

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 11, 2018

SUBJECT	DESCRIPTION	PRESENTER
RULES REVIEW	Assignments	Vice Chairman Jim Guthrie

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick

Vice Chairman Guthrie

Sen Martin

Sen Lakey

Sen Thayn

Sen Souza

Sen Potts

Sen Ward-Engelking

Sen Burgoyne

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, January 11, 2018
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne
- ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Patrick** called the meeting to order at 1:30 p.m. and welcomed everyone to the first meeting of the Commerce and Human Resources Committee (Committee).
- INTRODUCTION:** **Chairman Patrick** introduced the new page, Shelby Hale, and asked all committee members to introduce themselves. All Senators stated their name, the district they represent, and the town in which they reside. **Chairman Patrick** asked Committee Secretary, Linda Kambeitz, to tell the Committee a little about herself. **Chairman Patrick** asked page Shelby Hale, to tell the Committee what high school she attended and give some background. **Shelby Hale** said she was from Caldwell and attended Caldwell High School where she is a senior. She is the oldest of two siblings. She likes to draw and do creative things. She said she was excited to be here and to be a page. She stated that Senator Rice was her sponsor. **Senator Martin** asked her what were her plans for the future. **Shelby Hale** said she was selected to attend Hollins College in Virginia and wants to major in Political Science and possibly become a teacher.
- Chairman Patrick** introduced the new senator on the Committee Senator Potts. **Senator Potts** said he appreciated the welcome he has received in the Senate. He moved to Idaho 15 years ago to attend school and never left. He has six children. He has owned two businesses. Currently, he sells recreational vehicles in Idaho Falls.
- PASSED THE GAVEL:** Chairman Patrick passed the gavel to Vice Chairman Guthrie to assign the rules.
- RULES REVIEW:** **Vice Chairman Guthrie** explained there were three types of rules and referred to a handout sheet from Dennis Stevenson, State Administrative Rules Coordinator, which defined rules and procedures. **Vice Chairman Guthrie** referred to the spreadsheet that each Senator had with their rule assignments and said that Senators could trade rules if they felt they had more expertise in a particular area. He said he assigned approximately five rules to each Committee member. He said the State Legislature annually reviews the rules that State agencies had created to ensure that they complied with the Legislature's intent. All rules were assigned.
- PASSED THE GAVEL:** Vice Chairman Guthrie passed the gavel to Chairman Patrick. **Chairman Patrick** reminded the Committee of the Change in Employee Compensation Committee (CECC) meeting, which was starting at 2:30 p.m.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 1:50 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 16, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>RS25710</u>	Relating to Idaho Petroleum Clean Water Trust Fund	Senator Nonini Representative Randy Armstrong
DOCKET NO. <u>24-0101-1701</u>	Rules of the Board of Architectural Examiners	Tana Cory, Bureau Chief, Bureau of Occupational Licenses
<u>24-0701-1701</u>	Rules of the Idaho State Board of Landscape Architects	Tana Cory
<u>09-0130-1701</u>	Unemployment Insurance Benefits Administrative Rules	Michael Johnson, Unemployment Insurance Administrator, Department of Labor
<u>10-0101-1701</u>	Rules of Procedure	Keith Simila, Executive Director, Board of Professional Engineers and Land Surveyors
<u>10-0102-1701</u>	Rules of Professional Responsibility	Keith Simila
<u>10-0104-1701</u>	Rules of Continuing Professional Development	Keith Simila
<u>59-0102-1701</u>	PERSI Rules for Eligibility	Don Drum, Executive Director, PERSI
<u>59-0103-1702</u>	PERSI Contribution Rules	Don Drum
<u>59-0103-1801</u>	Contribution Rules	Don Drum
<u>01-0101-1701</u>	Idaho Accountancy Rules	Kent Absec, Executive Director, ID State Board of Accountancy
<u>01-0101-1702</u>	Idaho Accountancy Rules	Kent Absec
<u>01-0101-1703</u>	Idaho Accountancy Rules	Kent Absec
<u>01-0101-1704</u>	Idaho Accountancy Rules	Kent Absec

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick
Vice Chairman Guthrie
Sen Martin
Sen Lakey
Sen Thayn

Sen Souza
Sen Potts
Sen Ward-Engelking
Sen Burgoyne

COMMITTEE SECRETARY

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MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

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PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the Senate Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

RS 25710 **Relating to Idaho Petroleum Clean Water Trust Fund. Senator Nonini** said this legislation amends the Idaho Petroleum Clean Water Trust Fund, Idaho Code § 41-4904, to revise provisions to allow a broader group of wholesale distributors of petroleum products to serve as a member of the Board of Trustees (Board). There is no change in Board members; therefore, there is no fiscal impact.

MOTION: **Senator Lakey** moved to print **RS 25710**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules being heard.

DOCKET NO. 24-0101-1701 **Rules of the Board of Architectural Examiners. Tana Cory**, Bureau Chief, Bureau of Occupational Licenses (BOL), said the Board of Architectural Examiners (BAE), operates primarily on fees collected from licensees. It is recommended that boards maintain a balance equivalent to 100-150 percent of their annual budget. The BAE's balance exceeds that amount. Accordingly, the rule lowers fees and leaves more money in the hands of licensees.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The proposed change to Section 200 reduces the annual license renewal fee from \$75 to \$50, the endorsement license fee from \$150 to \$50, and sets the temporary license fee at \$50. Negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

MOTION: **Senator Martin** moved to approve **Docket No. 24-0101-1701**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0701-1701**

Rules of the Idaho State Board of Landscape Architects. **Tana Cory**, Bureau Chief, Bureau of Occupational Licenses (BOL), said the Board of Landscape Architects (BLA) operates primarily on licensing fees. It is recommended that boards maintain a cash balance of 100-150 percent of their annual budget. The cash balance of the BLA exceeds that amount. Accordingly, the BLA wants to lower its balance and leave more money in the hands of licensees. This rule will also update the name of the landscape architect accrediting body from the American Society of Landscape Architects (ASLA) to the more precise Landscape Architectural Accreditation Board (LAAB).

Ms. Cory reported there are no changes to the pending fee rule and it is being adopted as originally proposed. Negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the BLA. The proposed change to Section 400 reduces the license application fee from \$100 to \$75 and the original license and annual renewal fees from \$150 to \$125.

DISCUSSION:

Chairman Patrick inquired if there was an excess in the account because there are more landscapers. **Ms. Cory** said there may be a variety of reasons that more people are becoming licensed. Most of all, the BLA has not had many complaints, which causes expenses to go down. Costs are spread out over all of the boards.

MOTION:

Senator Souza moved to approve **Docket No. 24-0701-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
09-0130-1701**

Unemployment Insurance Benefits Administrative Rules. **Michael Johnson**, Unemployment Insurance Administrator, Idaho Department of Labor (IDOL), said the adoption of the pending rule is necessary to clarify the misconception that leads unemployment insurance claimants to believe that in order to file for unemployment insurance benefits, they must call a Boise telephone number. Further, the pending rule provides the DOL greater flexibility in the event the State needs to relocate its claims processing center for budgetary reasons or due to a natural disaster, such as fire or flooding.

Mr. Johnson said there are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact. Negotiated rulemaking was not conducted because the rule is temporary.

MOTION:

Senator Thayn moved to approve **Docket No. 09-0130-1701**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
10-0101-1701**

Rules of Procedure. **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS Board), said the rule change clarifies the intent of the IPELS Board. The amendments will: 1) add a new provision clarifying the IPELS Board's website is used for informational and legal purposes; 2) correct grammar and code citations; and 3) remove the Washington Accord from the list of unconditionally approved international engineering programs.

Mr. Simila reported there are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact to the General Fund or the agency dedicated fund because the amendment displays the intent of the IPELS Board's website; the website is already developed and used for the purposes stated. Further, the corrected words and citations are housekeeping in nature. International applicants for professional engineering licensure may incur costs for an independent review of their education credential if the IPELS Board is unable to determine whether the engineering coursework meets the education requirements stated in the existing rule. Negotiated rulemaking was not conducted.

DISCUSSION: **Senator Burgoyne** remarked that it seemed coincidental that Canada and the United Kingdom (UK) have the highest standards and asked if the language in the rule was based on these organizations. **Mr. Simila** said the rationale has to do with the Washington Accord. The IPELS Board has no familiarity with the requirements of other countries and the rule change has nothing to do with language or culture.

Senator Lakey asked if the Engineering Accreditation Commission (EAC) or the Accrediting Board for Engineering and Technology (ABET) is different than the Canadian or UK accrediting boards. **Mr. Simila** explained those boards were similar. **Senator Lakey** asked for more information on survey licensure and asked if the wording should be changed for clarification. **Mr. Simila** agreed the title should be changed. **Mr. Simila** clarified the exam is Idaho-specific, but every state has a different test for land surveyors.

Senator Potts referred to pages 95 and 99 and asked why changes were made. **Mr. Simila** stated the experience requirement is four years. The IPELS Board would like to remove the four-year requirement as a condition to take the exam. **Senator Potts** clarified the goal is to expedite the process. **Mr. Simila** said that was correct and the IPELS Board wanted to reduce barriers to taking the exam.

MOTION: **Senator Souza** moved to approve **Docket No. 10-0101-1701**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 10-0102-1701 **Rules of Professional Responsibility.** **Keith Simila**, Executive Director, Board of Professional Engineers and Land Surveyors (IPELS Board), said the rule amendments will clarify the requirement to follow the Qualifications Based Selection of Idaho Code § 54-1208. The intent is to clarify this statute as it applies to both consultants and subconsultants.

There are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact to the General Fund or the agency dedicated fund because the amendment is a clarification of a process already required by statute and rule. Negotiated rulemaking was conducted.

DISCUSSION: **Senator Lakey** remarked this rule deals with a specialized subsection addressing procurement and request for qualifications. He asked if someone did not fit the specifications, but needed an engineer as part of their team to bid on a public building, would this rule move the contractor into that section as a subcontractor or consultant. **Mr. Simila** replied this rule only applies to land surveyors and engineers. **Senator Lakey** said he would have to look at the code regarding subconsultants. **Mr. Simila** said it was not the intent of the IPELS Board to force this on a contractor, as they do not have jurisdiction. **Senator Lakey** said the language and the intent do not match. He said he would like to defer this rule and visit with Mr. Simila.

Senator Burgoyne asked if the rule references the scope that only applies to land surveyors or architects. **Mr. Simila** said the IPELS Board has no jurisdiction over other areas. **Senator Burgoyne** asked what Idaho Code § 67-2320 related to and if there was an application beyond engineers and landscapers. **Mr. Simila** stated that the statute imposes a rule on public entities as to how they procure design services from landscapers or any design professional. **Mr. Simila** said the law only applies to a public entity and how they conduct the procurement. This rule states proposals must be submitted in accordance with the law. **Senator Burgoyne** stated that a licensee or certificate holder, in response to solicitations, shall not submit information that constitutes a bid for services requested either as a consultant or subconsultant. **Mr. Simila** said the law defines the entitlement for a license or a certificate holder. **Senator Burgoyne** remarked the scope is limited to engineers and land surveyors.

Senator Lakey said his concern was adding "subconsultant", which may be a violation of the law. He suggested this rule be held at the Call of the Chair until he could meet with Mr. Simila. Chairman Patrick agreed.

**DOCKET NO.
10-0104-1701**

Rules of Continuing Professional Development. **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS Board), said the rule change clarifies the intent of the IPELS Board. The amendments repeal a subsection of the rule that exempts engineers and land surveyors residing in other countries from the requirements of completing continuing professional development. With the advent of online professional development offerings, this exemption is no longer needed.

Mr. Simila stated there are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact to the General Fund or the agency dedicated fund because the amendment does not increase or decrease the workload of the agency. The rule change will require more effort for licensees residing in other countries to obtain the required continuing professional development offerings of 30 professional development hours every two years.

DISCUSSION:

Senator Burgoyne asked if Canadian and UK licensees have a continuing education requirement in order to maintain their licenses. **Mr. Simila** said the requirements in Canada and the UK were similar, but the IPELS Board cannot require those licensees to furnish a completion certificate. **Senator Burgoyne** stated that if licensees in Canada and the UK were required to take courses in their countries, they would also be required to take courses here to continue to practice in the State of Idaho. **Mr. Simila** stated there is a rule that outlines the types of courses that satisfy the requirement. Codes and standards may be different in other countries. Documentation would be needed to verify continuing education. Some may be rejected.

MOTION:

Senator Souza moved to approve **Docket No. 10-0104-1701**. **Senator Potts** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0102-1701**

Public Employee Retirement System of Idaho (PERSI) Rules for Eligibility. **Don Drum**, Executive Director, PERSI, said Idaho Code § 59-1302(15), was amended in the 2017 Legislative Session. The definition of "employer" as applied to all new employers must be in compliance with the Internal Revenue Service (IRS) regulations governing governmental retirement plans.

There are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact.

DISCUSSION:

Senator Martin asked if there were any groups participating in PERSI that were excluded. **Mr. Drum** said the PERSI Board was careful not to exclude any entities already in PERSI and that were allowed by the IRS. **Vice Chairman Guthrie** asked how many entities would not be allowed to participate. **Mr. Drum** remarked there are some who do not meet the requirements. **Vice Chairman Guthrie** asked if there was anything that would cause a problem with the IRS. **Mr. Drum** said that based on research, the PERSI Board was in compliance with IRS.

MOTION:

Senator Martin moved to approve **Docket No. 59-0102-1701**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
59-0103-1702**

Public Employee Retirement System of Idaho (PERSI) Contribution Rules. **Don Drum**, Executive Director, PERSI, said the PERSI fund has made more money through investments. The rate increase has been postponed as this was a temporary rule last year. If this rule would go into effect this year, a 1 percent rate increase would be implemented. The PERSI Board is asking that this rule be rescinded.

MOTION: **Senator Burgoyne** moved to rescind **Docket No. 59-0103-1702**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

Senator Burgoyne asked for clarification from Mr. Drum. **Mr. Drum** said that if this rule was approved, the rate increase would be 1 percent starting in 2018.

DOCKET NO. 59-0103-1801 **Public Employee Retirement System of Idaho (PERSI)**. **Don Drum**, Executive Director, PERSI, said the reason for adopting this temporary rule is to delay the scheduled contribution rate increases to July 1, 2019. He said actuarial valuation indicates it is appropriate to delay the scheduled increase.

MOTION: **Senator Ward-Engelking** moved to approve **Docket 59-0103-1801**. **Senator Potts** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 01-0101-1701 **Idaho Accountancy Rules**. **Kent Absec**, Executive Director, Idaho State Board of Accountancy (ISBA Board), said the purpose of this rule is to amend Subsection 004.02 to appropriately date the Statement on Standards for Continuing Professional Education (CPE) that are incorporated by reference. The year notated will be changed from 2012 to 2016.

Mr. Absec said continuing professional education is required for Certified Public Accountants (CPA's) to maintain their professional competence and provide quality professional services. CPA's are responsible for complying with all applicable CPE requirements, rules, and regulations of state boards of accountancy, as well as those of membership associations and other professional organizations. The Preamble of the New Statement on Standards states the standards are broadly stated in recognition of the diversity of practice and experience among CPA's. They establish a framework for development, presentation, measurement, and reporting of CPE programs to help ensure that CPA's receive the quality learning experience necessary to satisfy their obligations to serve the public interest.

Mr. Absec explained the newly revised standards will provide two new methods of delivery in blended learning and nano-learning. Blended learning combines different types of instructional methods in a learning objective, such as combining self-study with a group program. Nano-learning is learning done in 10-minute increments with the licensee awarded learning credits based on a 50-minute hour model. Further revisions were made to allow CPE increments to be earned in one-fifth, one-half, or whole credit for all instructional delivery methods - with the exception of nano-learning. These revisions provide flexibility and consistency and do not cause CPE sponsors to rework program materials or require existing programs to be remeasured for CPE credit. Licensees will also have greater flexibility in the types of learning or delivery methods that better serve their learning skills and needs.

Mr. Absec stated a final major revision also clarifies the documentation of the element of engagement in a group live program that is acceptable for a licensee to earn credit. With these standards having endured the vetting process of stakeholders covering all facets of the CPE community, including but not limited to CPE program sponsors, state boards of accountancy members, state society members, and educators, and ultimately being approved by the American Institute of Certified Public Accountants (AICPA), and the National Association of State Boards of Accountancy (NASBA) Board of Directors, CPE program developers, and program sponsors are aware of the standards they will be held to in the area of CPE. Licensees and the general public will benefit from knowing that guidelines have been established around a CPA's CPE, which help promote a quality and effective learning experience. This rule has been published through the Office of Administrative Rules. The Legislative Services Office has reviewed the proposed rule and made no objections to the change. The ISBA has received no negative feedback from stakeholders or the general public and has the support of the Idaho

Society of CPA's.

There is no fiscal impact. Negotiated rulemaking was not conducted because the changes are simple in nature and the Statement on Standards are a joint effort from the NASBA and the AICPA.

Mr. Absec reported the materials being cited are being incorporated by reference into this rule. He said the Statement on Standards for CPE Programs is published jointly by the AICPA and the NASBA to provide a framework for the development, presentation, measurement, and reporting of CPE programs for the accounting profession. The standards provide specific information to both program sponsors to help ensure they are providing a rewarding educational experience and to licensees to aid them in choosing a personal and professional educational development plan suited to their development. A solid and consistent set of CPE standards will allow licensees who are licensed in multiple states to be better equipped to adhere to multiple jurisdiction requirements and give the citizens of Idaho the assurance that licensed professionals must adhere to standards as it relates to a licensee's professional development through continuous education.

MOTION: **Chairman Patrick** moved to approve **Docket No. 01-0101-1701**. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Burgoyne** stated that if a rule was incorporated by reference, information should be submitted in writing. **Mr. Absec** remarked the rule allows a licensee to have opportunities they did not have in the past. There is a provision in the rule that allows for a 10-minute nano-learning class. The nano-learning class provides an opportunity for a quick delivery on things such as preparing a tax return. Blended learning is a change in the delivery method for program sponsors who can hold a conference, assign homework, and give credit for work done outside of the classroom.

Senator Souza said all are sensitive to potential problems if a summary is not reviewed. She asked that presenters give the Committee Secretary "incorporation by reference" information.

VOTE: The motion carried by **voice vote**.

DOCKET NO. 01-0101-1702 **Idaho Accountancy Rules. Kent Absec**, Executive Director, Idaho State Board of Accountancy (ISBA Board), indicated this rule was being amended (Subsection 020.02b and 020.03) to bring it into conformity with a recent statute change of Idaho Code § 54-219(f). The amended rule will clarify that the ISBA Board is now permitted to consider a licensee's conviction of or guilty plea to any crime involving moral turpitude - an element of which is dishonesty or fraud, even where the licensee or proposed licensee has obtained a withheld judgment or other order or decree of expungement. The amended rule also clarifies the factors of rehabilitation the ISBA Board may consider in evaluating a current licensee or candidate for licensure.

Mr. Absec said here is no fiscal impact. Negotiated rulemaking was not conducted because the change is being made to bring the rule into compliance with a statute change made during the 2017 Legislative Session.

DISCUSSION: **Senator Burgoyne** said he had his intern review the rules. On page 10 there was a typographical error in "c." The sentence should say "The entry or" and not "The entry of."

MOTION: **Senator Burgoyne** moved to approve **Docket No. 01-0101-1702**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
01-0101-1703**

Idaho Accountancy Rules. Kent Absec, Executive Director, Idaho State Board of Accountancy (ISBA Board), indicated this rule was being amended, Paragraph 506.01.b to provide clarity to a licensee as to information they will need on documentation to support credit hours they are reporting for their Continuous Professional Education (CPE). This amendment to the rule will also reflect the language and requirements of standards set by the National Association of State Boards (NASBA) and the American Institute of Certified Public Accountants (AICPA); these standards are used by most state boards in the regulation of CPE.

There are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact.

