

SB

594

SB 594: RELATING TO INSURANCE UNAVAILABLE ON THE VOLUNTARY MARKET

In the course of deliberation over the medical malpractice insurance issue, it became evident that other groups similarly classified as "high risk," have faced the same problem in the past. Fishermen in particular often have found insurance at reasonable rates unavailable. Businesses and home owners in rural areas have encountered the same situation regarding fire insurance. In order to prevent a future insurance crisis for fishermen or other high risk groups, SB 594 was proposed.

SB 594 is similar to one of the provisions of the medical malpractice solution. When the Director of the Division of Insurance determines that insurance in any field is unavailable on the voluntary market, he may by regulation initiate a plan to provide the needed insurance. The Director is also empowered to require the insurance industry to establish a plan, subject to his approval, to fill the insurance gap.

In the establishment of such a plan, the Director is authorized to require participation by all insurance companies operating in the state with the burden spread equitably. The Director is also responsible for regulating rates and underwriting standards.

SB 594 was submitted on the recommendation of Herbert Dennenberg, the legislature's consultant on insurance.

Chancy *[Signature]*

1. No Public hearing
2. No standards of findings
3. Too much discretion
4. Agents - excuse admin convenience

Deenbergh
Re SB 594

Rationale: It's hard to predict what insurance problems will come up in the future. It's better to have a general solution than having to go address each problem area as it arises; thus with a general approach problem areas can be addressed quickly.

History: Insurance problem areas have popped up in many areas - of workman's comp, rent control, etc. They will certainly pop up again - thus the bill provides a solution now to future problems where insurance is not available.

Thus states with this type of legislation are in a much better position to deal with problems of inadequate insurance than states which do not have this type of legislation.

STATE OF WISCONSIN

ASSEMBLY BILL 58

(As Amended and Enacted)

Amended
to JS 594

AN ACT to renumber and amend 619.01 (1) (c); to amend 619.01 (1) (a);
and to create 619.01 (1) (c) 2 and (7) of the statutes, relating
to creation of mandatory risk-sharing plans for health care
liability insurance

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

SECTION 1. 619.01 (1) (a) of the statutes is amended to read:

619.01 (1) (a) Establishment of plans. If the commissioner
finds after a hearing that in any part of this state automobile insurance,
property insurance, health care liability insurance or workmen's compensation
insurance is not readily available in the voluntary market, and that the public
interest requires such availability, he may by rule either promulgate plans
to provide such insurance coverages for any risks in this state which are
equitably entitled to but otherwise unable to obtain such coverage, or may
call upon the insurance industry to prepare plans for his approval.

SECTION 2. 619.01 (1) (c) of the statutes is renumbered 619.01 (1)
(c) 1 and amended to read:

619.01 (1) (c) 1. Each plan, except a health care liability insurance
plan, shall require participation by all insurers doing any business in this state
of the types covered by the specific plan and all agents licensed to represent
such insurers in this state for the specified types of business, except that the

commissioner may exclude classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

SECTION 3. 619.01 (1) (c) 2 of the statutes is created to read:

619.01 (1) (c) 2. Each health care liability insurance plan shall require participation by all insurers insuring persons in this state against liability resulting from personal injuries. Any deficit in a health care liability insurance plan in any year shall be recouped by rate increases for such plan applicable prospectively. Any surplus over the loss reserves in such a plan in any year shall be distributed by rate decreases for such plan applicable prospectively.

SECTION 4. 619.01 (7) of the statutes is created to read:

619.01 (7) HEALTH CARE LIABILITY POLICY LIMITS. Health care liability insurance plans established under this section shall provide minimum coverage to insureds in the amount of not less than \$100,000 for each occurrence and \$300,000 for all occurrences in any one policy year for the protection of persons who are legally entitled to recover damages from the insured for errors, omissions or neglect in the performance of the insured's professional services. If an insured has excess limits liability coverage or such coverage is available to him, the coverage provided under such plans shall be equal to the minimum level of such excess limits coverage. If the insured does not have excess limits liability coverage and such coverage is not available to him, the commissioner may establish minimum levels of coverage higher than the minimum limits specified in this subsection for such plans.

SENATE BILL NO. 400 - COMMITTEE ON JUDICIARY

CHAPTER.....

AN ACT relating to insurance; authorizing the commissioner of insurance to promulgate regulations establishing a Nevada Essential Insurance Association; vesting administrative powers in a board of directors; assigning powers and duties to the association and the commissioner; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 679B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

SEC. 2. 1. If after a hearing the commissioner determines that a voluntary or mandatory plan would, in his judgment, fail for any reason to provide essential insurance coverage, he may, by regulation, establish a nonprofit unincorporated legal entity to be known as the Nevada Essential Insurance Association. All insurers required to participate pursuant to subsection 3 of NRS 686B.180 shall become members of the association as a condition of their authority to transact insurance in this state.

