor League Baseball player. Players make $5,000 a year and some early round picks receive a signing bonus of $5,000, and players must pay for their own housing and other costs of living. Big League Advance offers players capitol, about $300,000 to $400,000, up front in exchange for a future share in Major League earnings to help them support themselves. Mr. Schwimer explained that a small percentage of about 7,000 Minor League players will play in a Major League game, so players are taking a huge career risk. The money they provide helps players make it to the Major League and if they don't provides them assistance in starting their second life. There are other companies investing in professional athletes now and not all have good practices, so this bill will ensure that players are treated fairly by having representation, the information provided to them in their native language, they understand how much they will owe if they make it to the majors, and understand they will not owe anything if they don't make it to the majors.

Mr. DePodesta explained his experience with Major and Minor League Baseball of over twenty years and working closely with over 2,000 players who were taking career risks to chase their dreams. He said it was satisfying when players made it to the majors but more satisfying when players who didn't make it reached out and told him how formative the experience was and helped them develop as a person, not just a player. He supported this legislation as these deals with players are beginning to happen and he wants to ensure the opportunities presented to them are no lose situations for players.

Chair B. Short stated the bill has been reviewed by Christian Wright from the Delaware Department of Justice, and stakeholders worked to develop an amendment which will tighten the language of the bill and clarify that the term "percentage of earnings" only means earnings related to their work as a professional athlete and other job salaries are not included. The amendment also clarifies that the bill will only apply to contracts written after the bill has been signed into law.

Representative Baumbach stated he would like the removal of the word "unconscionable" to be included in the amendment as well. He also asked why tennis was specifically inapplicable, and felt the cap at 30% is excessively high.

Mr. Schwimer stated 20% to 30% is used by other companies, and while they have no problem lowering the cap they did not want the bill to impact the entire industry and receive pushback when the intention is to help players. He explained that professional tennis deals are based on independent contractors as opposed to a unified group and they could not figure out how to include them in the bill.

Representative Keeley asked if it is mandated that the athletes must have an attorney.

Mr. Schwimer stated they have a lawyer, financial advisor, or other representative review the contract. The goal of the bill is to try to avoid scenarios where a company takes advantage of a player by not explaining the contract to them or providing a copy in their native language.

Representative Keeley asked if the 30% cap included money made from endorsements as well.

Mr. Schwimer stated it is specific to the sport and company if it is included or not, their company does not include money from endorsements for baseball but other companies do.

Chair B. Short stated that without this legislation players are being taken advantage of, and responded to concerns of the 30% cap being too high by explaining there currently is no cap and a player can be giving up 70% of their earnings.

Representative Yearick asked how many states have similar legislation.

Mr. Schwimer stated Delaware would be the first state to pass this policy.

Representative Yearick asked how deals are worked out with players from other states as the law will differ.

Mr. Schwimer stated that Big League Advance is a Delaware company and abides by Delaware laws.

Representative Hensley asked how many companies with similar models there are.

Mr. Schwimer stated they know of about five companies with similar models and practices, but there are many other companies with exploitative practices.

Chair B. Short opened up the floor for public comment.

Jared Ruxer, a professional baseball player, emphasized the sense of urgency for this legislation, as players are currently signing deals and similar contracts are becoming more and more common.

Chair B. Short requested a motion. A motion was made by Rep. Baumbach and seconded by Rep. Spiegelman to release HB 434 from committee; motion carried. Yes=10 (B. Short, Bennett, Paradee, Q.

Johnson, Baumbach, Matthews, Gray, Spiegelman, Yearick, Hensley); No=0; Not Voting=1 (Keeley); Absent=1 (Ramone). The bill was reported out of committee with a F=0, M=10, U=0 vote.

Chair B. Short introduced **HB 432, AN ACT TO AMEND THE DELAWARE CODE RELATING TO ADMINISTRATIVE MATTERS INVOLVING THE TRANSFER OF STATE ECONOMIC DEVELOPMENT FUNCTIONS TO THE DEPARTMENT OF STATE.** He explained that the bill is a follow up from last year regarding organizational changes to the Delaware Economic Development Office.

Lawrence Lewis, representing the Department of State and Division of Small Business, stated the bill would make updates that focus the division's efforts on their new mission of small business and the creation of public and private partnerships. It enacts the appropriate name changes and memberships of relevant agencies, along with placing term limits on members of the Development of Finance council and eliminating the requirement that members be present to participate in meetings.