DISCUSSION:

Senator Lakey said he had a question on the last item added Subparagraph 506.01.b.viii, which seemed to add ambiguity rather than clarity. He asked for clarification. **Mr. Absec** said the ISBA Board does not accept continuous education from NASBA-approved providers or that of societies, such as the Idaho Society of CPA's. The ISBA Board allows firms and other organizations, such as the State Controller's Office, ISBA leeway to ask a licensee if they can provide other documentation that supports participation within the timeframe; if able to do so, the ISBA Board would grant credit for the courses. The change is primarily for those organizations that are not within the NASBA registry or Idaho Society of CPA's.

MOTION:

Chairman Patrick moved to approve **Docket No. 01-0101-1703**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
01-0101-1704**

Idaho Accountancy Rules. Kent Absec, Executive Director, Idaho State Board of Accountancy (ISBA Board), indicated this rule was being amended Subsection 602.01), Peer Review Program Participation, to bring it in conformity with a recent statute change of Idaho Code § 54-206(3), the definition of "attest." The amended rule will provide consistency between the Accountancy Act and relevant rules. The rule will now clearly define for a licensee which services are considered peer reviewable, and therefore, require a firm who performs these services to participate in a peer review program.

There are no changes to the pending rule and it is being adopted as originally proposed. There is no fiscal impact.

MOTION:

Senator Potts moved to approve **Docket No. 01-0101-1704**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

ADJOURNMENT:

There being no further business, Chairman Patrick adjourned the meeting at 2:53 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 18, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>RS25802</u>	Relating to Joint Public Agency Self-Funded Health Care Plans	Senator Kelly Anthon, Representative Randy Armstrong
MINUTES APPROVAL	Minutes of January 11, 2018	Vice Chairman Guthrie
DOCKET NO. <u>07-0106-1701</u>	Rules Governing Use of National Electrical Code	Warren Wing, Division of Building Safety
<u>07-0301-1701</u>	Rules of Building Safety	Arlen Smith, Building Codes Manager, Division of Building Safety
<u>07-0311-1701</u>	Rules Governing Manufactured/Mobile Home Industry	Patrick Grace, Regional Manager, Division of Building Safety
<u>07-0312-1701</u>	Rules Governing Manufactured or Mobile Home Installations	Patrick Grace
<u>07-1001-1701</u>	Rules Governing the Damage Prevention Board	Patrick Grace
<u>07-0401-1701</u>	Rules Governing Safety Inspections - General	Gary Barnes, Industrial Safety Program Manager, Division of Building Safety
<u>07-0402-1701</u>	Safety Rules for Elevators, Escalators, and Moving Walks	Gary Barnes
<u>07-0901-1701</u>	Safety and Health Rules for Places of Public Employment	Gary Barnes
<u>07-0817-1701</u>	Idaho Minimum Safety Standards and Practices for Logging - Cable-Assisted Logging Systems	Larry Jeffries, Deputy Administrator, Div. of Bldg. Safety
<u>12-0110-1701</u>	Rules Pursuant to the Idaho Residential Mortgage Practices Act	Anthony Polidori, Supv./Investigator, Dept. of Finance

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COMMITTEE MEMBERS

Chairman Patrick

Sen Souza

COMMITTEE SECRETARY

Linda Kambeitz

Vice Chairman Guthrie
Sen Martin
Sen Lakey
Sen Thayn

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Sen Ward-Engelking
Sen Burgoyne

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MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 18, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

RS 25802 **Relating to Joint Public Agency Self-Funded Health Care Plans. Senator Anthon** said this legislation amends Idaho Code Title 41, Chapter 41 relating to Joint Public Agency Self-Funded Health Care Plans. The purpose of this bill is to allow the Director of the Department of Insurance to waive the requirement for a joint public agency self-funded health benefits plan to purchase aggregate stop-loss insurance when certain conditions are met.

Senator Anthon said this bill will have no fiscal impact on the General Fund. He advised that Joint Public Agency Self-Funded Health Care Plans are funded by their member agencies using local tax dollars.

DISCUSSION: **Senator Potts** asked if the stop-loss insurance was on the person or the claim. **Senator Anthon** said this does not deal with individual stop-loss. This is the aggregate on top, above and beyond stop-loss claims. **Senator Potts** asked if stop-loss insurance could be purchased per person. **Senator Anthon** said the stop-loss is per person.

Senator Lakey disclosed for the record, under Senate Rule 39(H), that he represents a joint self-funded agency. He said he was supportive of printing this Routing Slip (RS). He was concerned that the RS did not provide any basis for including language from Chapter 40 in Chapter 41. **Senator Anthon** agreed the same concern is on the mind of the Idaho Intergovernmental Authority (III-A). That agency is looking at these regulations so that an environment of less government involvement is created. He remarked he was open to any recommendations.

MOTION: **Senator Burgoyne** moved to print **RS 25802**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Guthrie** moved to approve the minutes of January 11, 2018. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules being heard.

**DOCKET NO.
07-0106-1701**

Rules Governing Use of the National Electrical Code. **Warren Wing**, Electrical Program Manager, Division of Building Safety (DBS), referred to page 19 in the Pending Rules Book, and said the 2016 Idaho Legislature passed House Bill (H) 643, which established Idaho Code § 54-1001A, that directs the DBS to promulgate rules governing the use, inspection and safety of submersible well pumps in Idaho's lakes, rivers, ponds, and streams. This rulemaking amends the electrical code relating to installation and safety requirements of non-listed submersible well pumps in Idaho's waters where authorized swimming and marine activities take place. **Mr. Wing** said the DBS conducted negotiated rulemaking with the pump and electrical industry in order to develop these amendments. Pursuant to the negotiated rule notice, which published in the May 2016 Administrative Bulletin under Docket No. 07-0106-1601, meetings occurred in 2016, which included informal collaborative meetings with industry, and these rule changes were again discussed in the 2017 Electrical Board meetings.

Mr. Wing noted this rulemaking would amend the 2017 National Electric Code (NEC) to add a new section permitting the installation of disconnects grouped in one- and two-family dwelling units where multiple feeders enter the building. Additionally, the rulemaking provides exceptions to several articles of the NEC which address the installation of submersible well pumps in swimming and marine areas, and the electrical equipment used in these installations.

Mr. Wing stated there is no fiscal impact on the State General Fund. Negotiated rulemaking was conducted. **Mr. Wing** gave a brief synopsis of why the materials cited are being incorporated by reference into this rule.

MOTION:

Chairman Patrick moved to approve **Docket No. 07-0106-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0301-1701**

Rules of Building Safety. **Arlen Smith**, Building Codes Manager, Division of Building Safety (DBS), reported there are no changes to the pending rule and it is being adopted as originally proposed. He said that the 2012 International Residential Code (IRC) is currently utilized by building jurisdictions throughout the State; however, it does not provide adequate guidance related to the construction of "Tiny Homes." The construction of "Tiny Homes" in Idaho has increased significantly in the past several years and there is a need to establish specific residential code provisions to properly address some of the unique characteristics of "Tiny Homes."

Mr. Smith remarked the Idaho Building Code (IDBC) Board has approved one amendment to the 2015 edition of the International Building Code (IBC) and one amendment to the 2012 edition of the IRC to be known as the Idaho Residential Code (IDRC). These are the only proposed changes to the rules of the DBS. **Mr. Smith** said that pursuant to Idaho Code § 67-5229(2)(a) the materials cited were incorporated by reference into this rule. The "Tiny Home" provisions contained in this rulemaking would be added as an appendix to the IRC, and may be adopted by building code jurisdictions to address the installation of such homes. Additionally, because of increases to allowable design stresses in the 2012 IBC, masonry allowable stress design (ASD) lap lengths could exceed strength design laps. Placing a limit on the required lap length corrects this problem and provides consistency between masonry design methods.

Mr. Smith noted this rulemaking adds several provisions to the IRC in the form of a new appendix addressing certain aspects of "Tiny Homes." These include key definitions, as well as provisions related to ceiling height, lofts, stairways and ladders, and escape and rescue roof access windows. **Mr. Smith** pointed out a typographical error on page 35(e), the wording should say "lap splices" and not "plices." He said cities and counties can adopt more guidelines into their codes.

Typical "Tiny Homes" are built with lofts for sleeping. A roof window has to be provided for escape in case of a fire. According to code, there must be an escape in the room where a person is sleeping. This rulemaking will also add an amendment that will place a limit on the required length of reinforcement lap splices for ASD of masonry. It will make the allowable stress maximum lap length equivalent to the current strength design maximum lap length. Negotiated rulemaking was conducted.

DISCUSSION: **Senator Burgoyne** asked for clarification of the "Tiny House" provisions. He stated that under Idaho Code, these provisions cannot be mandatory or cannot be more restrictive than any amendments to the code. He then referred to pages 37-39 and queried if the rules were more restrictive. **Mr. Smith** replied that in some cases the rules may be and in some cases not and it depends on the official. **Senator Burgoyne** asked if the statute should be recited to help officials dealing with the rule. **Mr. Smith** said counties can adopt stricter laws for their county or city.

Senator Lakey asked if the builders of "Tiny Homes" were involved in negotiated rulemaking. **Mr. Smith** said builders were involved and "Tiny Homes" were brought to the attention of the DBS by an advocate for "Tiny Homes." He stated the appendix chapter will exist in the 2018 IDRC. A discussion ensued between Senator Lakey and Mr. Smith about headroom in a loft or sleeping quarters.

Senator Potts remarked that what he was hearing is that counties and cities have a choice. **Mr. Smith** said the ordinance has to be printed, but can also be put in a link on the web.

Senator Souza mentioned that the IRC is going to adopt these rules into code soon and was not Idaho Code more restrictive than the IRC. **Mr. Smith** said the effect of this appendix chapter depends on how the building official interprets and applies the building code. Under some interpretations and applications of the code, the appendix chapter will actually impose more requirements on the construction of these small homes. Many see the appendix chapter as providing relief from some requirements.

Chairman Patrick remarked that the IRC was not liked by many. He said he visited a subdivision of "Tiny Homes" in Kansas put into place for homeless vets. **Mr. Smith** said that the impediments to "Tiny Homes" are there but the building code is not competitive to their construction.

Senator Burgoyne remarked that Idaho cannot be more restrictive than the IRC. He asked what the 2012 code said and if Idaho was more restrictive. **Mr. Smith** said the same regulations apply to any other home that is being built. There are minimum sizes, dimensions, and plumbing code requirements. A 150-square foot home can be built that still complies with code. The only problem with "Tiny Homes" is head room height, which is 7 feet. **Mr. Smith** said a stairway or a ladder could be implemented instead of a rescue escape roof window. However, the building code states that stairs are required for all habitable spaces. A loft cannot be treated as a habitable space and currently there is no requirement for a ladder. **Senator Burgoyne** asked if this docket was adopted, but the rescue escape roof window and the loft access were rejected, would that cause an issue? **Mr. Smith** said that would be a problem because these were two of the issues that those who brought this rule forward thought were important.

TESTIMONY: **Jason Blaze**, City of Boise, testified he was approached by the "Tiny Homes" organization. He said these rules are exceptions and make it easier to build a "Tiny Home." Under current code, this kind of house would not be approved. However, the amendments were a good idea. **Senator Martin** asked if there was anything unsafe about these houses. **Mr. Blaze** said that adding an extra skylight window was a good escape route. All "Tiny Homes" must meet the standard building code. **Senator Lakey** remarked he wanted to approve the docket because he liked the idea there were options.

MOTION: **Senator Lakey** moved to approve **Docket No. 07-0301-1701**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0311-1701 **Rules Governing Manufactured/Mobile Home Industry.** **Patrick Grace**, Regional Manager, Division of Building Safety (DBS), reported the name of the Manufactured Housing Board (MHB) was statutorily changed to the Factory Built Structures Board (FBSB) in 2016. Additionally, individuals licensed in the Manufactured Housing (MH) industry as installers, and retailers who are installers, are required to perform continuing education in order to renew their licenses. The DBS and FBSB desire to establish the amount of continuing education credits in an amount consistent with the federal licensing requirements, which is eight hours of continuing education during the three-year period prior to licensure renewal. **Mr. Grace** reported this new requirement reflects a more practical and valuable schedule for licensees to acquire necessary education. The rulemaking also modifies the requirement that installers of manufactured homes, or retailers who are also installers, complete eight hours of continuing education during the three-year period prior to licensure renewal in lieu of 12 hours of education that is currently in the rules. **Mr. Grace** said there was no fiscal impact and negotiated rulemaking was conducted.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 07-0311-1701**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0312-1701 **Rules Governing Manufactured/Mobile Home Industry.** **Patrick Grace**, Regional Manager, Division of Building Safety (DBS), reported that pursuant to Idaho Code § 44-2201, all used mobile and manufactured homes shall be installed in accordance with the Idaho Manufactured Home Installation Standard (Standard), as provided by rule. The Standard has not been updated since 2004. Through the negotiated rulemaking process the DBS and DBS Board have established a newer and updated edition of the Standard reflecting installation requirements and safety considerations currently applicable to the industry. Additionally, the DBS is seeking to modify the training requirements for manufactured home installation inspectors to reflect the Standard and adopts the 2018 edition for application to the installation of used manufactured homes in the State. The rulemaking also modifies the annual training requirements for inspectors of manufactured home installations from an annual four-hour training requirement to eight hours of training every three years. **Mr. Grace** said there is no fiscal impact. Negotiated rulemaking was conducted.

DISCUSSION: **Senator Burgoyne** asked if there was a link to the Standards for January 2018. **Mr. Grace** said the link was publicly available on the website. **Senator Burgoyne** asked Mr. Grace to explain the differences from the 2004 to the 2018 editions. **Mr. Grace** indicated the DBS began with 2004 to address the updates. He mentioned the fiscal impact was a positive one for installers because of the updates in technology. **Senator Burgoyne** stated that when rules are incorporated by reference, the Committee needs to have a summary of the changes. **Senator Lakey** agreed with Senator Burgoyne and said he was interested in moving the hearing for the rule to another date and asked for a written summary when Mr. Grace came back.

TESTIMONY: **Teri Ottens**, representing the Idaho Housing Alliance, outlined the four major changes incorporated by reference. She mentioned that duplication was removed.

Senator Lakey thanked Ms. Ottens for the summary, but stated he wanted a written summary of the rules incorporated by reference.

MOTION: **Senator Lakey** moved to hold, at the Call of the Chair, **Docket No. 07-0312-1701** until a written summary was completed. **Senator Burgoyne** seconded the motion.

Senator Potts asked if this Committee was setting an expectation and a standard when other committees have not. **Vice Chairman Guthrie** explained the Committee was moving towards an environment where information was needed. Each rule is different and may have a different application. **Senator Souza** remarked that she wanted to see a summary of reference by incorporation.

The motion carried by **voice vote**.

DOCKET NO. 07-1001-1701 **Rules Governing the Damage Prevention Board.** **Patrick Grace**, Regional Manager, Division of Building Safety (DBS), said the program is relatively new and these rules were heavily negotiated. He reported it is expected there will be a positive impact on the Damage Prevention Board (DPB) dedicated fund as civil penalties are collected; however, that may be offset by a negative impact to the DBS as a result of the need to perform investigative activities in response to complaints received. Civil penalties will only adversely affect those stakeholders who do not comply with legal requirements. **Mr. Grace** noted a positive and necessary economic result will be the reduction of underground facility damages throughout the State of Idaho, as well as reinforcement of public safety through the protection of life and property. The fiscal impact to the various stakeholders providing such assurance may be significant on additional staffing and supporting resources to effectively reduce damage to underground facilities. Such expenses to facilities owners are expected to be offset by the reduction of actual damages when the Damage Prevention Program begins to operate effectively. These rules were temporary in 2017.

DISCUSSION: **Senator Burgoyne** referred to the civil penalties language and asked if someone committed all 11 violations in one day would the fine be \$5,000 or \$50,000. **Mr. Grace** said that for each day the violation occurs, there would be a fine. The level of a \$50,000 fine would not be imposed in this instance. **Senator Burgoyne** asked if it was a matter of DPB discretion if 11 violations were committed in one day. **Mr. Grace** commented a higher penalty could be imposed for multiple violations.

MOTION: **Senator Ward-Engelking** moved to approve **Docket No. 07-1001-1701**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

Brad Hunt, Office of Administrative Rules, Department of Administration, remarked that incorporation by reference was a synopsis of the rule submitted by the various agencies which outlines the difference between what is currently enforceable and what is being proposed. The incorporation by reference is provided with a synopsis with the legislative proposal analysis. This is only on the electronic version of the rules.

Vice Chairman Guthrie asked Mr. Barnes if he would yield his time to Mr. Jeffres, who had a flight to catch.

DOCKET NO. 07-0817-1701 **Idaho Minimum Safety Standards and Practices for Logging - Cable-Assisted Logging Systems.** **Larry Jeffres**, Deputy Administrator, Division of Building Safety (DBS), referred to a letter of support from the Associated Logging Contractors of Idaho (Attachment 1). He said the Associated Logging Contractors, in collaboration with major forest land owners, requested the implementation of these rules for the primary purpose of ensuring the safety of those involved in logging operations.

MOTION: **Senator Souza** moved to approve **Docket No. 07-0817-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0401-1701**

Rules Governing Safety Inspections - General. Gary Barnes, Industrial Safety Program Manager, Division of Building Safety (DBS), remarked the rules were updated to conform with codes. He said that many of the statutory references, as well as certain provisions related to other programs and authorities in the current rules are very outdated, and do not apply. Additionally, statutory authority to administer the Safety Program for State facilities was transferred solely to the DBS in 2015. Accordingly, other applicable rules related to the inspections which were previously administered by the Idaho Industrial Commission (IIC), have been updated. The rule also eliminates unnecessary references to programs that are no longer administered through the DBS Safety Program such as elevators and boilers. **Mr. Barnes** reported the rulemaking updates certain requirements for public employers to ensure a safe workplace, as well as the annual inspection process the DBS currently engages in when inspecting State facilities.

DISCUSSION:

Senator Lakey asked for a written summary indicating what is being adopted. **Mr. Barnes** pointed out the rule was 21 years old and there were many references to uniform codes which were obsolete in the year 2000.

Senator Souza suggested that since Mr. Barnes had two more rules to present and the Committee was out of time, she asked if all three rules could be held and presented at a another meeting. She asked that a summary of any changes be provided. Vice Chairman Guthrie and Chairman Patrick agreed.

**PASSED THE
GAVEL:**

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

ADJOURNED:

There being no further business at this time, Chairman Patrick adjourned the meeting at 2:57 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

10589 S. HIGHWAY 95
P. O. BOX 671
COEUR d'ALENE ID 83816-0671



PHONE (208) 667-6473
TOLL FREE (800) 632-8743
FAX (208) 667-2144
E-MAIL: alc@idahologgers.com

Chris Jensen, Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150 / P.O. Box 83720
Meridian, Idaho 83642

April 20, 2017

Re: Support for Temporary Rule Setting Idaho Minimum Safety Standards and Practices for Logging – Cable Assisted Logging Systems

Dear Administrator Jensen,

The Associated Logging Contractors – Idaho (ALC) wishes to express its support for the above referenced rules and supports immediate enactment as a Temporary Rule effective as soon as possible. The ALC was established in 1966 and is a non-profit trade association with over 440 members who are logging and wood products hauling contractor businesses operating in the state of Idaho. The ALC's membership consists of a majority of the businesses in Idaho who will be impacted by these rules in their daily operations. The ALC supports the proposed rules for cable assisted logging systems. The ALC appreciates the opportunity to have worked with the Division of Building Safety and the State Logging Safety Program over the last year on this addition to the Idaho Minimum Safety Standards and Practices for Logging.

The ALC supports immediate enactment of this proposal as a Temporary Rule because these cable assisted logging systems are being newly introduced into Idaho and it is important that minimum safety standards be set in place at the same time as our logging operation season gets underway. These machines will be operating on very steep ground and it is important that they are manufactured properly and operated properly and safely. The ALC has participated in a collaborative effort over much of this last year with our partners in the forest products industry which as you know are the large industrial forest land owners and the wood products mills. We recognize the innovation these cable assisted logging systems will bring to Idaho while at the same time acknowledge and assert that they need to be manufactured and deployed correctly and safely.