2. The association shall perform its functions under a plan of operation established by regulations promulgated by the commissioner pursuant to subsection 1 of NRS 686B.180.

SEC. 3. 1. The administrative powers of the Nevada Essential Insurance Association shall be vested in a board of directors consisting of not less than five nor more than nine members serving terms as established in the plan of organization. The members of the board shall be appointed by the commissioner with due consideration given to the composition of the membership of the association and to the interests of the insureds who are provided essential insurance coverage by the association.

2. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors and for reasonable and equitable compensation as may be prescribed by the terms of the plan of organization.

3. The board of directors of the association shall submit to the commissioner a plan of organization for the association and make suitable or necessary amendments thereto to assure the fair, reasonable and equitable administration of the association. The plan of operation shall become effective upon approval, in writing by the commissioner.

4. If the association fails to submit a suitable plan of operation within a reasonable period of time, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall promulgate a plan as necessary or advisable to effectuate the provisions of this section.

SEC. 4. 1. The Nevada Essential Insurance Association shall, for purposes of this section and to the extent approved by the commissioner, have the general powers and authority granted under the laws of this state to carriers licensed to transact the kinds of insurance defined in NRS 681A.020 to 681A.080, inclusive.

2. The association may take any necessary action to make available necessary insurance, including but not limited to the following:

(a) Assess participating insurers amounts necessary to pay the obligations of the association, administration expenses, the cost of examinations conducted pursuant to NRS 687A.110 and other expenses authorized by this chapter. The assessment of each member insurer for the kind or kinds of insurance designated in the plan shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. A member insurer may not be assessed in any year an amount greater than 5 percent of his net direct written premiums for the preceding calendar year. Each member insurer shall be allowed a premium tax credit at the rate of 20 percent per year for 5 successive years following termination of the association.

(b) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

(c) Sue or be sued, including taking any legal action necessary to recover any assessments for, on behalf of or against participating carriers.

(d) Investigate claims brought against the fund and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a service facility is subject to the approval of the commissioner but such designation may be declined by a member insurer.

(e) Classify risks as may be applicable and equitable.

(f) Establish appropriate rates, rate classifications and rating adjustments and file such rates with the commissioner in accordance with NRS 686B.

(g) Administer any type of reinsurance program for or on behalf of the association or any participating carriers.

(h) Pool risks among participating carriers.

(i) Issue and market, through agents, policies of insurance providing the coverage required by this section in its own name or on behalf of participating carriers.

(j) Administer separate pools, separate accounts or other plans as may be deemed appropriate for separate carriers or groups of carriers.

(k) Invest, reinvest and administer all funds and moneys held by the association.

(l) Borrow funds needed by the association to effect the purposes of this section.

(m) Develop, effectuate and promulgate any loss-prevention programs aimed at the best interests of the association and the insuring public.

(n) Operate and administer any combination of plans, pools, reinsurance arrangements or other mechanisms as deemed appropriate to best accomplish the fair and equitable operation of the association for the purposes of making available essential insurance coverage.

SEC. 5. The commissioner and the Nevada Essential Insurance Association may:

1. Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards and to the requirement of reasonable loss-prevention measures.

2. Establish procedures that will create minimum interference with the voluntary market.

3. Spread the burden imposed by the facility equitably and efficiently.

4. Establish procedures for applicants and participants to have grievances reviewed.

5. Take all reasonable and necessary steps to dissolve the association at the earliest date when essential insurance becomes readily available in the private market. The dissolution of the association, including its assets and liabilities, shall be accomplished under the supervision of the commissioner in an equitable and reasonable manner.

SEC. 6. There is no liability on the part of, and no cause of action of any nature arises, against the Nevada Essential Insurance Association or its agents or employees, members of the board or the commissioner or his representatives for any good faith performance of their powers and duties under sections 1 to 6, inclusive, of this act.

SEC. 7. This act shall become effective upon passage and approval.

SENATE BILL NO. 401 – COMMITTEE ON JUDICIARY

CHAPTER.....

AN ACT relating to insurance; revising provisions relating to mandatory insurance plans when essential insurance coverage is unavailable; clarifying the definition of liability insurance as a form of casualty insurance; eliminating malpractice insurance as a separate form of casualty insurance; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 681A.020 is hereby amended to read as follows:
681A.020 1. "Casualty insurance" includes:

(a) Vehicle insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal, together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft or draft or riding animal.