Chair B. Short requested a motion. A motion was made by Rep. Yearick and seconded by Rep. Bennett to release HB 432 from committee; motion carried. Yes=9 (B. Short, Bennett, Paradee, Q. Johnson, Matthews, Gray, Spiegelman, Yearick, Hensley); No=0; Absent=3 (Baumbach, Keeley, Ramone). The bill was reported out of committee with a F=0, M=11, U=0 vote.

Chair B. Short introduced **SS 1 FOR SB 159, AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE.** Speaker Schwartzkopf, the sponsor of the bill, stated the bill deals with vehicle manufacturers and auto dealers to prevent unnecessary costs from being passed down to consumers and to protect dealers from unfair and unsafe practices.

Chair B. Short opened up the floor for public comment.

Joseph Farley, representing General Motors, stated their opposition to the bill. (See attached).

James Ohly, representing the Alliance of Automobile Manufacturers, stated their opposition to the bill. (See attached).

Representative Keeley asked how companies receive vehicle and warranty information from customers if they are not part of the company the vehicle was bought from.

Mr. Ohly stated he did not know.

Representative Keeley asked if companies were selling their warranties under false pretenses.

Mr. Ohly stated that these companies may have legitimate and good warranty products, but they are not necessarily the warranty product endorsed by the manufacturer. This bill would prohibit a manufacturer from directing their franchise dealer to disclose when selling a non-manufacturer sponsored product that it is not the product the manufacturer recommends.

Representative Yearick asked if this bill is similar to legislation in surrounding states.

Mr. Ohly stated this piece of legislation is modeled after bills in other states, although the compromises made by stakeholders have resulted in a few provisions differing from other state laws.

John Whitby, representing Kent County Motors, answered Representative Keeley's previous question by stating companies that sell warranties often get customer data sold to them by the Department of Motor Vehicles. He also stated that every aspect of the bill is included in laws in many other states and there is nothing new in this bill.

Fred Hertrich, representing Hertrich Family of Automobile Dealerships, stated they have worked for fifteen months with counsel across the country, spent a year tracking and reading similar approved legislation in all fifty states, and talking to the fifty-three car dealerships in Delaware to formulate this updated bill. He stated nothing in the bill is new and all provisions can be found in another states bill. The purpose is to create a more even playing field for dealerships and manufacturers and will be for the betterment of consumers in Delaware. All Delaware dealerships are privately owned and provide jobs and wages for Delawareans.

Representative Yearick asked if local dealerships would be responsible for the cost of the updates if a General Motors or Ford decided to rebrand with a new logo if.

Mr. Hertrich stated that no matter how frequent, expensive, or unnecessary the rebrand or update is the local dealership is responsible for the cost and must purchase the products from the brand's vendor.

Representative Keeley asked what happens with repurchasing when a dealership decides not to do business anymore.

Mr. Hertrich stated that if a dealership terminates their business the manufacturer has certain things they have to repurchase from them, such as brand new inventory with less than a certain number or miles or new parts still in the box.

Chair B. Short requested a motion. A motion was made by Rep. Yearick and seconded by Rep. Gray to release SS 1 for SB 159 from committee; motion carried. Yes=10 (B. Short, Bennett, Paradee, Q. Johnson, Matthews, Ramone, Gray, Spiegelman, Yearick, Hensley); No=0; Not Voting=1 (Keeley); Absent=1 (Baumbach). The bill was reported out of committee with a F=0, M=12, U=0 vote.

Representative Paradee introduced **HB 413, AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO THE DISCLOSURE OF INFORMATION RELATED TO AUTOMOBILE INSURANCE.** He explained that the purpose of the bill is to expedite legal claims that arise due to automobile accidents by requiring automobile insurance companies to disclose the amount of coverage prior to a lawsuit being filed.

Chair B. Short opened up the floor for public comment.

Debra Lawhead, Insurance Coverage Administrator for the State of Delaware, stated she believed the bill needs to be expanded as it currently is too one-sided for the plaintiff and does not make sense for the claims adjustor handling the case. Frequently a claims adjustor working a case will not have medical bills or other important documents given to them till the statute of limitations has almost run out, and if they were given this information sooner in a demand package they would be able to settle claims much faster. She stated they need time to get information and figure out what the case is worth and what the liability

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on each side is. She also stated that actual statements given at the time of the investigation should not be provided, and recommended that language should be changed to providing the police report.

Representative Bennett asked if there was an amendment to the bill and if it was friendly.

Stephen Morrow, President of the Delaware Trial Lawyers Association, stated that HA 1 is not a friendly amendment. He talked with the insurance industry about the original draft of the proposed bill and took their comments and redrafted the bill, making it the simplest version of the bill that has been done in the states that have a version of it. The amendment changes the complexity of the bill.

Chair B. Short asked how the amendment substantially changes the bill.