The ALC will continue to work through the negotiated rules process on these rules through the next step but we support what has been proposed at this point and support immediate adoption as a Temporary Rule.

Thank you for your consideration and for continuing to work with our logging and wood products hauling contractors!

Sincerely,

Steve Sherich, Sherich Logging, Hayden, Idaho
President, Associated Logging Contractors – Idaho

Docket No.
07-0817-1701

Attachment 1
1-18-18

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 23, 2018

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION:	Your Health Idaho	Pat Kelly, Executive Director, YHI
<u>RS25657</u>	Distribution of Local Tourism Grants	Bobbi-Jo Meuleman, Director, Department of Commerce
DOCKET NO. <u>07-0401-1701</u>	Rules Governing Safety Inspections - General, p. 52	Gary Barnes, Industrial Safety Program Manager, Division of Building Safety
<u>07-0901-1701</u>	Safety and Health Rules for Places of Public Employment, p. 73	Gary Barnes
<u>15-0401-1701</u>	Rules of the Division of Human Resources and Idaho Personnel Commission, p. 109	Shelli Boggie, Human Resource Specialist, Senior
<u>17-0210-1701</u>	Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers, p. 131	Patti Vaughn, Benefits Administration Manager, Industrial Commission
<u>17-0211-1701</u>	Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Self-Insured Employers, p. 136	Patti Vaughn

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, January 23, 2018
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne
- ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:32 p.m.
- PRESENTATION: Your Health Idaho. Patrick Kelly**, Director, Your Health Idaho (YHI), presented the 2017 Annual Report: Navigating Change. A copy of the report can be found on the YHI website. **Mr. Kelly** thanked the Committee for their support. He stated that YHI has worked to fulfill its mission to maintain maximum control of Idaho's insurance marketplace at minimal cost to Idahoans. He gave an overview of 2017 accomplishments. Some of the key accomplishments were: 1) saving \$22 million for Idahoans from an assessment fee which is lower than that of the federal marketplace; 2) improved response time at call center and via emails; 3) successful implementation of technology improvements for both compliance and customer satisfaction; 4) provided more choices to Idahoans on the Exchange - with 225 plans available in 2017; and 5) training and certification of over 900 agents, brokers, and enrollment counselors to serve Idahoans at no cost to them.
- Mr. Kelly** noted that the year started with record enrollments. In 2017, 86 percent of Idahoans who enrolled via YHI received a tax credit and 71 percent selected a silver plan. Overall, the financial position of YHI remains robust. YHI invested the least amount of establishment funds of all fully functioning, state-based marketplaces. Operational expenses are the lowest in the country. YHI enrollment ranks in the top three of all states, based on per capita enrollment.
- Mr. Kelly** reported that immediately following the end of open enrollment, YHI began preparations for the next enrollment period by reviewing successes and opportunities for improvement; YHI held a summit with partners at the Departments of Insurance (DOI) and Health and Welfare (DHW), as well as carriers, and agents. He said new federal documentation requirements were implemented for "special enrollments," which were precipitated by a major life event, such as the birth of a child. Because of these controls, almost 4,000 invalid enrollments were prevented. Further, while the year was spent improving the customer experience, seasonal help was recruited earlier, skills training was enhanced, and additional hours of customer support were offered during the 2018 enrollment period.
- Mr. Kelly** indicated that YHI met with media throughout the State to discuss the shortened enrollment period and the ability to visit the website early to comparison shop. He also shared the unique possibility of no-cost premiums for some Idahoans. The \$0 premium bronze plans resulted from a lack of federal funding for Cost Sharing Reductions (CSR's); this lack of funding led to increased premiums

for silver plans and, therefore, increased tax credits. Some Idahoans experienced the most affordable premiums since the inception of YHI.

Mr. Kelly outlined the results of planning and preparation. He reported: 1) YHI had near record enrollments for 2018; 2) while the number of inquiries during open enrollment significantly increased, the time to resolve issues decreased; 3) web traffic saw dramatic improvement, indicating greater ease of use; 4) agents, customers, and partners remarked this was the best consumer experience to date.

Mr. Kelly said Idaho has maintained its stability and control of the State's health insurance marketplace. He remarked that the issue of funding Cost-Share Reductions was a significant one for Idaho. Thanks to partnerships and planning, carriers and consumers were prepared when the funding of CSR's was eliminated for 2018. YHI, the DOI, and DHW are all working together to prepare for any system or process changes that would be needed should the funding be reinstated.

Mr. Kelly stated that upcoming policy changes in 2019 include changes to the individual mandate. This change may not have a significant impact on Idaho. Research shows that most customers see value in having insurance coverage and approximately 5 to 7 percent of customers would be impacted.

DISCUSSION:

Senator Martin and **Mr. Kelly** discussed the \$22 million in savings from the assessment fee. **Vice Chairman Guthrie** remarked that he heard rates were increasing and customers were going to markets outside of the Idaho Exchange. **Mr. Kelly** said that as tax credits increase alongside rates. Consumers received a subsidy and the changes in rates have been marginal in the past.

Senator Thayn inquired as to: 1) the average tax credit; 2) the total amount granted; and 3) the size of deductibles for different plans. **Mr. Kelly** said the average tax credit was \$287 per month. For those receiving a tax credit, the amount increased to \$355 per month. The total amount of tax credit was \$304 million. **Senator Thayn** said he was concerned about access to primary care. **Mr. Kelly** said he would follow up with that information. **Senator Souza** stated that 85 percent of people on the Idaho Exchange had some sort of subsidy; she inquired as to the increase in premiums for those who do not receive the subsidy. **Mr. Kelly** said the average increase was 27 percent for 2018. **Senator Burgoyne** queried what was driving the 27 percent increase. **Mr. Kelly** said the DOI had regulatory authority over rate review and authorization. In 2018, the reduction in subsidy was 20 percent at the federal level. Due to lack of federal funding, 71 percent of YHI customers chose a silver plan.

Chairman Patrick thanked Mr. Kelly for his report.

RS 25657

Distribution of Local Tourism Grants. **Bobbi-Jo Meuleman**, Director, Department of Commerce (DOC), said the travel and tourism industry was Idaho's third-largest industry. Idaho tourism marketing and promotion activities were funded by a 2 percent travel and convention tax paid by travelers and collected by hotel, motel, private campgrounds, vacation rental, and bed and breakfast owners. Revenues deposited in the travel and convention fund are split according to Idaho Code: 45 percent for local tourism grants, 45 percent for statewide tourism efforts, and 10 percent for State administrative costs. Local tourism grants are distributed to regions based on the total dollars collected by each region through the 2 percent lodging tax. The Idaho Travel Council (ITC) is an eight-member council appointed by the Governor. The ITC is charged with overseeing the distribution of local tourism grants to the seven planning regions throughout the State. Each region uses these dollars to market its region to business and leisure travelers throughout the country and, in some cases, to a worldwide audience. Key stakeholders in Camas County, currently in Region 7 (Blaine, Camas, Lemhi, Custer, and Butte

counties), have requested to be grouped with Region 4 (Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties), as they believe this will result in better regional alignment of the county's limited tourism marketing dollars. **Ms. Meuleman** said this legislation would not impact the General Fund. If approved, this change would shift approximately \$4,000 annually from Region 7 to Region 4 as part of the ITC grant program.

DISCUSSION: **Senator Souza** asked if this change left any County in the region. **Ms. Meuleman** affirmed and said Blaine, Lemhi, Custer and Butte counties would remain.

MOTION: **Senator Martin** moved to send **RS 25657** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules review.

DOCKET NO. 15-0401-1701 **Rules of the Idaho Division of Human Resources (DHR) and Idaho Personnel Commission.** **Shelli Boggie**, Senior Human Resources Specialist, DHR, addressed the proposed changes to this rule. She said references to "provisional appointment," was deleted since the term had not been used since 2004 and was used only seven times from 1990-2004; the reference to a specific company was deleted, Hay Management Consultants; the reference to coordination of recruitment with the Director of the Idaho Department of Labor (IDOL) was deleted, as it was redundant and the applicant tracking system at the IDOL was being returned to the DHR; and approval for closure of State offices or State facilities, due to weather or other disruptions was to be amended.

Ms. Boggie said the DHR participated in negotiated rulemaking in to gather input from State agencies and interested parties to craft the proposed rule changes. Six written comments were received from State agencies. There is no fiscal impact as a result of this rulemaking.

MOTION: **Chairman Patrick** moved to approve **Docket No. 15-0401-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0210-1701 **Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers.** **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), gave a brief overview of the history of this rule. She said a frequent finding of periodic audits of insurance carriers and third-party claims administrators was that a delay in adjusting decisions; these frequent delays prompted a series of discussions regarding the proper interpretations of the statutory requirements. **Ms. Vaughn** said delayed decision-making on a workers' compensation claim can lead to undue economic hardship on a worker injured on the job. Oftentimes, the only remedy available to an injured worker is to initiate litigation on the claim.

Ms. Vaughn indicated that Idaho Code § 72-304 authorized the IIC to make rules, as necessary, to ensure the prompt payment of claims. After many meetings involving all stakeholders to discuss how regulations governing sureties might be amended to clarify the IIC's audit procedures, the IIC's Advisory Committee unanimously supported the rule changes.

Ms. Vaughn stated for purposes of compliance audits, the claims administrators would be allowed 30 days from the date they received knowledge of the injury to determine compensability of the claim. If, however, the employer failed to give timely notice of the injury to the claims administrator, income benefits must be issued within 28 days of the date of disability, as required by Idaho Code § 72-402. Further, this change accommodates the concerns of claims administrators who felt they were penalized during audits for the actions of employers who failed to

timely report injuries within ten days, per Idaho Code § 72-602. This represents a compromise by offering the claims administrator adequate time to determine compensability of the claim while also allowing the IIC to fulfill its duty to enforce the requirement of Idaho Code § 72-402.

Ms. Vaughn said that when an employer fails to give timely notice of the injury, payment may be due to the injured worker before a full investigation can be completed. An injured worker need not suffer the consequences of the delayed action by the employer. If the claim is ultimately denied, income benefits may be stopped immediately.

DISCUSSION: **Senator Burgoyne** asked for clarification of new language in Paragraph 051.09.a regarding claim servicing. **Ms. Vaughn** explained this came out of the audit process. It was found that benefits were not paid within 28 days of the date of disability and claims administrators felt unfairly penalized because an employer may have informed them of the claim well after the incident. The audit would evaluate the insurance company for purposes of adjusting the claim. The insurance company has 30 days from when they received knowledge of the incident to determine compensability. It is possible that 20 or 30 days may have already passed. The injured worker, per statute, is still entitled to payment within 28 days.

Senator Lakey stated he is used to using more objective terminology such as "30 days from submission of claim" rather than what is mentioned in Subsection .09, Paragraph a. He stated that the proposed method of determinations is a harder date to define and asked for some background. **Ms. Vaughn** said an injured worker may have given notice to the employer and the employer has the duty to relay the information to the claims administrator in order to determine compensability. During audits, the IIC evaluated when payments were started back to the date of injury. If the employer did not inform the claims administrator, the employer felt they were being unfairly penalized.

Vice Chairman Guthrie questioned Subsection 9d, regarding payment of the first Permanent Partial Disability (PPD). He asked whether the relevant factor was when the check was issued or when the check was received. **Ms. Vaughn** said the date was 14 days after receipt of the medical report. The 14-day period began when the check was issued.

Senator Burgoyne remarked that part of the problem was the employer received the notice, the surety company did not learn of it within a reasonable period of time. He asked why the surety company would not be bound by notice to the employer. **Ms. Vaughn** stated the statute addresses the surety company. The employer may hesitate to file a claim, as it may not be a workers' compensation claim. **Senator Burgoyne** said he could support the rule, but he asked whether the rule went beyond the statute. **Ms. Vaughn** said the IIC has authority over employers, but must prove the employer willfully neglected to file a report.

Tom Limbaugh, IIC Chairman, clarified that the employer and surety company were one in the same. The surety company was bound by Idaho Code § 72-402 to pay loss of wages or income benefits within 28 days of the date of disability. If an employer did not submit a claim in a timely way, it would constitute a violation of statute. The surety company was bound to make the first payment of loss of income, if the claim had not been denied, within the 28-day period. He emphasized the rule changes were for auditing purposes only.

MOTION: **Chairman Patrick** moved to approve **Docket No. 17-0210-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0211-1701**

Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Self-Insured Employers. **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), stated this rule mirrors the rules set forth in **Docket No. 17-0210-1701**, but substitutes self-insured employers for insurance carriers. These rules are intended to be approved or denied in tandem with **Docket No. 17-0210-1701**, so self-insured employers are not held to a different standard than insurance carriers.

MOTION:

Senator Martin moved to approve **Docket No. 17-0211-1701**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0401-1701**

Rules Governing Safety Inspections - General. **Gary Barnes**, Industrial Safety Program Manager, Division of Building Safety (DBS), explained that many of the statutory references, as well as certain provisions related to other programs and authorities in the current rules were outdated, and inapplicable. Additionally, statutory authority to administer the safety program for State facilities was transferred solely to the DBS in 2015. Accordingly, other applicable rules related to the inspections, which were previously administered by the Idaho Industrial Commission (IIC), have been updated. **Mr. Barnes** commented this rule amended outdated statutory provisions, and updated the adopted safety standards applicable to the safety inspections conducted by DBS on state-owned buildings and those owned by local governments. Unnecessary references to programs that are no longer administered through the DBS safety program, such as elevators and boilers were eliminated. Certain requirements for public employers were updated to ensure a safe workplace, as well as the annual inspection process the DBS currently engages in when inspecting State facilities. Negotiated rulemaking was conducted.

DISCUSSION:

Senator Martin remarked that every public employer must be free from hazards and this type of standard is not attainable. **Vice Chairman Guthrie** asked for a definition of "recognized hazards." **Mr. Barnes** stated the hazards were within another docket, but there was no definition. **Senator Martin** asked if there were "recognized standards." **Mr. Barnes** said there are situations that are known to be hazardous and some have a certain degree of hazard.

Senator Lakey referred to Subsection 012.01 and said the standard broadly required that the workplace be free from recognized hazards and that seemed inconsistent with the Subsection .012.03 which required every public employer to post signs for existing hazards. **Mr. Barnes** explained that some public employers have known hazards and signs should be posted; not all hazards can be mitigated. **Senator Lakey** noted there were hazards that public employers dealt with and signs should be properly posted. He questioned Subsection .01 of the rule which says the public employer shall furnish a place of employment free from "recognized hazards." He said that Section 12.03 that states hazards require signage conflicts with the section that says the place of employment must be "free from hazards." **Mr. Barnes** explained the DBS wanted the public employer to pursue a hazard-free workplace and hoped the area would be "free from hazards." **Senator Lakey** commented the language did not provide flexibility. He suggested the language could be broader when the Occupational Safety and Health Administration (OSHA) is mentioned in Subsection .011.02. He remarked the most current editions of the Life Safety Code did not have a date. **Mr. Barnes** commented the DBS was not attempting to adopt these codes, but was only using the OSHA codes as a reference standard. The DBS program was voluntary, an employer could choose to disregard the DBS documents and continue their present practice. The DBS was attempting to provide the most current documents to inspectors so if there was confusion only addressed in the National Fire Protection Agency (NFPA) or the American National Standards Institute (ANSI), they could look to new processes and procedures. **Senator Lakey** stated he was concerned and would prefer a specific date for those additions.

Senator Burgoyne referred to the fact that Section .006 is entitled Incorporation by Reference, and wondered why the codes cited in Subsection 11.02 were reference standards and why were they relevant. **Mr. Barnes** replied that the standards were only being used where OSHA standards were silent on a particular situation. **Mr. Barnes** said it was not the intent of the DBS to make these primary codes. OSHA standards were addressing workplace situations and were not necessary for place of public employment. **Senator Burgoyne** stated it appeared the codes were being adopted by reference in instances where it was necessary to find a standard and OSHA did not provide it. He queried if the codes would be applicable if OSHA did not provide the standard. **Mr. Barnes** stated the basic requirements in Section 012 were those used by the DBS. **Vice Chairman Guthrie** pointed out that the word "shall" was causing an issue.

Senator Souza asked if the Committee rejected Subsection .012.02, if that would be problematic. **Mr. Barnes** stated the rejection would certainly create problems for the DBS as they would still have to refer to the basic requirements.

Senator Lakey noted that if the guidelines were not mandatory, words like "shall" would be incongruent. He asked why the standards were stated as mandatory and not as guidelines. **Mr. Barnes** replied the employer should provide a safe workplace. He said that if there were no standards at all, the DBS might provide inaccurate assurances of safety change during inspection.

Senator Burgoyne referred to Subsection 012.01. and noted that "recognized standards" as a definition and "recognized hazards" are those addressed by codes adopted by the State. Not all of the codes may have been adopted at this point. He referred to Subsection 012.03 and asked if "injury hazard" intended to be a "recognized hazard" or were "injury hazards" something different. **Mr. Barnes** explained that "injury hazards" were meant to be in the rule and gave the example of a table saw as an injury hazard. **Senator Burgoyne** remarked that employers could be sued and encouraged the DBS to look at OSHA standards that outline what is required of an employer.

TESTIMONY: **Patrick Grace**, Regional Manager, DBS, remarked that guidelines had to be adopted by reference, as the rules were outdated and based on 1997 codes and standards. The DBS wanted to inform State agencies as to what codes and standards were being used every year when there was an inspection. The DBS wanted to be up-to-date on the standards. **Senator Burgoyne** said the implications were more serious than what was suggested. **Mr. Grace** said these rules apply to State facilities and did not apply to private property. OSHA standards were the recognized workplace standards and those standards used during inspections.

MOTION: **Senator Martin** moved to reject **Docket No. 07-0401-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 07-0901-1701 **Safety and Health Rules for Places of Public Employment.** **Gary Barnes**, Industrial Safety Program Manager, Division of Building Safety, asked for rejection of this docket.

MOTION: **Senator Lakey** moved to reject **Docket No. 07-0901-1701**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel back to Chairman Patrick.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:58 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, January 25, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>RS25686</u>	Background Checks - State Tax Commission	Tom Shaner, Tax Commissioner
<u>S 1209</u>	Relating to the Idaho Petroleum Clean Water Trust Fund	Senator Nonini
DOCKET NO. <u>07-0402-1701</u>	Safety Rules for Elevators, Escalators, and Moving Walks, p. 57	Gary Barnes, Industrial Safety Program Manager, Division of Building Safety
<u>12-0110-1701</u>	Rules Pursuant to the Idaho Residential Mortgage Practices Act, p. 106	Anthony Polidori, Supervisor Examiner/Investigator, Department of Finance
<u>07-0204-1701</u>	Rules Governing Plumbing Safety Inspections, p. 22	John Nielsen, Plumbing and HVAC Program Manager
<u>07-0206-1701</u>	Rules Concerning Idaho State Plumbing Code, p. 25	John Nielsen
<u>07-0701-1701</u>	Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety, p. 60	John Nielsen
<u>07-0701-1702</u>	Rules Governing Installations of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety, p. 64	John Nielsen
<u>17-0204-1701</u>	Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits, p. 121	Nick Landry, Financial Officer, Industrial Commission
<u>17-0207-1701</u>	Procedures to Obtain Compensation, p. 124	Patti Vaughn, Benefits Administration Manager, Industrial Commission
<u>17-0208-1701</u>	Miscellaneous Provisions, p. 128	Patti Vaughn

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick

Vice Chairman Guthrie

Sen Martin

Sen Lakey

Sen Thayn

Sen Souza

Sen Potts

Sen Ward-Engelking

Sen Burgoyne

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 25, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Commerce and Human Resource Committee (Committee) to order at 1:30 p.m.