(b) Liability insurance. Insurance against legal liability for the death, injury or disability of any human being, or for damage to property [;], including liability resulting from negligence in rendering expert, fiduciary or professional services; and provisions of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed,

irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

(c) Workmen's compensation and employer's liability. Insurance of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or injury of employees.

(d) Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery or theft by another, and also, insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause.

(e) Personal property floater. Insurance upon personal effects against loss or damage from any cause.

(f) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation and fittings.

(g) Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured.

(h) Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire-extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire-extinguishing equipment or apparatus.

(i) Credit and mortgage guaranty. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured, and insurance of real property mortgage lenders against loss by reason of nonpayment of the mortgage indebtedness.

(j) [Malpractice. Insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service.

(k) [Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon elevators.

[(l)] (k) Congenital defects. Insurance against congenital defects human beings.

[(m)] (l) Livestock. Insurance against loss or damage to livestock, and services of a veterinary for such animals.

[(n)] (m) Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals.

[(o)] (n) Miscellaneous. Insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

2. Provision of medical, hospital, surgical and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary), (g) (boiler and machinery), [(j) (malpractice),] and (k) (elevator) of subsection 1 shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life and health insurances.

SEC. 2. NRS 686B.180 is hereby amended to read as follows:

686B.180 1. If the commissioner finds after a hearing that in any part of this state any essential insurance coverage is not readily available in the voluntary market, and that the public interest requires such availability, he may by [rule] regulation either promulgate plans to provide such insurance coverages for any risks in this state which are equitably entitled to but otherwise unable to obtain such coverage, or may call upon the industry to prepare plans for his approval. *Such plans may also include any kind of reinsurance that is unavailable and that would facilitate making essential insurance coverage available where it would otherwise not be available.*

2. The plan promulgated or prepared under subsection 1 shall:

(a) Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards, and to the requirement of reasonable loss-prevention measures;

(b) Establish procedures that will create minimum interference with the voluntary market;

(c) Spread the burden imposed by the facility equitably and efficiently within the industry; and

(d) Establish procedures for applicants and participants to have grievances reviewed by an impartial body.

3. Each plan shall require participation by all insurers doing any business in this state of the [types] kinds covered by the specific plan and all agents licensed to represent such insurers in this state for the specified [types] kinds of business, except that the commissioner may exclude kinds of insurance, classes of insurers or classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

4. The plan may provide for optional participation by insurers not required to participate under subsection 3.

5. Each plan shall provide for the method of underwriting and classifying risks, [and] making and filing rates [applicable thereto.], adjusting and processing claims and any other insurance or investment function that is necessary for the purpose of providing essential insurance coverage.

6. The plan shall specify the basis of participation and assessment of insurers [and] as necessary and shall provide for the participation of agents and the conditions under which risks must be accepted.

7. Every participating insurer and agent shall provide to any person seeking coverages of kinds available in the plans the services prescribed in

the plans, including full information on the requirements and procedures for obtaining coverage under the plans whenever the business is not placed in the voluntary market.

8. The plan shall specify what commission rates shall be paid for business placed in the plans.

9. If the commissioner finds that the lack of cooperating insurers or agents in an area makes the functioning of the plan difficult, he may order that the plan set up a branch service office or take other appropriate steps to insure that service is available.

10. The existing assigned risk plan set up under former NRS 694.390 shall continue unless changed in accordance with this chapter.

SEC. 3. Chapter 686B of NRS is hereby amended by adding thereto a new section which shall read as follows:

There is no liability on the part of, and no cause of action of any nature arises, against the commissioner or his representatives or any essential insurance association, its agents or employees, under a plan established pursuant to the provisions of NRS 686B.180, for any good faith action taken by them in the performance of their powers and duties under such plan.

SEC. 4. This act shall become effective upon passage and approval.

SENATE BILL NO. 402 – COMMITTEE ON JUDICIARY CHAPTER.....

AN ACT regarding liability of persons rendering gratuitous emergency care; revising provisions relating to location of emergency; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 41.500 is hereby amended to read as follows:

41.500 1. [Any] *Except as provided in NRS 41.505, any person in this state, who renders emergency care or assistance [at the scene of] in an emergency, gratuitously and in good faith, shall not be held liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by such person in rendering the emergency care or assistance or as a result of any act or failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured person.*

2. Any person in this state who acts as an ambulance driver or attendant on an ambulance operated by a volunteer ambulance service or as a volunteer driver or attendant on an ambulance operated by a political subdivision of this state, or owned by the Federal Government and operated by a contractor of the Federal Government, and who in