

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1039

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1039

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1039

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1/06/05

Tape Number	Side A	Side B	Meter #
1	x		30.7-to end
1		x	0-5.6

Committee Clerk Signature



Minutes: 14 members present 0 absent

Chairman Haas: We will open the hearing on HB 1039.

Tim Dawson: Legislative Council-N- I staff the interim Public Service Committee, we have done a study on the bonds. The study came from auctioneers, who were unpleased that they pay for bonds each year and no auctioneer in recent history has made a claim on a bond and the only bond companies are out of State. They looked at other entities that had their own bonding funds instances when they had problems, like electricians and real estate agents. Auctioneers have to apply for a license, pay a fee for a license and renew license under subsection 1, second section says they have to get a bond for 5000 dollars or 10,000 dollars for an auction clerk. The size of the bond must be clearly stated in all contracts with sellers.

Rep. Kasper: On page two line one and two are you referred to in the bill public liability insurance, what I want to know is in practical matter I think what you are trying to get here is if an auctioneer conducts an caution and someone steals the money and doesn't pay the person, or

misrepresent the value of something, or they may sell a piece for a thousand and it is worth 50,000 dollars or something along those lines. What does this public liability insurance policy actually do? How does it work to cover the person who is selling the stuff through the auctioneer?

Tim: Insurance generally doesn't cover a legal act, but public liability insurance I would say would cover general negligence acts, where errors and omissions would be more of the professional errors. The idea of both of these in there is to cover all areas of negligence and problems, being that the insurance is a contract between the two people, I am not exactly sure as to what the policy would have in it, because that is dictated by each company, but the idea is to cover all forms of negligence.

Rep Kasper: Including the example I gave you.

Tim: Including the example you gave.

Rep Klemin: I have some experience in litigation in errors and omissions policy and there are in most insurance policies a lot of it, a lot of exceptions in errors and omissions policies that professional conduct would be excluded, illegal conduct would be excluded and there is quite a long list of exceptions. Do we have the same kind of exceptions in bonds now. Bonds would seem to me that it would cover those kind of things that errors and omissions policies don't cover.

Tim: Your correct. There is a slight gap between what a bond would cover and what the insurance would cover. The bond is a completely different animal, that does provide an additional protection, the reason it was here to offer certain options to the auctioneers, because errors and omissions was much more expensive then the bonds.

Rep Sitte: What other profession has to have a bond. Most occupations and professions, all officials under the state bonding fund, all public employees, private people, lot of cities require contractors to be bonded to do any work on sidewalks or whatever the case maybe.

About anyone who has a licenses to do something is probably bonded or required to be bonded.

Rep. Amerman: A lot of Realtors are auctioneers, being Realtors they already have errors and omissions, so they are not really going to have to buy any thing else. Is that correct.

Tim: I think the committee has conflicting testimony on whether the errors and omissions policy for a real estate agent would cover that person as auctioneer, being that there is conflicting testimony I would go with the testimony from people here today, that are more expert in that area, but there is an issue there that needs to be addressed.

Rep Amerman: If they were not already covered, if the individual that making a living just being an auctioneer, being this is much more expensive then just buying a bond, it would probably hurt them and hurt the ones that are already auctioneers.

Tim: To understand this bill, it started off them wanting their own funds, never getting enough of their own funds, like electricians, paying 40 or 50 dollars and they have their own funds and it covers situations in which bonds would be necessary and because that never really jelled, they went onto taking the other provisions that applied to these other groups and put them into bill draft to keep idea alive, I think. There are some open issues with the bill draft.

Rep Kasper: Is this a true statement, if this bill would be passed as it is, the public would have less protection from a fraudulent activity of an auctioneer, because the bond is gone?

Tim: Legally yes, but factually maybe not, no auctioneer has claimed on their bonds in the last four years for sure and probably 15, so factually speaking everyone is probably protected, but

legally speaking, bonds do provide different protections over insurance. I don't think to many auctioneers would use this, I think none would use it. I don't think an insurance policy for a real estate agent would cover you as an auctioneer.

Rep Kasper: Let me give you an example what actually occurred to me. I went to an auction about 8 years ago, I bought some gold coins, I think I paid about 1700 dollars and they were represented gold coins from this estate, I took them to an appraiser and they were forgeries, counterfeit. Went back to the auctioneer and threatened legal action, in this case they gave me my money back, but if he hadn't, assuming that would not have been error and omissions because it was a direct fraud he knew. I could tell by talking to him he knew these were counterfeit. The bond having been in place, I would have been able to go against the bond, I believe, but the error and omissions may not have covered what I needed to have covered.