RS 25686 **Background Checks - State Tax Commission.** **Tom Shaner**, Idaho State Tax Commission (Commission), stated this bill relates to how the Commission conducts background checks for its employees. Currently, the Commission uses the Idaho State Police (ISP) system, which also checks criminal records of eight western states. This bill will allow for nationwide background checks for current employees, contractors, and all new hires, to determine their suitability for access to federal income tax information. **Mr. Shaner** stated this is important because the Idaho income tax code was based on using the Internal Revenue (IRS) Code and it is necessary for the State to comply with the IRS guidelines, in order to have access to federal tax data. The current requirements became effective September 30, 2016. The IRS, according to Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, requires agencies that receive federal income tax information follow procedures that include a nationwide background check.

Mr. Shaner reported the first-year cost was approximately \$30,720, consisting of \$10,000 worth of equipment and a processing fee of \$37 each for 560 employees. In subsequent years, the Commission will have to continue to check the backgrounds of newly-hired people. The Commission turnover rate, including retirement, has been approximately 20 percent or 112 employees per year for an estimated annual cost of \$4,144. The Commission would absorb any costs associated with this bill within the current appropriation.

MOTION: **Senator Martin** moved to send **RS 25686** to print. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1209 **Relating to the Idaho Petroleum Clean Water Trust Fund.** **Senator Nonini** stated this legislation proposes to amend the Idaho Petroleum Clean Water Trust Fund, Idaho Code § 41-4904, to revise provisions to allow a broader group of wholesale distributors of petroleum products to serve as members of the Board of Trustees. There is no change in board members, so there is no fiscal impact.

TESTIMONY: **Suzanne Budge**, representing the Idaho Petroleum Marketers and Convenience Store Association, provided a brief history of the environment cleanup by the petroleum industry. She said most states took steps in statutes to provide for environmental cleanup. The cleanup program in Idaho was separate from the federal program. **Ms. Budge** mentioned there was a fund created in 1990 and a seven-member board created in 2003. The fund was managed by the State Insurance Fund and licensed through the Department of Insurance (DOI). **Ms. Budge** said that 93 percent of underground tanks were insured by the fund and the fund has paid almost \$41 million for cleanups. She remarked there was a broad representation of marketers on the board.

John Jackson, founder and Chief Executive Officer of Jackson Energy, testified that the board should be balanced with small, medium, and large distributors.

Senator Nonini concluded the presentation and expressed he was in agreement with Mr. Jackson.

MOTION: **Senator Souza** moved that **S 1209** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules review.

DOCKET NO. 07-0402-1701 **Safety Rules for Elevators, Escalators, and Moving Walks. Gary Barnes**, Industrial Safety Program Manager, Idaho Division of Building Safety (DBS), defined backup roller, counterweight displacement detection device, elastomeric buffer, seismic detection device, and sound engineering practice. He outlined all of the rule changes and additions. He noted that changes were incorporated by reference.

DISCUSSION: **Senator Lakey** stated he thought it appropriate that a summary of changes be provided. **Senator Lakey** stated that there needed to be a summary or suggestions as to which items should be summarized, so the Committee would have prior opportunity to review the changes.

MOTION: **Senator Lakey** moved to hold at the Call of the Chair **Docket No. 07-0402-1701**. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senator Potts** asked to be recorded as voting **nay**.

DOCKET NO. 12-0110-1701 **Rules Pursuant to the Idaho Residential Mortgage Practices Act. Anthony Polidori**, Supervising Examiner/Investigator, Consumer Finance Bureau, Idaho Department of Finance (DOF), stated that the effect of this rule would be to promote consistent, uniform, and familiar industry standards in the marketplace by updating references to federal laws and regulations (Truth-in-Lending Act and Regulation Z - Real Estate Settlement Procedures Act and Regulation X) as amended through January 1, 2018. He stated this would be accomplished by replacing reference to the year 2017 with reference to the current year.

Mr. Polidori remarked that updating references to federal laws and regulations was an effort by the DOF to avoid exposing Idaho's mortgage licensees to inconsistencies in federal and state requirements. Furthermore, this effort would provide consumers and industry stakeholders with certainty as to the rules that apply to mortgage practices in Idaho. The DOF is not aware of any opposition. This rule was incorporated by reference. **Mr. Polidori** stated that he had a summary of the changes (see Attachment 1).

MOTION: **Chairman Patrick** moved to approve **Docket No. 12-0110-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0204-1701**

Rules Governing Plumbing Safety Inspections. **John Nielsen**, Plumbing, Heating, Ventilation, and Air Conditioning (HVAC) Program Manager, Idaho Division of Building Safety (DBS) reported the Cross Connection Manual published by the American Water Works Association (AWWA) had previously been used as the standard for the installation of cross connection control and backflow prevention devices. However, the Idaho State Plumbing Code (ISPC) already contained provisions related to backflow installations. The plumbing industry would prefer to reference only one source. This rulemaking would create clarity by eliminating the need for plumbers and inspectors to reference the Cross Connection Manual. The industry and the State would save money inasmuch as plumbers and inspectors would no longer refer to and purchase two code books. Negotiated rulemaking was conducted.

MOTION:

Senator Potts moved to approve **Docket No. 07-0204-1701**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0206-1701**

Rules Concerning Idaho State Plumbing Code. **John Nielsen**, Plumbing, Heating, Ventilation, and Air Conditioning (HVAC) Program Manager, Idaho Division of Building Safety (DBS), stated the amendment to Section 603.5.7 of the 2017 Idaho State Plumbing Code (ISPC) would eliminate reoccurring freezing issues because the code required installing hose bibb-type vacuum breakers on freeze-resistant sanitary yard hydrants. **Mr. Nielsen** noted that this amendment would assist homeowners and contractors in saving money by not requiring a tracer wire for non-metallic pipe if the electrical wiring for the well was contained in the same trench from the well to the structure. Negotiated rulemaking was conducted.

Mr. Nielsen remarked this rulemaking was incorporated by reference. **Mr. Nielsen** referred to a handout that showed the 2017 ISPC, Section 603.5.7, Outlets with Hose Attachments (see Attachment 2).

MOTION:

Senator Burgoyne moved to approve **Docket No. 07-0206-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0701-1701**

Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems. **John Nielsen**, Plumbing, Heating, Ventilation, and Air Conditioning (HVAC) Program Manager, Idaho Division of Building Safety (DBS), said the current edition of the International Residential Code (IRC) requires mechanical ventilation and details how to design the systems to achieve the required flowrate of air, as expressed in cubic feet per minute (CFM). This is based on the number of bedrooms and total square footage of the dwelling. **Mr. Nielsen** explained that the existing administrative rule provision did not improve or help administer this requirement beyond that which was already contained in the code itself. Accordingly, the code amendment in the rules was not needed. This rulemaking proposes to delete an amendment to a mechanical provision (Section M1502.4.2) of the IRC related to system design that was no longer necessary. Pursuant to Idaho Code § 67-5220(2), negotiated rulemaking was not conducted, because the rule is simple in nature. The proposed rulemaking was discussed at several HVAC board meetings over the course of the last year, without opposition from mechanical contractors or the public.

MOTION:

Senator Thayne moved to approve **Docket No. 07-0701-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0701-1702**

Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems. **John Nielsen**, Plumbing, Heating, Ventilation and Air Conditioning (HVAC) Program Manager, Idaho Division of Building Safety (DBS), said Idaho Code § 54-5021 required that HVAC inspectors be appropriately certified for the type of HVAC work that they are inspecting. **Mr. Nielsen** reported this rulemaking identified two entities that certify mechanical inspectors. The rule would allow the HVAC Board flexibility to approve any other professional certifying body. Negotiated rulemaking was not conducted because the rule is simple in nature. The proposed rulemaking was discussed at numerous HVAC Board meetings over the course of several years; there was no opposition from mechanical inspectors or the public.

DISCUSSION:

Senator Lakey asked Mr. Nielsen if this was a new section of code; he inquired as to whether inspectors were previously certified. **Mr. Nielsen** stated every mechanical inspector had been certified through the International Code Council (ICC) or through the International Association of Plumbing and Mechanical Officials.

MOTION:

Senator Potts moved to approve **Docket No. 07-0701-1702**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0204-1701**

Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits. **Nick Landry**, Financial Officer, Idaho Industrial Commission (IIC), said the Peace and Detention Officer Disability Fund (Fund) was established during the 2007 Legislative Session with S 1123. The Legislature's intent was to ensure that peace and detention officers would continue to receive their full rate of base salary when injured in the line of duty. Functionally, the Fund reimburses the employer for the difference between the indemnity (wage) benefits provided by the Idaho Workers' Compensation law and the full rate of base salary paid by the employer.

Mr. Landry explained that after the statute was effective, the IIC promulgated administrative rules which detailed eligibility requirements, as well as the application and payment processes. In subsequent statutory amendments, the eligibility requirements in administrative rule were amended to reflect the changes in statute.

Mr. Landry stated that there was uncertainty regarding the stability of revenue and claim liabilities when the Legislature created the Fund in 2007, . By 2012, the cash balance had reached \$562,000. During the 2012 Legislative Session, the passage of H 570 expanded the eligibility criteria in Idaho Code § 72-1104 with a sunset date of July 1, 2015. By 2015, the cash balance of the Fund was \$867,000. In the 2015 Legislative Session, H 55 effectively removed the sunset date for the expanded eligibility criteria.

Mr. Landry noted the proposed administrative rule change was a housekeeping measure that removed the sunset date in the administrative rule to reflect the repealed sunset date provided by H 55. The IIC had administered the Fund in accordance with statute, so there was no fiscal impact associated with the proposed administrative rule change.

MOTION:

Senator Lakey moved to approve **Docket No. 17-0204-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0207-1701**

Procedures to Obtain Compensation. **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), said the IIC adopted rules in 2015 that would mandate the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange (EDI) Claims Release 3.0 standard for the electronic reporting of workers' compensation claims and subsequent reports effective July 1, 2017. On April 3, 2017, the IIC adopted a Temporary Rule extending the implementation date to November 4, 2017, after some trading partners requested additional time to develop and test their systems to the new standard. This rule change retroactively inserted the actual implementation date of November 4, 2017 into the permanent rule.

MOTION:

Senator Ward-Engelking moved to approve **Docket No. 17-0207-1701**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0208-1701**

Miscellaneous Provisions. **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), said this change clarified the triggering events when an injured worker was entitled to a written notice of a change of claim status. These notices allow the injured worker to know whether their claim had been accepted or denied, and to understand why payments have either been started, stopped, or reduced.

MOTION:

Senator Burgoyne moved to approve **Docket No. 17-0208-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DISCUSSION:

Vice Chairman Guthrie reminded presenters they would need written detail relating to "incorporated by reference" submitted to the Committee secretary prior to the meeting. **Senator Burgoyne** suggested the summaries be submitted when the books containing the dockets were distributed. **Senator Lakey** remarked that at one of the previous hearings he looked at the information submitted online for the Legislative Service Office and did not find it useful for this purpose. He asked for a narrative and a practical summary.

**PASSED THE
GAVEL:**

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

Chairman Patrick announced the meeting on Thursday, February 1, 2018 will begin at 2:00 p.m. instead of 1:30 p.m. due to training for all Committee Chairmen and Vice Chairmen.

ADJOURNED:

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:20 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently in full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here:

IDAPA 12 – DEPARTMENT OF FINANCE

12.01.10.005 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

The Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 *et seq.*, incorporates certain provisions of the federal Real Estate Settlement Procedures Act, codified in 12 U.S.C. section 2601 *et seq.*, the federal Truth in Lending Act, codified in 15 U.S.C. sections 1601 *et seq.* and Regulations X and Z as issued by the federal Consumer Financial Protection Bureau. Provisions of Regulations X and Z were amended during the past year and these amendments need to be incorporated into the Idaho rules. This is done to ensure the state rules are consistent with federal regulations and to provide one set of rules for industry to follow. Idaho industry is required to comply with all applicable new and updated federal rules whether or not the Department incorporates them by reference. The following is a summary of the rules adopted by the Consumer Financial Protection Bureau (Bureau).

1. Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

Date of final rule: December 27, 2017

This final rule amends official commentary that interprets the requirements of Regulation Z (Truth in Lending) to reflect a change in the asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the 12-month period ending in November.

The adjustment to the escrows asset-size exemption threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified mortgages that satisfy all applicable criteria, including being made by creditors that have (together with certain affiliates) total assets below the threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages.

*Anthony
Polidore*

*1-25-18
Incorporated by
Reference
docket no. 12-0110-1701
attachment 1*

2. Appraisals for Higher-Priced Mortgage Loans Exemption Threshold Adjustment

Date of final rule: November 9, 2017

This final rule amends official interpretations for regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for “higher-risk mortgages,” termed “higher-priced mortgage loans” or “HPMLs” in the agencies’ regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA) and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) issued joint final rules implementing these requirements, effective Jan. 18, 2014. The Agencies’ rules exempted, among other loan types, transactions of \$25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the OCC, the Board, and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Based on the CPI-W in effect as of June 1, 2017, the exemption threshold will increase from \$25,500 to \$26,000 effective Jan. 1, 2018.

3. Truth in Lending (Regulation Z) Threshold Adjustments

Date of final rule: November 9, 2017

This final rule amends the official interpretations and commentary for the agencies’ regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the Board and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Based on the annual percentage increase in the CPI-W as of June 1, 2017, the exemption threshold will increase from \$54,600 to \$55,800 effective Jan. 1, 2018.

4. Amendments to Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)

Date of interim final rule: October 4, 2017

This interim final rule amends a provision of the Regulation X mortgage servicing rules issued in 2016 relating to the timing for mortgage servicers to provide modified written early

intervention notices to borrowers who have invoked their cease communication rights under the Fair Debt Collection Practices Act.

5. Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z).

Date of final rule: July 7, 2017

This final rule modifies the federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act and the Truth in Lending Act that are implemented in Regulation Z. This rule memorializes informal guidance on various issues and makes additional clarifications and technical amendments. This rule also creates tolerances for the total of payments, adjusts a partial exemption mainly affecting housing finance agencies and nonprofits, extends coverage of the TILA-RESPA integrated disclosure (integrated disclosure) requirements to all cooperative units, and provides guidance on sharing the integrated disclosures with various parties involved in the mortgage origination process.

6. Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction.

Date of final rule: June 27, 2017

This rule amends certain mortgage servicing rules issued in 2016 to make several non-substantive corrections. The corrections address two typographical errors, the authority citation for Regulation Z, and several amendatory instructions relating to certain official commentary to apply the correct effective date.

7. Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date.

Date of final rule: April 25, 2017

The rule represents a final rule to delay the Oct. 1, 2017 effective date of the rule governing Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (the Prepaid Accounts Final Rule) by six months, to April 1, 2018.



An Association of Mortgage Professionals

January 17, 2018

To: Senate Commerce and Human Resources Committee

Re: Department of Finance Docket No. 12-0110-1701

The Idaho Association of Mortgage Professionals supports the rule changes as proposed by the Idaho Department of Finance. These represent a mere updating of the statutes to stay in line with federal law.

IAMP works closely with the Department of Finance each year on many aspects of their operation, from legislation and rulemaking to licensing issues to education requirements. We enjoy a transparent relationship and always have the opportunity in advance to provide input on any upcoming changes.

We appreciate this relationship and will continue to provide input from the mortgage industry on state matters.

Sincerely,

A handwritten signature in black ink that reads "Chuck Anderson". The signature is written in a cursive style with a long, sweeping underline.

Chuck Anderson

President

IAMP

Idaho Association of Mortgage Professionals
P.O. Box 7981, Boise, ID 83707
Phone (208) 321-9309 Fax: 208-321-4819
E-mail: tottens@amsidaho.com
www.idahomortgageprofessionals.org

603.5.3 Backflow Prevention. Water closet flushometer tanks shall be protected against backflow by an approved backflow prevention assembly, device, or method.

603.5.4 Heat Exchangers. Heat exchangers used for heat transfer, heat recovery, or solar heating shall protect the potable water system from being contaminated by the heat-transfer medium. Single-wall heat exchangers used in indirect-fired water heaters shall meet the requirements of Section 505.4.1. Double-wall heat exchangers shall separate the potable water from the heat-transfer medium by providing a space between the two walls that is vented to the atmosphere.

603.5.5 Water Supply Inlets. Water supply inlets to tanks, vats, sumps, swimming pools, and other receptors shall be protected by one of the following means:

- 1) An approved air gap.
- 2) A listed vacuum breaker installed on the discharge side of the last valve with the critical level not less than 6 inches (152 mm) or in accordance with its listing.
- 3) A backflow preventer suitable for the degree of hazard, installed in accordance with the requirements for that type of device or assembly as set forth in this chapter.

603.5.6 Protection from Lawn Sprinklers and Irrigation Systems. Potable water supplies to systems having no pumps or connections for pumping equipment, and no chemical injection or provisions for chemical

603.5.6.3 Systems with Chemical Injectors. Where systems include a chemical injector or provisions for chemical injection, the potable water supply shall be protected by a reduced-pressure principle backflow prevention assembly (RP).

603.5.7 Outlets with Hose Attachments. Potable water outlets with hose attachments, other than water heater drains, boiler drains, and clothes washer connections, shall be protected by a nonremovable hose bibb-type backflow preventer, a nonremovable hose bibb-type vacuum breaker, or by an atmospheric vacuum breaker installed not less than 6 inches (152 mm) above the highest point of usage located on the discharge side of the last valve. In climates where freezing temperatures occur, a listed self-draining frost-proof hose bibb with an integral backflow preventer or vacuum breaker shall be used.

603.5.8 Water-Cooled Equipment. Water-cooled compressors, degreasers, or other water-cooled equipment shall be protected by a backflow preventer installed in accordance with the requirements of this chapter. Water-cooled equipment that produces backpressure shall be equipped with the appropriate protection.

603.5.9 Aspirators. Water inlets to water-supplied aspirators shall be equipped with a vacuum breaker installed in accordance with its listing requirements and this chapter. The discharge shall drain through an air gap. Where the tailpiece of a fixture to receive the discharge of an aspirator is used, the air gap shall be located above the flood-level rim of the fixture.

1-25-18 Ron Whitney
2017 IDAHO STATE PLUMBING CODE
Socket No. 07-0208-1701
Attachment 2

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, January 30, 2018

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of January 16, 2018	Senator Martin
<u>RS25633</u>	Relating to Engineers and Surveyors, Revise Terminology, Revise Certain Requirements for Exam and Licensure	Keith Simila, Executive Director, Board of Prof. Engineers and Land Surveyors
DOCKET NO. <u>10-0102-1701</u>	Rules of Professional Responsibility, p. 100	Keith Simila, Executive Director, Board of Professional Engineers and Land Surveyors
<u>07-0312-1701</u>	Rules Governing Manufactured or Mobile Home Installations, p. 49	Patrick Grace, Regional Manager, Division of Building Safety
<u>18-0102-1701</u>	Insurance Policy Titles, p. 141	Dean L. Cameron, Director, Department of Insurance
<u>18-0108-1701</u>	Filing of Life Policy Forms, p. 143	Dean L. Cameron
<u>18-0120-1701</u>	Cancellation of, or Refusal to Renew, Automobile Insurance Policies, p. 145	Dean L. Cameron
<u>18-0122-1701</u>	Sale of Insurance by Vending Machines, p. 152	Dean L. Cameron
<u>18-0125-1701</u>	Title Insurance and Title Insurance Agents and Escrow Officers, p. 154	Dean L. Cameron
<u>18-0130-1701</u>	Individual Disability and Group Supplemental Disability Insurance, p. 158	Dean L. Cameron
<u>18-0135-1701</u>	Guidelines Respecting the Use of Claim Forms for Disability Insurance Claims, p. 162	Dean L. Cameron
<u>18-0156-1701</u>	Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules, p. 164	Dean L. Cameron
<u>18-0173-1701</u>	Rule to Implement the Individual Health Insurance Availability Act Plan Design, p. 169	Dean L. Cameron
<u>18-0175-1701</u>	Credit for Reinsurance Rules, p. 171	Dean L. Cameron
<u>18-0181-1701</u>	Corporate Governance Annual Disclosure, p. 208	Dean L. Cameron

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick
Vice Chairman Guthrie
Sen Martin
Sen Lakey
Sen Thayn

Sen Souza
Sen Potts
Sen Ward-Engelking
Sen Burgoyne

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 30, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of January 16, 2018. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

RS 25633 **Relating to Engineers and Surveyors, Revise Certain Requirements for Exam and Licensure.** **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS), stated the purpose of the amendment was to reduce barriers to licensure by repealing the requirement for additional education upon multiple examination failures and decoupling the requirement for obtaining four years of experience prior to assignment to the professional licensure examinations. **Mr. Simila** commented there would be no fiscal impact to the General Fund or the dedicated fund of the agency; removing the requirements would not increase or decrease the cost of processing applications.