Mr. Morrow stated the bill would simply require the requesting party to provide the police report to the insurance company if it is available, and the amendment will require the requesting party provide other documentation such as medical records, medical bills, and wage loss.

Chair B. Short asked if the bill as amended would still require the insurer provide the information they originally requested.

Mr. Morrow stated that the plaintiff will receive the requested information after they provide the requested information to the insurer.

Chair B. Short asked if a plaintiff is currently required to provide any information to the insurer.

Mr. Morrow stated they are required to answer certain questions and provide any relevant witness letters, police reports, and medical provider information.

Chair B. Short stated that it seems the amendment is creating a balance of information being provided both ways.

Mr. Morrow stated the amendment also asks them to provide the address of their policy holder, and the insurance companies had an issue in the original draft when the plaintiff asked for that information.

Chair B. Short stated he did not understand why providing the policy holders address would be necessary, but it seems as though the amendment is insurers asking for information to be shared with them as well so it is not a one-way requirement.

Mr. Morrow stated the only requested information is the policy limit and they are asking plaintiffs to meet a certain criteria before sharing that information. The purpose of the bill is a free-flow of information to coordinate benefits.

Representative Q. Johnson asked if having the information earlier changes the value of the clients claim.

Mr. Morrow stated the value of the claim doesn’t change due to knowing the policy limit.

Representative Q. Johnson stated there may be concern from the consumer that their representation may not be as good once their attorney is aware of the policy limit if it is small.

Mr. Morrow understood the potential concern, but felt it should not be an issue as the limit on bodily injury claims is now $25,000, changes have been made to under-insured policy to provide more coverage, and he believes attorneys will always represent their clients to the best of their abilities regardless of the policy limit.

With the permission of the Chair, Representative Smyk stated the previous witness, Mrs. Lawhead, was an expert witness as she is responsible for a fleet of 10,000 vehicles and has held this responsibility for over twenty-six years.

Mr. Morrow responded to Mrs. Lawhead's earlier comment by stating there is not request of statements, simply for insurance policy information. He requested the bill be released with the condition that the sponsor will continue to work with insurers as they move forward with the bill.

Laird Stabler, representing State Farm Insurance Company, stated the company has serious concerns with the bill. An insurance policy is a contract between the policy holder and the insurance company and this bill could cause a breach of their contract by making information from that contract public to a third party without any safeguards. He stated the amendment will provide safeguards by requiring the requesting party provide information from the accident before they provide the policy limit. They're concerned this is a way of circumventing the court system, as information has historically been shared between the parties through court where they have safeguards. He stated the amendment is based on a Virginia law that has been in place for ten years, and that if contractual information is going to be opened up it must be done narrowly.

Taylor Cosby, representing the American Insurance Association and the USAA Insurance Company, explained that the Virginia law came about the same way this original bill did. Plaintiff lawyers wanted to have information on the insurance policy and insurers object because that would be exposing contractual information. The Virginia bill became a compromise, which the amendment is almost an exact copy of, and has been effective for the past ten years.

Rebecca Kidner, representing the Property and Casualty Insurance Association of America (PCI), asked committee members if they support the bill to support the amended version, as it would create a more balanced system of sharing information.

Lawrence Christianson, representing Nationwide Insurance, stated they support the amendment, as information exchange should be done through the court system but the amendment will create a more balanced sharing of information which could result in more settlements at a faster rate.

Eric Goldberg, representing American Insurance Association, asked the committee not to release the bill as is.

Chris DePietro, representing All State Insurance, asked the committee not to release the bill and to continue discussions with trial lawyers and insurers to improve the legislation.

The committee agreed to defer action on HB 413.

Chair B. Short adjourned the meeting at 4:15 p.m.

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Respectfully submitted by:

Jennifer Proebstle

Attendance List:

1. Michael Schwimer, Big League Advance
2. Paul DePodesta
3. Jared Ruxer
4. Lawrence Lewis, Department of State and Division of Small Business
5. Joseph Farley, General Motors
6. James Ohly, Alliance of Automobile Manufacturers
7. John Whitby, Kent County Motors
8. Fred Hertrich, Hertrich Family of Automobile Dealerships
9. Debra Lawhead, Insurance Coverage Administrator for the State of Delaware
10. Stephen Morrow, Delaware Trial Lawyers Association
11. Laird Stabler, State Farm Insurance Company
12. Taylor Cosby, American Insurance Association and USAA Insurance Company
13. Rebecca Kidner, Property and Casualty Insurance Association of America
14. Lawrence Christianson, Nationwide Insurance
15. Eric Goldberg, American Insurance Association
16. Chris DePietro, All State Insurance