Tim: Correct, in insurance you have to sue the person and identify that person, the bond is a contract that protects you as the consumer, so you can go directly on the bond.

Rep. Potter: If auctioneers would most likely not use this, can you tell me why you would want to? I am confused, why we are even doing this.

Tim: I am just pointing out that there is some unanswered issues, that probably should be addressed, whether it passes or not is your decision or whether you change it your you tweak or what not, these are valid issue and they should be addressed.

Illona A. Jeffcoat-Sacco/Public Service Commission-Against-See attached testimony

We received an e-mail from the Auctioneers Association, they are against the bill and then would probably not want to use it and it would not provide appropriate protection to them.

Rep Amerman: Why isn't their a bonding agent, why do they have to go out of state?

Illona: I really don't know the answer to that. I am not an insurance expert and not an auction expert, but we do have our director of our division hear, she may have an answer. I didn't attend those early sessions of interim committee, frankly until the bill showed up, so I didn't hear that discussion directly.

Rep. Froseth: On section 2, the bond must provide annual coverage and not less than 5000 dollars auctioneer and 10,000 for auctioneer clerk. That doesn't seem like a very big amount. Today's auctions, does this say that an auctioneer may sign for a sale that will probably run into the half-a-million dollar range with a 10,000 bond. Could you explain that to me.

Illona: Your exactly correct. I think the trade off, the balancing, is between the cost of the bond, if you made that 100,000 dollar bond, if it would cover that huge auction. The cost would probably be prohibited, but I am going to ask our licncesing director, Sue Richter, if she has a better answer, if it is O.K. with the chairman.

Sue Richter-Lisensing Director- Public Service Commision-N-The bond is minimal, I agree with that. We have a discussion on a regular basis in our office, especially when we get calls from people that have attended sales, where a lot of money is paneled, that 5000 and 10,000 dollars is for your entire years worth of work and I think if you asked your auctioneer or auction clerk for their answer, what they would probably say to you is that the clerk is required to maintain an escrow account and we have been very fortunate in this, the incidents that people have not been paid has been very minimal. Trust account is what they have been able to accomplish and what they have with the amount of money they have on file and what they are required to have.

Rep. Klemin: What the escrow account is and how it is established? What kind of moneys are in their.

Sue: Once the sale has been completed, then all the proceeds from that sale are required to go into that account and that account is supposed to be kept in a manner so if you review the account you can see auction sale number 1, this is the money that went in, number 2, this is the money that went in and then the money is suppose to come out in the same manner. You paid the person you had the sale for, whatever money was owed backed to them and then any money the auctioneer or auction clerk had coming back to them they would take that money and use a second account to pay all of the expenses and advertising costs whatever it is that is associated with that sale.

Rep. Klemin: So actually that passed through two types of accounts and its not an account where funds are retained for any appreciable length of time, so one could not go to that account at some point later, when some irregularity was discovered and didn't have any funds their.

Sue: That is correct. The clerks are required to make a reimbursement within 30 days pending sale.

Todd D. Kranda-Attorney-Kelsch Law Firm-CNA Surety-Against-Lobbyist: Mr. Peterson was unable to attend, I am hear in his place, representing Mr. Peterson. Testimony attached.

Rep. Kasper: Do you have any idea what a 5000 dollar bond costs in this particular case and a 10,000 dollar bond on an annual basis?

Todd: I have that information from my interim committee, but I grabbed the wrong file, my recollection is the cost ranges between companies low end of about 50 dollars and my company, I think is at 100 dollars looking at a review in reduction, because of the competition on that bond.

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House Government and Veterans Affairs Committee

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Annual cost of 50 to 100 dollars.

Rep. Sitte: What would the cost of a 20,000 dollar bond be, just we have some kind of idea, in considering raising it, could you research this and get back to us.

Todd: I would be happy to research that and get back to you.

Rep. Haas: Thank you very much. Any more questions?

Rep. Galvin: I move to Do Not Pass on HB 1039

Rep. Meier: I second.

VOTE: YES 14 NO 0 ABSENT 0 Rep. Kasper will carry the bill.

Date: 1/6/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1039

House House Government and Veterans Affairs

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO NOT PASS

Motion Made By GALVIN

Seconded By MEIER

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes) 14 No ∅

Absent ∅

Floor Assignment REP. KASPER

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 6, 2005 1:14 p.m.

Module No: HR-03-0153
Carrier: Kasper
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1039: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1039 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1039

Richter, Susan K.