MOTION: **Senator Martin** moved to send **RS 25633** to print. **Senator Ward-Engelking** seconded the motion.

DISCUSSION: **Senator Burgoyne** said he thought the purpose of the amendment was to remove barriers to licensure. He questioned whether anti-trust laws would be violated. **Mr. Simila** commented the amendment applied primarily to individuals from foreign countries who had no intent of living in the United States.

VOTE: The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules review.

DOCKET NO. 10-0102-1701 **Rules of Professional Responsibility.** **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS), reported the amendments would clarify the requirement to follow the Qualifications Based Selection statute, Idaho Code § 67-2320. He stated the intent applied to both consultants and subconsultants. **Mr. Simila** said there was no fiscal impact to the State General Fund or the agency dedicated fund because the amendment was a clarification of a process already required by law and rule.

DISCUSSION: **Senator Lakey** remarked he appreciated the explanation from Mr. Simila of the "incorporation by reference." **Senator Lakey** clarified with Mr. Simila that a subconsultant hired by a contractor was not subject to this rule.

MOTION: **Senator Thayn** moved to approve **Docket No. 10-0102-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0312-1701**

Rules Governing Manufactured or Mobile Home Installations. **Patrick Grace**, Regional Manager, Idaho Division of Building Safety (IDBS), reported that according to Idaho Code § 44-2201, all used mobile and manufactured homes should be installed in accordance with the Idaho Manufactured Home Installation Standard (IMHIS). The IMHIS had not been updated since 2004. Through the negotiated rulemaking process, the IDBS has established a newer, updated edition of this new standard reflecting installation requirements and safety considerations currently applicable to the industry.

Mr. Grace said that, in addition, the DBS was seeking to modify the training requirements for manufactured home installation inspectors to reflect a more practical and valuable schedule for inspectors to acquire necessary education. The IMHIS would be updated and the 2018 edition would be adopted for application to the installation of used manufactured homes in the State. The rulemaking would modify the annual training requirements for inspectors of manufactured home installations from an annual four-hour training requirement to eight hours of training every three years.

Mr. Grace commented the proposed rules would be "incorporated by reference." (see Attachment 1)

DISCUSSION: **Senator Lakey** thanked Mr. Grace for the helpful summary.

MOTION: **Senator Thayn** moved to approve **Docket No. 17-0312-1701**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0102-1701**

Insurance Policy Titles. **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), remarked the existing rule consisted of one sentence barring the approval of any life insurance policy bearing a name which would be misleading or confusing. Such policies were already prohibited by Idaho Code § 41-1813. The rule would not be necessary as it did not add value in understanding or effectuating Code or any other provisions of Code. This rulemaking would repeal this rule.

MOTION: **Senator Lakey** moved to approve **Docket No. 18-0102-1701**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0108-1701**

Filing of Life Policy Forms. **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), stated that the rule, which was originally adopted in 1962, called for life policy forms to be submitted to the DOI "in duplicate." Policy forms have long been submitted electronically through the System for Electronic Rate and Form Filings (SERFF). This rule would not be necessary for the effectuation of Idaho Code, Title 41. Other provisions of this rule related to filing of rating formulas and specimens would also be unnecessary, because filings were made per Idaho Code §§ 41-1812 and 41-1813 and in light of substantive provisions in Idaho Code Title 41, Chapter 19.

MOTION: **Senator Souza** moved to approve **Docket No. 18-0108-1701**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0120-1701**

Cancellation of, or Refusal to Renew Automobile Insurance Policies. Dean L. Cameron, Director, Idaho Department of Insurance (DOI), stated that Idaho Code § 41-2502 required that insurers offer uninsured and underinsured auto coverage to Idaho consumers; the Code also provided that a consumer could reject coverage in writing when the policy was first purchased. **Director Cameron** indicated Subsection 3 also provided that the insurer furnish a statement approved by the Director of the DOI explaining both types of coverage and the types of underinsured coverage that may be available in Idaho. The DOI fulfilled this directive initially by publishing Bulletin 08-08. Recently, there have been discussions about whether consumers were adequately protected under the status quo. In 2017, there were three bills (H 163, S 1048, and S 1078) that considered proposing amendments to Idaho Code §§ 41-2502 or 41-2503 (the latter section contained the definitions). Legislators suggested that the Director meet with industry to consider alternatives that would better serve Idahoans. **Director Cameron** reported negotiated rulemaking was conducted and written comments were received.

MOTION:

Senator Lakey moved to approve **Docket No. 18-0120-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0122-1701**

Sale of Insurance by Vending Machines. Dean L. Cameron, Director, Idaho Department of Insurance (DOI), stated the rule dated back to 1979 and was not currently monitored by the DOI, no licenses currently exist, nor were any expected. The fee for vending machine licenses was not addressed or included in the DOI's general fee rule. Internet options replace this mode of accessibility for the public, along with provisions on credit cards for limited travel insurance. **Director Cameron** said recent legislative change removed retail licensing requirements for travel insurance. This rulemaking proposed to repeal this rule.

MOTION:

Chairman Patrick moved to approve **Docket No. 18-0122-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0125-1701**

Title Insurance and Title Insurance Agents and Escrow Officers. Dean L. Cameron, Director, Idaho Department of Insurance (DOI), stated this rule would amend language to make title insurance policy cancellation fees permissive, rather than mandatory, because there may be various scenarios when it may seem inappropriate to charge a cancellation fee. Title insurance agents would not charge cancellation fees, but for the current rule. (see Attachment 2)

DISCUSSION:

Senator Potts asked about late fee charges and the possibility of abuse of power. **Director Cameron** said that most of the time costs would be absorbed, but if there was a real estate agent who was unable to deliver closing escrows on a consistent basis, there could be a charge.

Senator Burgoyne queried if a policy would be cancelled, if this was this done before the title search and would this be a windfall for the insurance company. **Director Cameron** commented this issue did not come up. He said most real estate agents would respond as soon as possible, however, escrow could fall out right up to the point of closing. At that point, the title company would have done all of the work. **Senator Burgoyne** mentioned that in a situation where a real estate agent submitted an order for a title insurance policy on behalf of the purchaser, would there be a cancellation fee; if so, who would be responsible. **Director Cameron** replied the real estate agent who ordered the policy would be responsible to pay the cancellation fee.

Chairman Patrick remarked money could be lost, as it appeared the title company did all of the work. **Director Cameron** stated that was correct and that was an issue with the title industry, and it would be considered an inducement if the fee

was waived where others would be forced to charge the fee. The DOI was trying to give the title company permission without making the fee mandatory.

- TESTIMONY:** **Cameron McFadden**, representing Title One, clarified that cancellations only occurred 1 percent of the time. He remarked this rule would give the company discretion.
- DISCUSSION:** **Senator Burgoyne** commented that the Committee may be revisiting this issue again from the consumer protection point-of-view. He pointed out there should be a maximum amount set, with a sliding scale based on work performed. **Senator Lakey** stated he did not think the Committee would be revisiting this issue again due to the idea that this happens so infrequently.
- MOTION:** **Senator Lakey** moved to approve **Docket No. 18-0125-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 18-0130-1701** **Individual Disability and Group Supplemental Disability Insurance.** **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), reported that this proposed rule would allow, but not require, carriers to offer return of premium or cash value benefits to covered persons for specified disease, limited benefit policies, and accident-only policies. This authority is in addition to the other types of policies currently permitted. The rule was drafted using negotiated rulemaking.
- DISCUSSION:** **Chairman Patrick** asked how the carrier would make any money if the premium amount was refunded. **Director Cameron** said the carrier would make money by carrying a premium for the years of coverage.
- MOTION:** **Senator Potts** moved to approve **Docket No. 18-0130-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 18-0135-1701** **Guidelines Respecting the Use of Claim Forms for Disability Insurance Claims.** **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), stated this rule would require insurers to furnish to hospitals and certain other service providers, a six-month supply of paper forms for the filing of claims. Since the rule was adopted in 1980, the vast majority of claims had been submitted electronically. It was no longer necessary for providers to have a six-month supply of paper forms on hand at all times. This rule reflected outmoded practices. This rulemaking was proposed to repeal this rule.
- MOTION:** **Senator Martin** moved to approve **Docket No. 18-0135-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 18-0156-1701** **Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules.** **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), reported the definition of "things of value" would be revised in Subsection 010.05 and provisions 4.1 and 9 of Exhibit 1. The revision would not require cancellation fees because there were various scenarios where it seemed inappropriate to charge a cancellation fee, and title insurance agents would not charge cancellation fees but for the current rule.
- MOTION:** **Senator Thayn** moved to approve **Docket No. 18-0156-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0173-1701 **Rule to Implement the Individual Health Insurance Availability Act Plan Design.** **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), stated this rule would provide specifics for the plan design of five individual health plans to be offered through the Idaho Individual High Risk Reinsurance Pool (Pool), per Idaho Code, Chapter 55, Title 41. Revisions to Chapter 55, effective July 1, 2017, eliminated the requirement and the need to design specific products for the Pool. These plans would likely function as a reinsurance mechanism for individuals with certain health conditions enrolled in major medical individual health insurance plans available marketwide. The approximately 50 individuals grandfathered into these high-risk plans prior to the 2017 legislation would be renewed without modification to plan design. Rules for design of these plans were obsolete, as no new such plans would be created. This rulemaking was proposed to repeal this rule.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 18-0173-1701**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0175-1701 **Credit for Reinsurance Rules.** **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), said the pending rule would include current National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation #786 provisions supporting the modernization of reinsurance regulation. This pending rule sets forth rules and procedural requirements necessary to carry out the provisions of Idaho Code § 41-515, as amended in 2017 by H 101. (see Attachment 3)

DISCUSSION: **Senator Martin** and **Director Cameron** discussed the inclusion of the NAIC Credit for Reinsurance Model Regulations #786 provisions and how the demands and needs of Idaho were tailored to make the provisions as workable as possible.

Senator Lakey questioned the use of the word "sole." He asked if the trust was created solely for that beneficiary or were there others in the trust who were beneficiaries. **Director Cameron** replied the purpose for the definition was for the insurance companies who were beneficiaries buying reinsurance.

MOTION: **Senator Martin** moved to approve **Docket No. 18-0175-1701**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0181-1701 **Corporate Governance Annual Disclosure.** **Dean L. Cameron**, Director, Idaho Department of Insurance (DOI), said H 102 enacted in 2017, created Title 14, Chapter 64 Corporate Governance Annual Disclosure (CGAD) which required insurance companies to file a CGAD. The addition of a new rule following the enactment of Idaho Code Title 41, Chapter 64, provided insurers with more detailed procedures for submitting the required CGAD filing; it included the contents that were deemed necessary by the DOI Director to carry out the provisions of Chapter 64.

Director Cameron commented the proposed rules would be "incorporated by reference." (see Attachment 4)

MOTION: **Senator Lakey** moved to approve **Docket No. 18-0181-1701**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

Chairman Patrick reminded the Committee that the meeting of February 1, 2018 would begin at 2:00 p.m. due to a training class for all committee chairman and vice chairmen.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:42 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

2018 Manufactured Home Installation Standard

Summary of Significant Changes

Chapter 1 - General

- § 100 - Clarified scope and application of Manufactured Home Installation Standards to new and used manufactured & mobile homes, as well as applicability of all other related laws
- § 106 - Removed reference to service license - which is now obsolete as this license was removed from the statute in 2013.

Chapter 2 – Permits and Inspections

- § 201 - Removed obsolete language related to alterations and permitting which was unnecessarily restrictive
- §§ 203-204 – Clarifies the authority of the inspection entity (local or state) to permit, and the inspection criteria
- Revised installation checklist to meet new standards

Chapter 3 - General Installation Standards

- § 301 & 306 - Corrects references to the applicable edition of the building and residential code as adopted by the Building Code Board (and approved by the legislature)
- § 301 - Updated requirements to match new processes currently being used related to ensuring homes are sold in regions of the State with the proper snow load.
- § 301 - Eliminated a requirement that a certain percentage of the Home must be at least 18 inches above the ground
- § 303 - Updated provision to match current materials in use – allows for the field treatment of the cut ends of approved pressured treated wood products

Chapter 4 - Standard Set Installation Standards

- § 402 - Updated provisions to allow for recognized new technologies currently in use – recognizes and allows certain products that may be listed and labeled (approved) by a nationally recognized testing organization, or designed by an Idaho-licensed professional engineer. These products include prefabricated pads, block pier caps, or other piers, as well as alternate anchoring systems (§404).
- § 403 - Clarifies home perimeter support requirements for home sections over 12 feet, and allows for parallel perimeter blocking. Also indicates that certain support methods shall be in accordance with the manufacturer's recommended standards.
- § 403 - Eliminates the requirement of a foundation on all homes with a roof load of over 80 pounds psf.
- § 404 – allows for the use of used anchoring systems if they meet certain requirements

Chapter 5 – Permanent Foundation

- §§ 501 & 504 - Clarifies that permanent foundations shall meet the requirement of the Idaho Residential Code or be designed by an Idaho-licensed professional engineer.
- § 504 – Eliminates an inappropriate legal determination regarding the “real property” character of homes placed on a foundation.

attachment 1
07-0312-1701
1-30-18

- § 505 – Modifies the spacing of anchoring equipment to the footings from a prescribed method to that of the standards recommended by the manufacturer of the anchoring equipment.
- § 505 – Allows for alternate anchoring systems if approved by an Idaho-licensed professional engineer.

Chapter 6 – Electrical Connections

- No significant changes

Chapter 7 – Plumbing Connections

- § 701 (and throughout) - Correctly updated references to the Idaho State Plumbing Code

Chapter 8 – Mechanical Connections

- § 803 -Clarifies that crossover ducts (between home sections) installed on site shall be done so in accordance with the current edition of the Idaho Residential Code adopted by the Idaho Building Code Board (and approved by the legislature).

Chapter 9 – Underfloors/Access and Egress

- No changes

Chapter 10 - Accessory Buildings and Structures

- No changes

Note – chapters 9 and 10 were previously combined in a single chapter in the previous (2004) edition of the Manufactured Home Installation Standards. While the provisions are now broken out into separate chapters, no changes were made to the language in those provisions.

Chapter removed – Heat Producing Appliances

- Previously designated chapter 10 related to Heat Producing Appliances was deleted because such installations are now already permitted under a different provision of the law, and not needed here. These items relate to ranges and dryers, furnace, gas stoves and fireplaces, water heaters, solid fuel burning fireplaces, and pellet-fired appliances. These are HVAC or building installations, which may be added to the homes at the site, and are permitted by the AHJ as a matter of course without regard to the fact that the structure is a manufactured home.

Definitions –

The following definitions taken from Idaho Code were added:

- Manufactured home
- Modular building
- Mobile home

The following definitions were added for clarity at the request of industry:

- New home
- RME (Responsible managing employee)
- Used

attachment 1
p. 2



Idaho Land Title Association
372 S. Eagle Rd., Suite 387
Eagle, ID 83616

January 25, 2018

Dear Committee Members,

The Idaho Land Title Association (ILTA) would like to take this opportunity to voice its support for rule dockets 18-0125-1701 and 18-0156-1701 proposed by the Idaho Department of Insurance (DOI). The ILTA is a trade association for the title insurance industry comprised of approximately 95% of the licensed title agents and title insurance underwriters in Idaho. The ILTA meets regularly with state and local officials to discuss title insurance issues. The ILTA appreciates the willingness of the DOI to work through these rules during the 2017 legislative interim.

Changes to Rule 25 and Rule 56 cut unnecessary regulations and aligns the DOI rules with current business practice. These rules will still allow title companies the discretion to address cancellation fees with customers. The rule changes will help the title industry to work more smoothly with their realtor and lender affiliates in the market.

Please approve rule dockets 18-0125-1701 and 18-0156-1701. Thank you for your consideration.

Sincerely,

Daryl Olsen
ILTA President

*4/30/18
docket no.
18-0125-1701
attachment 2*

State of Idaho
DEPARTMENT OF INSURANCE

C.L. "BUTCH" OTTER
Governor

700 West State Street, 3rd Floor
P.O. Box 83720
Boise, Idaho 83720-0043
Phone (208)334-4250
Fax (208)334-4398
Website: <http://www.doi.idaho.gov>

DEAN L. CAMERON
Director

To: Chairman Patrick, Senate Commerce & Human Resources Committee
c/o Linda Kambeitz
From: Pamela Murray, Assistant to Director Cameron
Date: January 25, 2018
Re: Docket 18-0175-1701 Credit for Reinsurance – Incorporation by Reference

This rulemaking tracks NAIC model regulation (#786) and is a supplement to accreditation-related legislation (HO101) enacted last year. The pending rule's incorporation by reference provisions incorporate three documents at page 173 of the Sen. Commerce & Human Resources Pending Rule Book and are as follows quoted in red:

004. INCORPORATION BY REFERENCE.

Consistent with National Association of Insurance Commissioners (NAIC) model regulation 786, the following documents applicable to letters of credit as referenced in subsections 061.02, 081.05 and 081.06 of this rule, are incorporated by reference. ()

01. Documents. Copies of the following documents may be obtained by contacting our office. ()

- a. The Purposes and Procedures Manual of the NAIC Investment Analysis Office, NAIC Securities Valuation Office and NAIC Structured Securities Group, December 31, 2016, edition, as referenced in subsection 061.02. ()
- b. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 600 (UCP 600), July 1, 2007, edition, as referenced in subsection 081.05. ()
- c. The International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), 1998 edition, as referenced in subsection 081.06. ()

1. Purposes and Procedures Manual of the NAIC Investment Analysis Office, NAIC Securities Valuation Office and NAIC Structured Securities Group,

This document generally provides guidance for filing and evaluation of types of securities which qualify as assets in meeting the requirements for insurers and reinsurers and assist state regulators in evaluating the financial statements and solvency of companies.

Section 061 of the rule starting on page 187 of the Pending Rule Book identifies when credit for reinsurance is allowed where the reinsurer holds specific assets for the domestic ceding insurance company. The specific document is referenced on page 188 of the Pending Rule Book at section 061.02 as follows:

02. Securities. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the NAIC Investment Analysis

Equal Opportunity Employer

docket no.

*attachment 3
1-30-18
18-0175-1701*

Office NAIC Securities Valuation Office and NAIC Structured Securities Group, and
qualifying as admitted assets; (7-1-96)()

The amendment simply highlights the method and document by which the NAIC Securities Valuation Office identifies securities that satisfy the requirement. Securities exempt from filing are generally those that are otherwise deemed as secure, typically through a third party rating organization.

2. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (ICC) Publication 600 (UCP 600) and the International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98)

Both of these documents codify international practices providing guidance on the issuance and use of letters of credit. The letters of credit referenced in the pending rule are not used as a primary means of financing. Rather they are used as a backstop and are standby letters of credit, akin to a surety bond in the event a reinsurer does not pay a claim. However they are generally demand instruments and independent of the underlying reinsurance agreement. These techniques and methods for handling letters of credit represent best practices and have been standardized by the ICC through these publications.

The other standardized method for handling letters of credit is pursuant to the Uniform Commercial Code or UCC. Idaho's version is codified at Idaho Code § 28-5-101 et seq.

Section 081.05 and .06 reference these two documents as follows at page 194 of the Pending Rule Book:

05. Disclosure Statement. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 5600) (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution. (7-1-96)()

06. Letter Subject to Uniform Customs and Practice. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 5600) (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), then the letter of credit shall specifically address and ~~make provision provide~~ for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 1936 of Publication 5600 occur. (7-1-96)()

The updates are not particularly substantive and do not change prior practices significantly. The reference in 081.06 changing Article 19 to Article 36 of Publication USP 500 to 600 is an update to the new reference where a bank cannot honor a presentment of a draw on a line of credit due to a force majeure (acts such as war, civil strife, floods etc.) and adds acts of terrorism to the category of a force majeure.

attachment 3
p. 2

State of Idaho
DEPARTMENT OF INSURANCE

C.L. "BUTCH" OTTER
Governor

700 West State Street, 3rd Floor
P.O. Box 83720
Boise, Idaho 83720-0043
Phone (208)334-4250
Fax (208)334-4398
Website: <http://www.doi.idaho.gov>

DEAN L. CAMERON
Director

To: Chairman Patrick, Senate Commerce & Human Resources Committee
c/o Linda Kambeitz
From: Pamela Murray, Assistant to Director Cameron
Date: January 25, 2018
Re: Docket 18-0181-1701 Corporate Governance Annual Disclosure – Incorporation by Reference

This rulemaking tracks NAIC model regulation (#306) and is a supplement to accreditation-related legislation (HO102) enacted last year. The pending rule's incorporation by reference provision incorporates one document at page 210 of the Sen. Commerce & Human Resources Pending Rule Book and is quoted as follows:

004. INCORPORATION BY REFERENCE. The most recent National Association of Insurance Commissioners (NAIC) Financial Analysis Handbook (2016 Annual / 2017 Quarterly edition) is hereby incorporated by reference into IDAPA 18.01.81. Copies of this handbook, may be viewed at: ()

1. National Association of Insurance Commissioners (NAIC) Financial Analysis Handbook

The National Association of Insurance Commissioners (NAIC) Financial Analysis Handbook (FAH) sets forth established standards and best practices to conduct peer review and coordinate regulatory oversight for examining insurance companies. The FAH provides guidance on the framework for financial analysis, procedures for analysis, an analyst reference guide, procedures for group-wide supervision and guidance for notes to financial statements.

If the Corporate Governance Annual Disclosure (CGAD) is completed at the group level, it must be filed with the lead state and may be filed with other states with group affiliate insurers.

Section 011.05 of the rule starting on page 211 of the Pending Rule Book references the FAH as follows:

011. FILING PROCEDURES.

05. Completion on Insurance Group Level. Notwithstanding Subsection 011.01, and as outlined in Section 41-6403, Idaho Code, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request. ()

Factors to determine the lead state include: the state with the largest direct written premium; the domiciliary state of the top-tiered insurance company; the physical location of the main corporate or largest operational offices, etc.

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
2:00 P.M.
Room WW54
Thursday, February 01, 2018

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of January 18, 2018	Senator Lakey
<u>RS25944</u>	Relating to Credit Report Freeze	Senator Jeff Agenbroad
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Jerry Edgington, Idaho Health Insurance Exchange	Jerry Edgington
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of J. Michael Brassey, Idaho Personnel Commission	J. Michael Brassey
DOCKET NO. <u>24-0801-1701</u>	Rules of the State Board of Morticians	Tana Cory, Bureau Chief, Bureau of Occupational Licenses
<u>24-1801-1701</u>	Rules of the Real Estate Appraiser Board	Tana Cory
<u>24-2501-1701</u>	Rules of the Idaho Driving Business Licensure Board	Tana Cory

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 01, 2018

TIME: 2:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: Senator Souza

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Commerce and Human Resource Committee (Committee) to order at 2:00 p.m.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of January 18, 2018. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 25944 **Relating to Credit Report Freeze.** **Senator Agenbroad** reported this bill would allow an Idaho resident to place one credit report security freeze and one temporary lift of a credit report security freeze on their credit report every 12 months at no cost to the consumer. This bill will have no fiscal impact on the General Fund.

MOTION: **Senator Burgoyne** moved to print **RS 25944**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Jerry Edgington of Boise, Idaho, to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI), term commencing April 10, 2017 and expiring April 10, 2021. **Mr. Edgington** remarked it was a privilege to serve on the YHI Exchange Board.

DISCUSSION: **Senator Burgoyne** thanked Mr. Edgington for continuing to serve on the YHI Exchange Board. **Senator Burgoyne** inquired, due to increases in premiums in what way would the YHI Exchange be affected. **Mr. Edgington** replied the market is getting progressively better. The Idaho Health Care Plan can stabilize and help the YHI Exchange stay in place. He remarked the most important thing is timing because the market has been fragile.

GUBERNATORIAL APPOINTMENT: **Senator Martin** moved to send the gubernatorial appointment of Jerry Edgington to the Idaho Health Insurance Exchange Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of J. Michael Brassey of Boise, Idaho, to the Idaho Personnel Commission (Commission), term commencing July 1, 2017 and expiring July 1, 2023. **Mr. Brassey** remarked he was on the Commission and is currently Chairman. He talked about his prior work experience, including Director of the Idaho Department of Insurance. **Mr. Brassey** mentioned he was one of the Idaho's Uniform Laws Commissioners.

GUBERNATORIAL APPOINTMENT: **Senator Ward-Engelking** moved to send the gubernatorial appointment of J. Michael Brassey to the Idaho Personnel Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Ward-Engelking will carry the appointment on the floor.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules review.

DOCKET NO. 24-0801-1701 **Rules of the State Board of Morticians. Tana Cory**, Bureau Chief, Idaho Bureau of Occupational Licenses (IBOL), reported the 2017 Legislature passed H 120 which created inactive licenses for morticians and funeral directors. The bill directed the IBOL to specify in rule the terms, procedures, and fees necessary to maintain an inactive license. Section 380 sets the terms under which a mortician or a funeral director may request an inactive license holder to return to active status. Section 500 establishes an inactive license and renewal fee of \$40.

MOTION: **Senator Thayne** moved to approve **Docket No. 24-0801-1701**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-1801-1701 **Rules of the Real Estate Appraiser Board. Tana Cory**, Bureau Chief, Idaho Bureau of Occupational Licenses (IBOL), introduced Scott Calhoun, Real Estate Appraiser Board (REA Board) member. **Mr. Calhoun** remarked that in 2017, the Legislature passed H 119, which allows the REA Board to collect and pass through fees to the federal government for Appraisal Management Companies (AMCs). This rule implements that legislation. This rule also updates the incorporated "Uniform Standards of Professional Appraisal Practice (USPAP) from the 2016-2017 edition to the 2018-2019 edition. He noted this fee rule will have no impact on the General Fund or the IBOL's dedicated fund because the REA Board passes through an amount equal to any federal fee that will apply to AMC's, which is currently projected to be between \$25-\$50 multiplied by the number of appraisers working for or contracting with an AMC per year.

Mr. Calhoun gave a synopsis of why the materials cited were being incorporated by reference into this rule. (see Attachment 1).

MOTION: **Chairman Patrick** moved to approve **Docket No. 24-1801-1701**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-2501-1701 **Rules of the Idaho Driving Business Licensure Board. Tana Cory**, Bureau Chief, Idaho Bureau of Occupational Licenses (IBOL), reported that as a result of a law change in 2015, the Idaho Department of Transportation (IDOT) distributes to the IBOL a portion of money collected for driver training permits. The IBOL can lower its fees for licensees. The change to the pending rule lowers the fees for an original business license and renewal to \$125. The reduction in fees for other licenses issued by the IBOL is the same as in the proposed rule. Section 175 reduces the initial application processing fee from \$50 to \$25, the original instructor license and renewal fee from \$50 to \$25, the instructor apprentice permit fee from \$50 to \$25, and the original business license and renewal fee from \$500 to \$125.

MOTION: **Senator Martin** moved to approve **Docket No. 24-2501-1701**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:23 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 06, 2018

SUBJECT	DESCRIPTION	PRESENTER
RS26043	Oral Parity for Cancer Treatment	Senator Heider
MINUTES APPROVAL	Minutes of January 23, 2018 Minutes of January 25, 2018	Senator Thayn Senator Souza
S 1219	Relating to Health Insurance	Senator Kelly Anthon
S 1226	Distribution of Local Tourism Grants	Bobbi-Jo Meuleman, Director, Department of Commerce
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Bobbi-Jo Meuleman, Director, Department of Commerce	Bobbi-Jo Meuleman
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Hyatt Erstad, Idaho Health Insurance Exchange	Hyatt Erstad
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Arron White, Industrial Commission	Arron White
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Melinda Smyser, Director, Department of Labor	Melinda Smyser
DOCKET NO. 07-0402-1701	Safety Rules for Elevators, Escalators, and Moving Walks, p. 57	Gary Barnes, Industrial Safety Manager, Division of Building Safety

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 06, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: Senator Lakey

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Thayn** moved to approve the Minutes of January 23, 2018. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Senator Souza moved to approve the Minutes of January 25, 2018. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 26043 **Oral Parity for Cancer Treatment.** **Senator Heider** stated the purpose of this legislation is to amend Idaho Code, Chapter 18, Title 41, by adding to Idaho Code § 41-1852, so that a health benefit plan's co-payment, deductible, or coinsurance amount for orally-administered anti-cancer medications is similar to those required of injected or intravenously administered anti-cancer medications. There is no fiscal impact to the General Fund as the bill does not extend to Medicaid.

MOTION: **Senator Martin** moved to send **RS 26043** to print. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

S 1219 **Relating to Health Insurance.** **Senator Anthon** stated this legislation amends Idaho Code, Chapter 41, Title 41, relating to Joint Public Agency (JPA) Self-Funded Health Care Plans. The purpose of this bill is to allow the Director of the Idaho Department of Insurance (DOI) to waive the requirement for a JPA Self-Funded Health Benefits Plan to purchase aggregate stop-loss insurance when certain conditions are met. This bill will have no fiscal impact on the General Fund. JPA Self-Funded Health Care Plans are funded by member agencies using local tax dollars.

DISCUSSION: **Senator Martin** and **Senator Anthon** discussed the definition of stop-loss insurance and how the insurance related to a self-funded group.

TESTIMONY: **Amy Manning**, Executive Director, Idaho Independent Governmental Authority (III-A), remarked this bill is important to employers who are unable to afford quality health care benefits for employees. Currently, the requirement for a JPA Self-Funded Health Benefits Plan to purchase aggregate stop-loss insurance is costing public agencies an enormous amount of money.

Pat Riley, Northern Lakes Fire Protection District, reported after the agency joined III-A, three paramedics were hired and two vehicles were purchased. He stated the fire district has saved \$1 million. The bill is positive legislation.

MOTION: **Senator Burgoyne** moved that **S 1219** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1226 **Distribution of Local Tourism Grants.** **Bobbi-Jo Meuleman**, Director, Idaho Department of Commerce (DOC), stated the travel and tourism industry was Idaho's third-largest industry. Idaho tourism marketing and promotion activities were funded by a 2 percent travel and convention tax paid by travelers and collected by hotel, motel, private campgrounds, vacation rental, and bed and breakfast owners. **Ms. Meuleman** remarked revenues deposited in the travel and convention fund are split according to Idaho Code: 45 percent for local tourism grants, 45 percent for statewide tourism efforts, and 10 percent for State administrative costs. Local tourism grants are distributed to regions based on the total dollars collected by each region through the 2 percent lodging tax.

Ms. Meuleman advised the Idaho Travel Council (ITC) is an eight-member council appointed by the Governor. The ITC is charged with overseeing the distribution of local tourism grants to the seven planning regions throughout the State. Each county uses these dollars to market its region to business and leisure travelers throughout the country and, in some cases, to a worldwide audience. Key stakeholders in Camas County, currently in Region 7 (Blaine, Camas, Lemhi, Custer, and Butte counties), have requested to be grouped with Region 4 (Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties), as they believe this will result in better regional alignment of the county's limited tourism marketing dollars. **Ms. Meuleman** advised this legislation would not impact the General Fund. If approved, this change would shift approximately \$4,000 annually from Region 7 to Region 4 as part of the ITC grant program.

TESTIMONY: **Shawn Barigar**, President and Chief Executive Officer (CEO), Twin Falls Chamber of Commerce, testified in support of the bill and explained the initial request was two years ago. **Mr. Barigar** remarked he was excited to have legislation move forward.

Senator Stennett testified in support of the bill. **Senator Stennett** commented the bill was the best solution and best use of tourism dollars in all of the counties.

Representative Miller testified in support of the bill. He stated the change will better serve Camas County.

MOTION: **Senator Thayne** moved that **S 1226** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Bobbi-Jo Meuleman of Boise, Idaho, as Director of the Idaho Department of Commerce (DOC), to serve a term commencing January 1, 2018 and serving at the pleasure of the Governor. **Ms. Meuleman** reported that prior to being appointed by the Governor as the Director of the DOC, she held the position of Chief Executive Officer (CEO) for the DOC for one-and-one-half years. **Ms. Meuleman** reported she assisted the Director of the DOC in day-to-day activities, such as managing department staff, and general office operations, and promoting the State of Idaho. She oversaw business retention and expansion, community development, international business attractions and grants and fiscal teams. Prior to moving to the DOC, **Ms. Meuleman** explained she worked in the Governor's office for six-and-one-half years as scheduler and Deputy Chief of Staff. She began

her career in government in Washington, D.C., in 2004 working for Senator Conrad Burns for three years and Congressman Denny Rehberg for two years. **Ms. Meuleman** stated she has made a personal goal to find various ways to help close the gap, especially in rural Idaho, on the last mile of broadband connectivity.

GUBERNATORIAL APPOINTMENT:

Senator Burgoyne moved to send the gubernatorial appointment of Bobbi-Jo Meuleman as Director of the Idaho Department of Commerce, to the floor with the recommendation that she be confirmed by the Senate. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING:

The appointment of Hyatt Erstad of Boise, Idaho, to the Idaho Health Insurance Exchange (Exchange) - Your Health Idaho (YHI), to serve a term commencing April 10, 2017 and expiring April 10, 2021. **Mr. Erstad** stated he has been in the insurance industry for the past 38 years. Currently, he is a Board member for YHI.

DISCUSSION:

Senator Thayne queried about closing the gap versus a dual waiver proposal and the costs surrounding premiums. **Mr. Erstad** noted that, if waivers are applicable and legislation passes, the DOI will be able to create some policies not required by the ACA.

MOTION:

Senator Ward-Engelking moved to send the gubernatorial appointment of Hyatt Erstad to the Idaho Health Insurance Exchange (Exchange) - Your Health Idaho (YHI), to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Guthrie** seconded the motion.

DISCUSSION:

Senator Souza asked, if Mr. Erstad had a choice, what would health care look like in the United States. **Mr. Erstad** stated he would get rid of reporting requirements regarding employee benefits. He stated he was a proponent of the free enterprise system and that health insurance products should not have all of the demands of the Affordable Care Act (ACA). He remarked there needed to be a mechanism for those who fall into the gap.

Senator Burgoyne asked if Mr. Erstad would continue linkage between health insurance and employment. **Mr. Erstad** commented that with the ACA there are mandated requirements if an employer has 50 or more employees, which he would eliminate, along with reporting requirements.

GUBERNATORIAL APPOINTMENT VOTE:

The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING:

The appointment of Arron White of Meridian, Idaho, to the Idaho Industrial Commission (IC), to serve a term commencing January 15, 2018 and expiring January 13, 2023. **Mr. White** explained the duties and mission of the IC. He stated his experience has been devoted to the representation of workers. He mentioned he had worked in the electrical trade and eventually became involved in the local union. **Mr. White** reported that, over the last 24 years, he has served as organizer, press secretary, executive board member, secretary/treasurer, and business manager of the International Brotherhood of Electrical Workers Local 291. He has been involved in various organizations, including the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), where he has assumed the offices of executive board member, secretary/treasurer, and President of the AFL-CIO. **Mr. White** has served on the Workforce Development Council and the Advisory Committee of the IC.

DISCUSSION: **Senator Souza** noted there was no political affiliation listed on Mr. White's application and wondered if he had been selected for a particular partisan. **Chairman Patrick** remarked that political background was not pertinent. **Senator Souza** asked if there was a designated spot for a union representative on the IC. **Chairman Patrick** commented that the IC represents workers.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of Arron White, to the Idaho Industrial Commission (IIC) to the floor with the recommendation that he be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Melinda Smyser of Parma, Idaho, as Director of the Idaho Department of Labor (DOL), to serve a term commencing October 23, 2017 and to serve at the pleasure of the Governor. **Ms. Smyser** stated she grew up on a farm and ranch in Middleton and is a lifelong resident of Canyon County. As Director of the DOL, she noted she leads an agency of 536 employees. **Ms. Smyser** reported the mission of the DOL is to connect business, education, and the workforce; link job seekers with employers; and help people with career and life transitions.

Ms. Smyser gave an overview of her background which included serving on the Parma School District Board of Trustees for 13 years. She noted she is a former educator/counselor with 30 years of experience in education, including developing and implementing a model school counseling program. **Ms. Smyser** indicated she also focused on grant writing and implementation of at-risk youth programs. She noted she is a small business owner, opening Capitol Cellars, a restaurant in downtown Boise, that showcases Idaho's political history. She represented Canyon and Gem counties in the Idaho State Senate for two terms, where she served on the Health and Welfare and Commerce Committees, and as Vice Chairman of the Agricultural Affairs Committee.

For the past five years, **Ms. Smyser** has served as U.S. Senator Jim Risch's Southwest Idaho Regional Director. **Ms. Smyser** has a bachelor's degree from the University of Idaho and a Master's degree in Education/Counseling from the College of Idaho. **Ms. Smyser** reported that, among her many honors, is the State Grand Old Party (GOP) Lifetime Achievement Award which she received in 2017. She is a Friend of Agriculture, an Idaho School Counselor of the Year, and founding member of the Mentoring Network. **Ms. Smyser** stated her greatest accomplishment in life is raising her four children and being married to the love of her life, Skip Smyser. In her leisure time, she enjoys travel, politics, and exercise.

DISCUSSION: **Senator Burgoyne** mentioned he was interested in the DOL program of placing unemployed workers with employers. He asked about the progress of this program. **Ms. Smyser** reported there is an excellent opportunity to help connect employees with colleges, resume writing, and job seeking skills. **Senator Burgoyne** and **Ms. Smyser** had a conversation about long-term versus short-term unemployment and the idea that some workers who are displaced do not want to work. The DOL requirement is that an unemployed worker must look for two jobs a week.

Senator Souza and **Ms. Smyser** had a conversation about health and wellness initiatives, Olympic Challenge through Blue Cross insurance, exercise class offerings at the workplace, and the exploration of all options.

**GUBERNATORIAL
APPOINTMENT:**

Senator Souza moved to send the gubernatorial appointment of Melinda Smyser, as Director of the Idaho Department of Labor (DOL), to the floor with the recommendation that she be confirmed by the Senate. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenter for the rules review.

**DOCKET NO.
07-0402-1701**

Safety Rules for Elevators, Escalators, and Moving Walks. Gary Barnes, Industrial Safety Manager, Idaho Division of Building Safety (DBS), referred to the Incorporation by Reference items for this rule provided to the Committee.

DISCUSSION:

Vice Chairman Guthrie and **Senator Potts** praised Mr. Barnes for his hard work on the Incorporation by Reference summary.

MOTION:

Senator Martin moved to approve **Docket No. 07-0402-1701**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

ADJOURNED:

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:44 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 08, 2018

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL <u>RS25963</u>	Minutes of February 1, 2018 Relating to Banking Credit Unions	Senator Potts Ryan Fitzgerald, NW Credit Union Association
<u>RS26070</u>	Relating to Insurance	Bill Litster, Idaho Public Policy Institute
<u>RS26072C1</u>	Relating to Covenants Not to Compete	Senator Guthrie
<u>RS26077</u>	Relating to Insurance Across State Lines	Senator Foreman
<u>RS26101</u>	Relating to Pharmacy Benefit Manager Transparency Act	Senator Patrick
<u>RS26038</u>	Relating to Firefighters	Senator Lee
<u>S 1234</u>	Relating to the Idaho State Tax Commission	Tom Shaner, Tax Commissioner
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Kevin Settles, Idaho Health Insurance Exchange	Kevin Settles
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Janice Fulkerson, Idaho Health Insurance Exchange	Janice Fulkerson
DOCKET NO. <u>38-0409-1801</u>	Rules Governing the Use of the Chinden Office Complex	Keith Reynolds, Deputy Director, Department of Administration

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 08, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m. **Chairman Patrick** announced volunteers were needed for the newly-formed Regulatory Reform Joint Subcommittee (RRJS). The RRJS is tasked with working with licensing boards to examine current rules and regulations within their respective fields.