Bill

From: troyorr@daktel.com
To: Wednesday, January 05, 2005 3:43 PM
Richter, Susan K.
Subject: NDAA Auction Bills

1039

Dear Susan Richter,

In regards to House Bill no. 1039 As president of the North Dakota Auctioneers Association I wanted to express our associatons position. We feel that the current bond requirements are sufficient and the additional option of liability insurance and errors and omision insurance would not be a viable option. This wordage may even confuse many auction companies and provide no additional benefits to the public nor licensees. In short would would oppose this legislation. I have also met with Cliff Orr & Norm Aldinger chairman of the NDAA legislation committe with a mutual agreement.

Troy Orr
President
North Dakota Auctioneers Association

H.B. 1039

Presented by: Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission

Before: Government & Veterans Affairs Committee
Honorable C.B. Haas, Chairman

Date: 6 January 2005

TESTIMONY

Chairman and committee members, my name is Illona Jeffcoat-Sacco. I am the Executive Secretary of the Public Service Commission. The Licensing Division administers the Commission's jurisdiction over auctioneers and auction clerks in North Dakota. The Commission asked me to appear here today to testify against House Bill 1039.

House Bill 1039 provides that an auctioneer or auction clerk could file, with the Commission, evidence of a public liability insurance policy and an errors and omissions insurance policy covering activities under Chapter 51-05.1, in lieu of a corporate surety bond.

The Commission has concerns about the insurance alternatives proposed by this bill. Current bonding requirements are imposed to protect consumers from financial loss resulting from the auctioneer's or auction clerk's nonperformance. If consumers are harmed because an auctioneer or auction clerk has failed to reimburse them for items sold at public auction, they can look to the Commission for reimbursement via the surety

bond. We are concerned that the insurance alternatives may not provide this type of financial protection.

First of all, it is unclear what is meant by the phrases "public liability policy" and "all activities contemplated by this chapter." Assuming a "public liability policy" is the same thing as a "general liability policy," it is our understanding that such policies are designed to cover the licensee in the event that his negligent actions cause injury or harm to another, like having something fall off his trailer onto someone's foot or leg to cause injury. If such an injury occurs the consumer could recover from the licensee's insurance policy. On the other hand, a surety bond is intended to cover the malfeasance of the auctioneer or auction clerk, like if he absconded with the funds from the auction. While liability insurance policies don't automatically provide protection for this type of financial loss, licensees might be able to add some form of fiduciary coverage to a liability policy to meet this need. The language requiring coverage for "all activities contemplated by this chapter" might be an attempt to require licensees to do just that. However, the coverage, availability and cost of such an endorsement is unknown, and the bill in its current form does not clearly require such an addition.

Similarly, it is our understanding that errors and omissions insurance policies also lack protection for the type of financial losses covered by the current bonding requirements. Again, licensees might be able to add some form of fiduciary coverage to an errors and omissions insurance policy, but if that is contemplated, the same concerns apply.

If licensees are able to find insurance companies that are willing to write the policies with sufficient fiduciary coverage, the insurance alternative may cover all activities contemplated under the chapter,

including financial loss due to nonperformance. But even if this one hurdle is removed, others still exist. The Commission does not have the staff or the expertise to review filed insurance policies to determine whether the policies will satisfy the law and adequately protect consumers. In addition, especially if fiduciary endorsements are contemplated, we question whether there would be any financial benefit to the licensee from filing these policies in lieu of a surety bond.

The purpose of a surety bond is to provide protection against financial loss and neither the liability policy nor the errors and omission policy would cover malfeasance. The Commission is fortunate that there have been very few instances in which we have looked to a licensee's surety bond for recovery. Recovery via the surety bond was used approximately ten years ago to pay claimants and the process worked as intended. The Commission is currently involved in a case seeking recovery against an auction clerk's surety bond to satisfy unpaid valid claims. Barring any unforeseen issues, it is expected that the recovery for valid claimants via the surety bond will again work well.

We believe the most direct and efficient route to providing protection for consumers' financial losses is via the surety bond.

This completes my testimony. I will be happy to answer any questions you may have.

AB 1234

11/1/04
A. Jeffcoat

Auctioneers are required to maintain a \$5,000 surety bond and auction clerks are required to maintain a \$10,000 surety bond. As of September 2, 2004, there were 384 licensed auctioneers, 195 licensed auction clerks, and 43 licensed bank clerks for a total of 579 licensees. Bonds are not required for federally insured financial institutions to clerk sales. The attached list identifies a number of companies that issue auctioneer and auction clerk surety bonds for North Dakota licensees; however, the two companies identified below issue the majority of bonds.