MINUTES APPROVAL: **Senator Potts** moved to approve the Minutes of February 1, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 25963 **Relating to Banking Credit Unions. Ryan Fitzgerald**, Northwest Credit Union Association, stated this bill proposes to update and modernize internal governance provisions of the Idaho Credit Union Act. The legislation updates the requirements for annual credit union membership meetings in order to allow greater access for members, as well as provides for updates for voting mechanisms with new technology. The updates also outline the reasoning and procedures for holding special membership meetings.

Mr. Fitzgerald reported the governance updates include provisions outlining the size, qualifications, and fiduciary responsibilities of a credit union's board of directors. It also includes updates for meeting requirements and locations, election procedures, terms, and vacancies. Additional updates include the basic powers and duties of a board of directors and what duties may not be delegated to other committees, officers, or employees.

Mr. Fitzgerald remarked the legislation provides reorganization of a credit union supervisory committee, while providing minor additions to the stated powers of the supervisory committee, including requiring biennial member account verification and credit union oversight. Provisions outline the bond requirements that each credit union is required to carry in order to insure against risk, which must be reviewed by the board of directors annually.

Mr. Fitzgerald reported there will be no fiscal impact to the General Fund associated with this proposed legislation. The provisions of this proposed legislation specifically relate to corporate governance of state-chartered credit unions and will require no additional resources of the Idaho Department of Finance (DOF). The proposed legislation will not increase or decrease the DOFs revenues.

MOTION: **Senator Souza** moved to print **RS 25963**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 26070

Relating to Insurance. Bill Litster, Idaho Public Policy Institute, stated the purpose of this legislation is to increase the required automobile minimum liability insurance (proof of financial responsibility) from \$25,000 to \$50,000 minimum (for one claimant); from \$50,000 to \$100,000 minimum (for two or more claimants in the same accident); and from \$15,000 to \$50,000 minimum for property damage (to one or several vehicles damaged by the at-fault driver in the same accident). The effective date of this legislation would be January 1, 2019. Automobile liability insurance minimum requirements have not been increased since 1983, almost 35 years ago.

The same \$25,000 in medical services that a person received in 1983 would cost over \$110,000 today - after adjustment for medical inflation, according to federal statistics. Similarly, Mr. Litster asserted the current required \$15,000 cumulative minimum property damage insurance is insufficient to cover the cost of replacement of, for example, a 2018 Ford F-150 and a Toyota Camry totalled in a single accident by an at-fault driver. According to insurance companies, approximately 20 percent of Idaho drivers who buy insurance buy only select the \$25,000/\$50,000 minimum liability requirements.

Mr. Litster noted the precise savings are yet to be determined. The benefit to the General Fund, specialty funds of State and county governments should be significant. Collectively, payments toward medical bill on hundreds of automobile accidents total millions of dollars annually. Additionally, the front-line medical community will benefit along with employers and health insurance companies.

MOTION:

Senator Martin moved to print **RS 26070**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

RS 26072C1

Relating to Covenants Not to Compete. Vice Chairman Guthrie stated this legislation revises covenants not to compete by removing and revising the requirements for rebuttable presumptions in Idaho's non-compete employment law. This legislation also makes technical corrections to Idaho Code § 44-2702 by striking "section" and replacing it with "chapter." Revised definitions of "key employee," "key independent contractor," and "legitimate business interest" are provided in order to be consistent with the other sections of Idaho Code.

Vice Chairman Guthrie reported that because this addresses Idaho Code sections that set parameters for private covenants surrounding Idaho employment laws, there will be no fiscal impact to the General Fund or any other State fund or local government. This section currently does not, and will not, require any government expenditures.

DISCUSSION:

A discussion ensued between **Vice Chairman Guthrie** and **Chairman Patrick** regarding gathering the non-compete information on a case-by-case basis.

MOTION:

Senator Thayn moved to print **RS 26072C1**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 26077

Relating to Insurance Across State Lines. Senator Foreman reported this legislation proposes to establish the Idaho Free Market Insurance Act. This Act would allow individuals and groups to lower their health insurance costs by making available competitive health plans from out-of-state insurance companies. This legislation requires the Director of the Idaho Department of Insurance (DOI) to issue a certificate of authority to an out-of-state insurer to sell accident and sickness insurance policies in this State. Such certificates may be issued only if that insurer is licensed in good standing in another state, remains licensed in that state, and complies with Idaho's mandatory coverage requirements. Out-of-state insurers must use appropriate forms that are clear and not misleading, and must participate in Idaho's premium tax and high-risk reinsurance pool. This legislation gives the Director of the Idaho DOI the authority to enter into compacts with other states to ensure consumer protection for Idahoans purchasing policies from out-of-state companies.

Senator Foreman commented the insurers will remit Idaho's premium tax and participate in the High-Risk Reinsurance Pool. The impact should be neutral to the State budget.

DISCUSSION:

Senator Burgoyne asked if the DOI Director would have authority over out-of-state carriers. **Senator Foreman** remarked he was not certain, but this Routing Slip (RS) will give the State a high level of control. **Senator Burgoyne** queried if the claims adjusters would have to meet Idaho standards or those of the other states. **Senator Foreman** stated Idaho would be in control. Idaho Code and DOI rules and regulations would have to be followed. **Senator Burgoyne** and **Senator Foreman** discussed prior approval for medical procedures and the degree to which the legislation would stipulate following Idaho standards.

MOTION:

Vice Chairman Guthrie moved to print **RS 26077**. **Senator Potts** seconded the motion. The motion carried by **voice vote**. **Senator Lakey** asked that the Director of the DOI be present at the next hearing.

PASSED THE GAVEL:

Chairman Patrick passed the gavel to Vice Chairman Guthrie.

RS 26101

Relating to Pharmacy Benefit Manager Transparency Act. Chairman Patrick stated that Pharmacy Benefits Managers (PBMs) are middlemen that were originally designed to reduce administrative costs for insurers, validate patient eligibility, administer plan benefits, and negotiate costs between pharmacies and health plans. He commented that today, PBMs have control over almost all aspects of prescription drug transactions, with the three largest PBMs managing 78 percent of the prescription drug benefit transactions. **Chairman Patrick** reported the purpose of this legislation is to establish a PBM Transparency Act that would include registration and disclosure of information requirements. In addition, it would establish transparency of the covered prescription drug lists and the methodology that determines how reimbursement to pharmacies is ultimately calculated.

Chairman Patrick reported there is no fiscal impact to the State's General Fund. The legislation gives the Idaho DOI rulemaking authority to administer fees that would cover all costs.

MOTION:

Senator Lakey moved to print **RS 26101**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

RS 26038

Relating to Firefighters. **Senator Lee** reported this proposal provides local discretion for decision making regarding the type of medical screenings required for full-time, part-time, or volunteer firefighters. Current legislation requires specific screening standards. Allowing more flexibility in medical screening choices is intended to decrease costs, improve access to more medical screening options, and reduce unnecessary barriers to entry, especially for rural fire districts. There is no requirement that any district change its medical screening choices.

Senator Lee commented there is no fiscal impact to the General Fund, as these costs are paid by local fire districts and fire departments. It is expected that costs will stay the same for districts who do not choose to make a change, whereas costs will likely decrease for districts who select a different screening medical service or provider.

DISCUSSION:

Senator Lakey queried, if a firefighter moved to another district, would that individual have to comply with the standards of the new district. **Senator Lee** affirmed and noted the legislation would allow fire districts to have higher standards than what is prescribed. Many full-time, city districts have higher standards than what is prescribed in this proposed legislation. **Senator Souza** remarked that rural fire districts are different than those in the larger cities because they have volunteers. She queried if this meant that the volunteers do not have standards or medical exams. **Senator Lee** remarked that some State and federal wage laws indicate that if an individual is paid at all, they are a paid firefighter. But if a firefighter is a volunteer and then goes out to a fire and is paid, then that firefighter is under the paid fire rules. Not all districts understand that.

Senator Ward-Engelking queried how this change would affect Workers' Compensation. **Senator Lee** stated she would have answers when the bill had a hearing. **Senator Lakey** asked if there was a list of standards and were they were commonly used standards. **Senator Lee** commented she supports firefighters; their health and safety are important. **Senator Burgoyne** asked what a screening exam involved; he wondered if it was comparable to a \$25 sports physical. **Senator Lee** reported she was not interested in recommending a \$25 sports physical for firefighters, but something more comprehensive.

MOTION:

Senator Souza moved to print **RS 26038**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

S 1234

Relating to the Idaho State Tax Commission (STC). **Cynthia Adrian**, Tax Policy Specialist, stated this bill relates to how the STC conducts background checks for employees. Currently, the STC uses the Idaho State Police (ISP) system; this system checks with eight Western states for criminal records. This bill will allow for a nationwide background check for current employees, contractors, and all new hires, to determine their suitability to have access to federal income tax information. This is important because the Idaho income tax code is based on the Internal Revenue Code. **Ms. Adrian** commented it is necessary for the STC to comply with the Internal Revenue Service (IRS), according to Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, which requires agencies receiving federal income tax information to follow procedures that include a nationwide background check.

Ms. Adrian advised the first-year cost is approximately \$30,720. This sum consists of \$10,000 worth of equipment and the processing fees of \$37 each for the 560 employees. In subsequent years, the STC would have to continue

to check the backgrounds of newly-hired employees. The STC turnover rate, including retirement, has been approximately 20 percent or 112 employees. This rate of turnover would result in an estimated annual cost of \$4,144. The STC will absorb any costs associated with this bill within its current appropriation.

DISCUSSION: **Senator Martin** inquired as to the current processing fees. **Dawn Peck**, Idaho State Police (ISP), commented the fees are currently \$25.

MOTION: **Senator Potts** moved to send **S 1234** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Kevin Settles of Boise, Idaho, to the Idaho Health Insurance Exchange Board - Your Health Idaho (YHI) to serve a term commencing April 10, 2017 and expiring April 10, 2021. **Mr. Settles** stated he owns and operates Bardenay Restaurant in Boise, Eagle, and Coeur d'Alene. He and his businesses have earned nationwide recognition in the Wall Street Journal, USA Today, Fortune Magazine, Forbes, MarketWatch, National Public Radio, Modern Marvels, and an A & E Television Network Show on the History Channel. In 2011, he was named Idaho Restaurateur of the Year. **Mr. Settles** is a member of the National Restaurant Associations Board of Directors, past President of the Idaho Lodging and Restaurant Association's Board of Directors, Secretary of the Bogus Basin Recreational Association Board of Directors, and a Commissioner on the Idaho Commission on Human Rights.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of Kevin Settles, to the Idaho Health Insurance Exchange Board - YHI to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. **Senators Martin** and **Burgoyne** thanked Mr. Settles for his service. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Janice Fulkerson of Meridian, Idaho, to the Idaho Health Insurance Exchange Board - YHI to serve a term commencing April 10, 2017 and expiring April 10, 2021. **Ms. Fulkerson** reported she has over 25 years of progressive leadership and experience in the health care and social services industries. She has expertise in administration, strategic planning, payer and provider contracting, program and product development, operations, and infrastructure development. Currently, she owns Unify Consulting Services, which is an Idaho-based firm delivering business solutions for organizations, with a focus in health care and social services. Through a commitment to make a positive contribution, each project is customized and focused on improving market presence, organizational development, and long-term strategic planning. Additionally, as Director of Contracting for Northpoint Recovery, she develops and directs payer and provider contracting in Idaho and the State of Washington for both inpatient and outpatient recovery facilities. She directs and manages contract negotiations with commercial payers, health care networks, and government programs.

GUBERNATORIAL APPOINTMENT: **Senator Potts** moved to send the gubernatorial appointment of Janice Fulkerson to the Idaho Health Insurance Exchange Board - YHI to the floor with the recommendation that she be confirmed by the Senate. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenter for the rule being reviewed.

**DOCKET NO.
38-0409-1801**

Rules Governing the Use of the Chinden Office Complex. **Keith Reynolds**, Deputy Director, Idaho Department of Administration (DOA), reported this property was transferred to State control on December 21, 2017; the property requires immediately applicable rules to govern its use. The rulemaking uses the existing rules framework for the Capitol Mall and multi-tenant facilities and applies it in a single chapter to the new office complex. Variations to accommodate the sports facilities and private entity tenants are included; however, the majority of the provisions are those in place for the Capitol Mall and multi-tenant facilities elsewhere in the State.

There is no fiscal impact to the General Fund or to the State.

DISCUSSION:

Senator Lakey and **Mr. Reynolds** discussed the use of the recreational facilities and the definition of a private event. **Mr. Reynolds** commented the rules may be changed to add or address different options.

Senator Martin commended Mr. Reynolds for his foresight in acquiring the Chinden facility.

Senator Burgoyne commented he saw some potential issues, noting this is not a typical government complex. He stated there are private business tenants who will be impacted by government activities. He noted there was nothing in this rule about activist demonstrations or activities that usually take place on the Capitol steps. Tenants may feel ingress and egress are compromised. **Mr. Reynolds** remarked there will be some of those conflicts based on the way the Chinden campus is configured. Tenants want to know how the campus will be used.

Vice Chairman Guthrie stated he did not particularly like when government becomes involved in the private sector. He queried if there would be a rule relating to rental rates. **Mr. Reynolds** indicated the State does not have the authority to grant a lease to a private entity and the intent was to house government entities and nonprofits. He explained the State was forced to take private tenant leases through the purchase of the property. The State wanted to keep Hewlett-Packard (HP) in Idaho and to accommodate the tenants. This purchase will provide quality housing for State agencies.

MOTION:

Senator Burgoyne moved to approve **Docket No. 38-0409-1801**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Guthrie passed the gavel to Chairman Patrick.

Chairman Patrick reminded the Committee of the newly-formed Regulatory Reform Joint Subcommittee (RRJS) and asked for volunteers.

ADJOURNED:

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:45 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 13, 2018

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of January 30, 2018	Senator Ward-Engelking
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Tom Shores, Idaho Health Insurance Exchange Board - Your Health Idaho	Tom Shores
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Stephen Weeg, Idaho Health Insurance Exchange Board - Your Health Idaho	Stephen Weeg
<u>S 1252</u>	Relating to Engineers & Surveyors	Keith Simila, Executive Director, Board of Professional Engineers and Land Surveyors

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 13, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Ward-Engelking** moved to approve the Minutes of January 30, 2018. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & HEARING: The appointment of Tom Shores of Boise, Idaho, to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI), term commencing April 10, 2017 and expiring April 10, 2021. **Mr. Shores** reported he has been very active in making sure that every agent is prepared to provide the people of Idaho the very best information about how the Exchange is working and what is best.

DISCUSSION: **Senator Thayn** asked Mr. Shores what were the challenges and the most enjoyable aspects of being on the Exchange Board. **Mr. Shores** stated he disliked dealing with the federal government. He enjoyed the camaraderie of the Exchange Board when they meet to come up with a solution to a problem.

GUBERNATORIAL APPOINTMENT: **Senator Martin** moved to send the gubernatorial appointment of Tom Shores to the Idaho Health Insurance Exchange Board - Your Health Idaho, to the floor with the recommendation that he be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & HEARING: The appointment of Stephen Weeg, of Pocatello, Idaho, to the Idaho Health Insurance Exchange Board (Exchange) - Your Health Idaho (YHI), term commencing April 10, 2017 and expiring April 10, 2021. **Mr. Weeg** commented he has served as Chairman of the Exchange Board since 2013. He remarked the Exchange Board is the most fully-engaged board he has ever worked with.

DISCUSSION: **Senator Souza** commented, that in 2002, Mr. Weeg was very involved in exploring the possibilities of utilizing telehealth. She asked Mr. Weeg how he saw TeleHealth today and in the future. **Mr. Weeg** remarked that TeleHealth is fundamental as to how health care is delivered, especially in rural communities. TeleHealth makes it possible to have face time with larger hospitals, which is increasingly important. Access is critical to have a resource that can be built upon.

Vice Chairman Guthrie queried what the Exchange would have to do to adapt to changes in health care today. **Mr. Weeg** remarked the Exchange focuses on what can be done now. The Exchange Board may look at other ways to help people as they access coverage. If insurance companies decide through an executive order to sell insurance, the Exchange can do that. The Exchange

Board has to keep an open mind in watching the evolving landscape to help Idaho citizens. YHI is financially solvent and self-sustaining.

GUBERNATORIAL APPOINTMENT: **Vice Chairman Guthrie** moved to send the gubernatorial appointment of Stephen Weeg to the Idaho Health Insurance Exchange - Your Health Idaho, to the floor with the recommendation that he be confirmed by the Senate. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

S 1252 **Relating to Engineers & Surveyors.** **Keith Simila**, Executive Director, Idaho Board of Professional Engineers and Land Surveyors (IPELS), stated the purpose of the amendment was to reduce barriers to licensure by repealing the requirement for additional education upon multiple examination failures and decoupling the requirement for obtaining four years of experience prior to assignment to the professional licensure examinations. **Mr. Simila** commented there would be no fiscal impact to the General Fund or the dedicated fund of the agency; removing the requirements would not increase or decrease the cost of processing applications.

MOTION: **Senator Potts** moved to send **S 1252** to the floor with a **do pass** recommendation. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Chairman Patrick** announced there was a rule the Committee may want to reject, since the rule was rejected in the House. He mentioned the agency requested the rule be rejected. The topic will be discussed individually at a later time.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 1:50 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 15, 2018

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 6, 2018	Senator Burgoyne Vice Chairman
	Minutes of February 8, 2018	Guthrie
HONORING OF PAGE & INTRODUCTION OF NEW PAGE	Honoring of Page Shelby Hale Introduction of New Page Micah Mensing	Chairman Patrick
<u>RS26159</u>	Unanimous Consent Relating to Prohibited Practices of Collection Agencies	Senator Potts
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Fernando Veloz, Idaho Health Insurance Exchange Board - Your Health Idaho	Fernando Veloz
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Dr. John Livingston, Idaho Health Insurance Exchange Board - Your Health Idaho	Dr. John Livingston
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Karen Vauk, Idaho Health Insurance Exchange Board - Your Health Idaho	Karen Vauk
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Mark Holubar, Idaho Personnel Commission	Mark Holubar
<u>H 348</u>	Relating to the Board of Acupuncture	Tana Cory, Bureau Chief, Bureau of Occupational Licenses
<u>H 349</u>	Relating to Occupational Therapy	Tana Cory
<u>H 350</u>	Relating to Counselors and Therapists	Tana Cory
PRESENTATION	Department of Commerce	Bobbi-Jo Meuleman, Director, Department of Commerce

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick

Vice Chairman Guthrie

Sen Martin

Sen Lakey

Sen Thayn

Sen Souza

Sen Potts

Sen Ward-Engelking

Sen Burgoyne

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1333

email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 15, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:32 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of February 6, 2018. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

HONORING OF PAGE & INTRODUCTION OF NEW PAGE: **Chairman Patrick** honored Page Shelby Hale. He asked her to tell the Committee what she learned. **Ms. Hale** stated being a page was a great experience and she thanked the Committee. She commented she wanted to major in political science and teach.

Chairman Patrick introduced the new page, Micah Mensing and asked him to tell the Committee a little about himself. **Mr. Mensing** told the Committee he was a senior at Albion High School. He mentioned he worked on a beet farm in the summer. He was looking forward to being a page.

RS 26159 **Relating to Prohibited Practices of Collection Agencies. Senator Potts** provided background information and the rationale for this proposed legislation. He noted the purpose is to provide that a collection agency licensee or collection agency or its agent may collect interest or incidental fees, charges, or expenses if they are expressly authorized by the agreement creating the debt. The proposed legislation would also make technical corrections.