As of September 2, 2004, Western Surety Company has 228 auctioneer bonds and 124 auction clerk bonds issued for North Dakota state licensees. The premium is \$100 for a 1-year auctioneer bond and \$100 for a 1-year auction clerk bond. If the premium is prepaid, the cost is \$175 for a 2-year auctioneer or auction clerk bond and \$250 for a 3-year auctioneer or auction clerk bond. North Dakota has numerous local agents that are able to obtain bonds through Western Surety Company.

As of September 2, 2004, Merchants Bonding Company has 138 auctioneer bonds and 59 auction clerk bonds issued for North Dakota licensees. The premium is: \$49 for a 2-year auctioneer bond; \$69 for a 3-year auctioneer bond; \$59 for a 1-year auction clerk bond; \$89 for a 2-year auction clerk bond; and \$109 for a 3-year auction clerk bond. Merchants Bonding Company has a minimum \$49 charge for executing a bond; therefore, if an individual is looking for an auctioneer bond for only 1-year, the premium is the same as a 2-year bond. Although they are not a local agent, the T.S. Holt Company located in Greenville, South Carolina, writes bonds for Merchants Bonding Company.

1/6/04

Tape 51.7
Todd
Crandall
HB1039

CNA SURETY

P.O. Box 5077, Sioux Falls, SD 57117-5077

January 6, 2004

Chairman C. B. Haas and Committee Members
House Government & Veterans Affairs Committee
State Capitol Building
Bismarck, ND

William G. Peterson
Vice President, Public Affairs
Officer
Western Surety Company
Telephone: 605-977-7715
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Dear Chairman Haas and Committee Members:

Re: Auctioneer and Auctioneer Clerk Bonds and Insurance – House Bill No. 1039
Our File ND 7999

I regret that I am unable to be with you this morning to present this testimony in person, but appreciate the opportunity to present it in written form.

It is my understanding that you have before you a bill draft which would allow auctioneers and auctioneer clerks the option of providing insurance instead of a bond as a condition of their licensure in North Dakota. Our Company is concerned about this legislation and wishes to register our opposition to the proposal. We believe it is against good public policy to allow for an insurance policy to be substituted for a bond requirement.

Surety bonds and insurance are two separate and distinct products. Surety bonds are three-party agreements where the surety guarantees the faithful performance of the principal, in this case the auctioneer, to the obligee, in this case the State of North Dakota or its consumers. Insurance is a two-party agreement where the insurance company agrees to pay the insured, the auctioneer, directly for any losses incurred. Losses are not expected with surety bonds, and the surety only takes those risks which its underwriting experience indicates are safe. Premiums for surety bonds are largely a service charge for weeding out unqualified candidates and for issuing the bonds. Losses are expected in insurance, and insurance rates are adjusted to cover losses and expenses. Sureties are selective whereas insurers write more risks. Surety bonds provide consumer protection by weeding out the bad risks so consumers have a degree of certainty that they are operating with a reputable business. Insurers write most risks and assume they will have losses. Finally, surety bonds provide coverage if a dishonest act while insurance policies do not. Allowing an insurance policy to substitute for surety bonds could leave some consumers without any recovery if a dishonest act occurs.

Second, we don't believe that substituting an insurance policy for a surety bond is advantageous to auctioneers or auctioneer clerks either. We are unaware of an insurance policy that would

Chairman C. B. Haas and Committee Members

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cover auctioneers, such as an errors and omissions policy, being written by any company in the United States today. If this does become a brand new product, you may find a limited market available for it. The cost of this insurance policy could easily be higher than the cost of the bond, as is typical with errors and omissions policies, thus increasing costs to auctioneers and auctioneer clerks while decreasing protection to North Dakota's consumers.

We are aware of your concerns that there have been few claims against the North Dakota Auctioneer and Auctioneer Clerk Bonds in the past. We believe this is proof that the bond requirement is working in that only those auctioneers or auctioneer clerks who are qualified to act in that capacity are being bonded and thus licensed. As I have stated before, one of the principles of suretyship is to eliminate the bad apples from the barrel before they can do any harm. This is being accomplished at a minimal cost to auctioneers and clerks.

We would urge you to give H.B. 1039 a do not pass recommendation as we do not feel it will accomplish what you may intend it to do. We would be happy to work with you on other changes to the auctioneer bond requirement if you should so desire. Again, thank you for your time in this matter. All good wishes.

Sincerely,

William G. Peterson