MOTION: **Senator Thayn** asked for unanimous consent to send **RS 26159** to a privileged committee for printing. **Chairman Patrick** asked if there was opposition to the unanimous consent request. There were no objections.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Fernando Veloz of Meridian, Idaho, to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI), to serve a term commencing April 10, 2017 and expiring April 10, 2021. Mr. Veloz was interviewed via a conference call. **Mr. Veloz** stated he is a health care professional who would like to continue oversight of marketing and the financial goals of YHI in his capacity as board member and licensed Certified Public Accountant (CPA). Currently, **Mr. Veloz** is Chief Financial Officer (CFO) for Administrative Services, Inc. in Meridian, Idaho.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Lakey** moved to send the gubernatorial appointment of Fernando Veloz to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI) to the floor with the recommendation that he be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The gubernatorial appointment of Dr. John Livingston of Boise, Idaho, to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI) to serve a term commencing April 10, 2017 and expiring April 10, 2021. **Dr. Livingston** stated he was past president of the Idaho chapter of the American College of Surgeons and president of the medical staff of Treasure Valley Hospital. **Dr. Livingston** mentioned he represents the interests of patients and physicians on the Exchange Board.

DISCUSSION: **Senator Souza** remarked she appreciated Dr. Livingston's attitude about varying insurance products. She queried if he could envision other alternatives, such as comparative pricing lists, that were non-Affordable Care Act (ACA) compliant, on the Exchange. **Dr. Livingston** replied that some states employ that kind of tool, but it is a cumbersome process. He stated he envisions selling alternative insurance policies where the Exchange keeps local control, but does not have to conform to the ACA.

Chairman Patrick wondered about Dr. Livingston being a medical advisor to the Idaho Freedom Foundation (Foundation). **Dr. Livingston** remarked he was asked to be on the Foundation Board, but declined. He advises the Foundation on medical issues, is unpaid, and has disclosed this to the YHI Board.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Thayne** moved to send the gubernatorial appointment of Dr. John Livingston to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI) to the floor with the recommendation that he be confirmed by the Senate. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The gubernatorial appointment of Karen Vauk of Boise, Idaho, to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI) to serve a term commencing April 10, 2017 and expiring April 10, 2021. **Ms. Vauk** stated she works at the Idaho Foodbank where she is President and Chief Executive Officer (CEO). She works with the uninsured and underinsured at the Foodbank. She explained she represents consumer interests on the Exchange Board. **Ms. Vauk** indicated she has served on various boards, including St. Luke's Board of Directors, the Idaho State Board of Education as Assessment and Accountability Commissioner, and the Idaho Healthcare Coalition. **Ms. Vauk** commented she has learned more about health insurance than she ever imagined. She stated she is very proud of the Exchange. The Exchange Board has worked through difficult issues and has maintained a focus on the needs of people in the State of Idaho.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Ward-Engelking** moved to send the gubernatorial appointment of Karen Vauk to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI) to the floor with the recommendation that she be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The gubernatorial appointment of Mark Holubar of Idaho Falls, Idaho, to the Idaho Personnel Commission (Commission) to serve a term commencing July 1, 2017 and expiring July 1, 2023. **Mr. Holubar** remarked he was looking forward to serving the citizens of Idaho to ensure that State employees receive due process in employment actions. He mentioned he has served on the Board of Trustees for the Museum of Idaho and on the Idaho Workforce Development Council. **Mr. Holubar** mentioned he was from Wisconsin and has worked for various companies in other states in the field of human resources. He has experience in employee relationships, leadership, and talent management.

DISCUSSION: **Senator Souza** queried if there was anything on the Commission that surprised Mr. Holubar. **Mr. Holubar** remarked the Commission was similar to the corporate world in analyzing acceptable job performance and due process.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Potts** moved to send the gubernatorial appointment of Mark Holubar to the Idaho Personnel Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

H 348 **Relating to the State Board of Acupuncture.** **Tana Cory**, Bureau Chief, Idaho Bureau of Occupational Licenses (BOL) stated this proposed legislation increases the honorarium paid to members of the Idaho State Board of Acupuncture (BOA) for each day spent in the actual performance of their duties from \$50 to \$100. There is no impact to the General Fund. The impact of the BOL's dedicated fund would be approximately \$1,000 a year based upon five members meeting four times per year.

DISCUSSION: A discussion ensued with **Senator Martin**, **Senator Potts**, and **Ms. Cory** about the BOL Board decision to increase the honorarium.

MOTION: **Senator Martin** moved to send **H 348** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

H 349 **Relating to Occupational Therapy.** **Tana Cory**, Bureau Chief, Idaho Bureau of Occupational Licenses (BOL), stated this proposed legislation amends Idaho Code § 54-3702 to clarify language and remove obsolete terms related to qualifications for board appointments from the Occupational Therapy Practice Act (OTPA). It clarifies that the definitions of "Graduate Occupational Therapy Assistant," "Occupational Therapist," and "Occupational Therapy Assistant" refer to persons regulated by Idaho Code and also removes an obsolete provision pertaining to endorsement licensure.

There is no impact to the General Fund, because the BOL operates solely on dedicated funds. There is no impact to the BOL's dedicated fund since the proposed legislation will not alter the number of BOL Board meetings held each year or require more services be provided to the BOL.

MOTION: **Vice Chairman Guthrie** moved to send **H 349** to the floor with a **do pass** recommendation. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

H 350 **Relating to Counselors and Therapists.** **Tana Cory**, Bureau Chief, Idaho Bureau of Occupational Licenses (BOL), introduced Piper Field and Sandy Sweesy, Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. **Piper Field** stated this proposed legislation would move educational curricula requirements for licensed marriage and family therapists, and associate therapists, from statute and allow the BOL to establish these requirements in rule. This is consistent with the approach for licensed counselors in the rest of Idaho Code. This would also allow the BOL Board to be more responsive to changes in curriculum standards of accrediting bodies for the educational institutions in Idaho and would facilitate the portability of licenses between Idaho and other states.

There is no fiscal impact to the General Fund because the BOL Board operates solely on dedicated funds. There is no impact to the BOL's dedicated fund since the proposed legislation will not alter the number of board meetings held each year or require more services be provided to the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.

TESTIMONY: **Roberta Crockett** testified in support of the bill. (Attachment 1). She commented the improvements will make it easier for people to understand how to become licensed.

Krysteena Stephens testified in support of the bill. (Attachment 2). She shared her story of trying to transfer her license to Idaho from another state.

MOTION: **Senator Martin** moved to send **H 350** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Bobbi-Jo Meuleman**, Director, Idaho Department of Commerce (DOC), provided an update on the accomplishments of the Idaho Chamber of Commerce. (Attachment 3). The goal of the DOC is to foster a business-friendly environment to aid in job creation, support existing companies, strengthen communities, and market Idaho through tourism and trade.

Ms. Meuleman remarked that Idaho's existing businesses account for over 80 percent of jobs in the State. The Business Retention and Expansion Team focuses on these existing businesses to ensure the DOC is providing the businesses with the support they need.

Ms. Meuleman reported Idaho's continued growth, business-friendly environment, low cost of doing business, and access to leadership have all contributed to the steady flow of business attraction. Site visits from companies considering Idaho as a potential location for an expansion or relocation have increased steadily over the past five years. Site visits were down slightly from 2016, but overall, it was still a very good year for business attractions in the State.

Ms. Meuleman stated the most successful tool granted by the Idaho Legislature in 2014 was the Idaho Tax Reimbursement Incentive (TRI). As of today, 43 projects have been approved. Of those 43 projects, 22 were utilized by existing Idaho businesses for expansions. Of the 43 projects, 24 have been in rural areas. To date, 1,680 jobs have been created as a result of the TRI, with an average wage of \$59,000 with over 6,000 new jobs projected for all approved projects.

Ms. Meuleman commented, that through the Community Development Block Grant (CDVG), dollars are used to fund project throughout the State that benefit low-to moderate-income persons. Projects include infrastructure updates such as water and sewer, downtown revitalization, senior centers, and parks.

Ms. Meuleman explained the DOC tracks data for international exports. The DOC collaborates with the Idaho Department of Agriculture to promote Idaho products and jointly manage trade offices in Mexico, Taiwan, and China.

Ms. Meuleman noted the Idaho Global Entrepreneurial Mission (IGEM) grants funds to university researchers and business experts who partner together to bring viable technologies to the market.

Ms. Meuleman advised tourism is Idaho's third-largest industry and is continuing to see significant growth. In fiscal year (FY) 2017, the State lodging and convention tax collection increased by over 12 percent - topping over \$11 million. The travel and tourism industry employs over 57,000 employees statewide and contributes over \$1.3 billion of the State's gross domestic product (GDP). Tourism is a key economic driver in the State and the leading industry in many rural areas.

Ms. Meulman indicated the DOC anticipates growth to continue at 10 percent annually, particularly with the addition of over 1,800 proposed hotel properties

statewide and the inclusion of the vacation rental properties, such as Airbnb in lodging tax collections.

DISCUSSION: **Ms. Meuleman** and **Senator Potts** discussed the reason behind the decline in exports of semiconductors, mining products, and transportation equipment. **Ms. Meuleman** indicated that Micron, the leading exporter, was not making as many products in Idaho.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:40 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary



Testimony before the Senate Commerce and Human Resources Committee-Thursday, February 15, 2018

Supporting H 350 -COUNSELORS AND THERAPISTS – Amends existing law to revise licensure requirements for marriage and family therapists and associate marriage and family therapists.

Mr. Chairman and Members of the Committee:

My name is Roberta Crockett, I am a licensed Marriage and Family Therapist practicing and residing in Boise. I am the Past-President of the Idaho Association for Marriage and Family Therapy. I am also a past member and chair of the Idaho State Licensing Board of Professional Counselors and Marriage and Family Therapists.

The Idaho Association for Marriage and Family Therapy supports H350 because we believe that it facilitates the Licensing Board's effort to keep current with the evolving standards and practices of the field. Making the licensing law more streamlined will keep the licensing process more efficient, and allow those who complete their education and training in marriage and family therapy, either in Idaho or in another state to be able to understand and anticipate the requirements for becoming licensed in Idaho.

Our organization often receives inquiries from those interested in entering the field. Since the current law is written towards standards that are now almost 20 years old, we frequently spend time helping applicants understand how their more recent program requirements translate into fitting the older guidelines. I know the Bureau of Occupational Licensing fields numerous calls of this sort as well.

I was involved in the original passage of the Marriage and Family Therapist licensing law in 2001, and I can see now that putting the specifics in Rules would have been wise. I appreciate that the Licensing Board and Bureau is taking this step now. To their credit they invited our organization and other stakeholders to be part of a subcommittee that drafted this change, and will also draft the rules to implement it, should it become law.

We ask for your support of this change in the law.
Thank you, Roberta Crockett, MA, LMFT

Review of State Licensing Requirements
House Bill No. 350
Krysteena Stephens, MA
February 15, 2018

Mr. Chairman, members of the board, my name is Krysteena Stephens and I am here today to offer personal testimony in support of House Bill No.350 relating to revising licensing requirements for Associate Marriage and Family Therapists and Marriage and Family Therapists in the state of Idaho (Section 54-3405B, Idaho Code and Section 54-3405C, Idaho Code).

I stand here today as a pre-licensed Marriage & Family Therapist candidate. The term "pre-licensed," is important to open my discussion with as I am not a recent graduate as the term may assume. In fact, I graduated in 2012 and hold a master's degree in Marriage & Family Therapy. I have been practicing in various roles in the behavioral health field for the majority of the last six and a half years. I have thousands of hours of clinical work (as defined by rule) yet the state views and labels me as a registered intern.

When I moved to Idaho two and a half years ago I predicted there would be a hoop or two to jump through in order to transfer my graduate credits and therapy hours yet was not nearly prepared for where the next two years of unraveling information would take me. Here are some of the issues I faced:

- 1) Despite graduating from an accredited university, Idaho Statute Title 54-3405B determines that my coursework does not meet all criteria for state license requirements. To remove this barrier, I researched all universities in this state providing graduate coursework in marriage and family therapy in order to take additional courses to fulfill the needed 12 semester units. None of the programs in marriage and family therapy in this state could provide me with this specific coursework that was required. \$8,700 later, I eventually completed 18 additional quarter credits to fulfill the 12 semester unit requirement by this state.
- 2) Another barrier is listed under section 2 [54-3405B] in the same title that states, "Completion of one (1) year practicum of supervised marriage and family therapy experience, consisting of ... one hundred fifty (150) hours ... with couples or families, as part of the graduate program." The statute does not provide information pertaining to a person in my predicament who holds a master's degree and is not in practicum yet has not completed one hundred fifty (150) direct client contact hours with couples and families. When I approached the board with this question, even they were initially stumped. There is little flexibility in these qualifications and it does not address alternative circumstances .
- 3) Additionally, section 2 [54-3405B] requires students with minimal real-life therapy training to perform therapy with couples and families prior to graduating. Working with couples and families pose unique risks such as managing issues of domestic violence, child abuse or neglect, child custody battles, infidelity, and trauma that may be revealed while both perpetrator and victim are present in the room. According to the AAMFT Code of Ethics, [Standard 3.6; Standard 3.10] "... "Marriage and family therapists do not diagnose, treat, or advise on problems outside the recognized boundaries of their

attachment 2

*H 350
2/15/18*

competencies." This is a highly complex and potentially high-risk population and should only be pursued once the therapist has, at minimum several hundred hours of training, strong knowledge of law and ethics, and enough competence to handle the ensuing chaos.

On paper, the qualifications for licensure for a marriage and family therapist are more than double the length as those for a licensed professional counselor or a licensed clinical social worker. House Bill No. 350 appears to eliminate all of the convoluted jargon of the statute, simplifies the language, and allows a board of individuals with substantial clinical knowledge to hold greater influence in making a sound judgment. These rules are set in place to protect the public and they need to be managed primarily by the board members who hold clinical experience and know the signs of therapeutic exploitation. We need to put the power back in the hands of the people who are on the ground floor. As Lt Governor Brad Little stated, "government always needs to do its part to protect citizens, but it also must make sure it does not interfere where it's not needed... Only the lightest possible hand."



As the lead economic development agency for the State of Idaho, the mission of the Idaho Department of Commerce is to foster a business friendly environment to aid in job creation, support existing companies, strengthen communities, and market Idaho to:

- Grow and expand the economy by supporting the expansion and retention of Idaho businesses and attraction of new businesses to the state;
- Cultivate the development of new businesses and job opportunities across targeted industry sectors;
- Expand Idaho's tourism and recreation industries;
- Guide Idaho businesses in exports of goods and services to the world and encourage foreign investment in Idaho;
- Encourage communities to be prepared for business growth through infrastructure development and site readiness;
- Invest in development of new innovative research through public private partnerships.

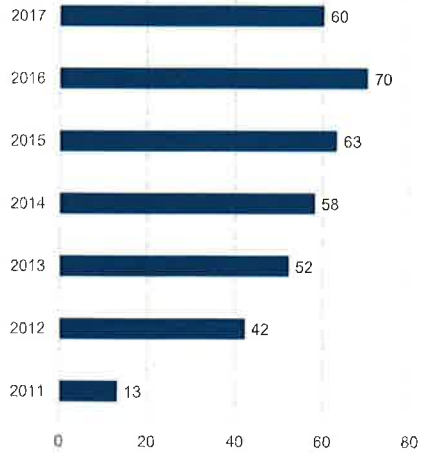












Business Retention and Expansion

- Over 500 company visits in FY17
- Coordinated 19 rural economic development professionals
- Building relationships



Business Attraction



TRI ROI	TOTAL PROJECTS	TRI by the Numbers	
4 : 1	43		
ACTUAL JOBS	ACTUAL WAGES		
1680	\$59,931		
RURAL PROJECTS	URBAN PROJECTS		
24	19		
EXISTING IDAHO BUSINESSES	NEW IDAHO BUSINESSES		
22	21		

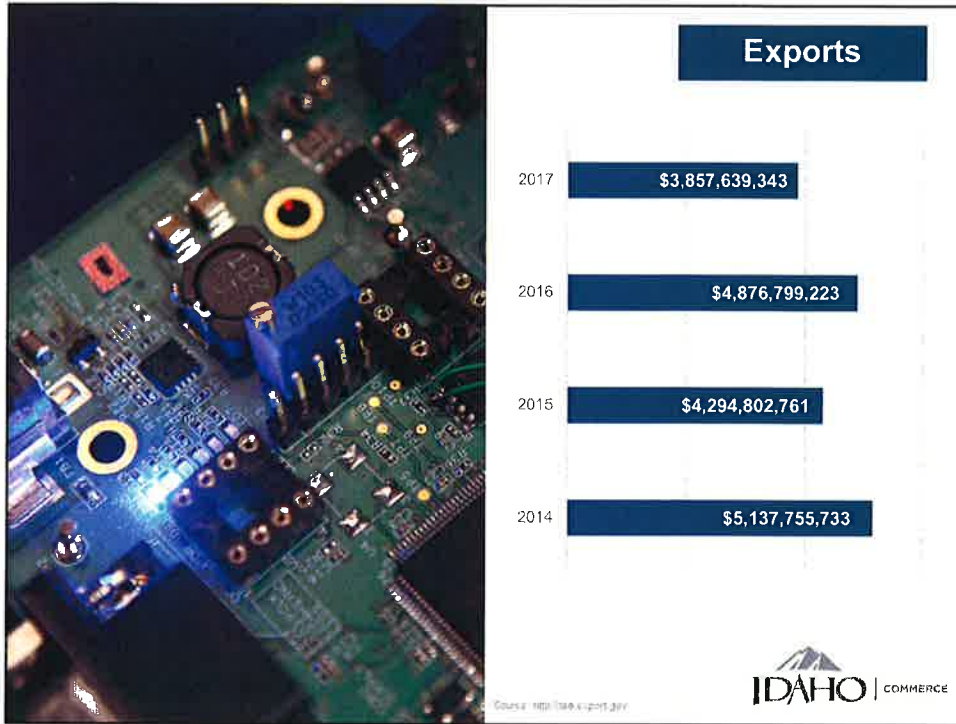
Source: Idaho Commerce's 2016 Economic Incentives and Financial Incentives Idaho for its stakeholders website

Community Development Block Grants

- Awarded \$9,225,739 in federal funds via the Community Development Block Grant.
- Projects included:
 - Water system improvements
 - Wastewater treatment improvements
 - Senior center and community center improvements and new builds
 - Well upgrades
 - Downtown revitalizations
- Awarded \$500,000 in state Rural Community Development Block Grants




WINCHESTER



IGEM


- 4 projects funded in FY17 for \$979,572
- Projects range from:
 - Remote sensor system for alfalfa crop bloom
 - Spectroscopic reflectometer for optical fiber development
 - Potato storage air purification sensor network
- To date, IGEM has funded 24 projects for over \$4.8 million in university and industry partnerships





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AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 20, 2018

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Minutes of February 13, 2018	Senator Martin
GUBERNATORIAL APPOINTMENT & VOTE:	Committee Consideration of the Gubernatorial Appointment of David Jeppesen, to the Idaho Health Insurance Board - Your Health Idaho	David Jeppesen
GUBERNATORIAL APPOINTMENT & VOTE:	Committee Consideration of the Gubernatorial Appointment of Park Price, to the Public Employee Retirement System of Idaho Board	Park Price
<u>H 454</u>	Relating to Insurance Dividends and Other Distributions	John Mackey, United Heritage Financial Group
<u>S 1265</u>	Relating to Fees for a Security Freeze	Senator Jeff Agenbroad
<u>S 1302</u>	Relating to Insurance - Living Organ Donors	Senator Cherie Buckner-Webb
<u>H 432</u>	Relating to the Workforce Development Council, Revise Makeup, Composition, and Duties	Mark Warbis, Communications Director, Senior Special Assistant, Office of the Governor

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 20, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of February 13, 2018. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & HEARING: The gubernatorial appointment of David Jeppesen of Eagle, Idaho, to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI) term commencing August 15, 2017 and expiring April 10, 2021. **Mr. Jeppesen** provided a brief overview of his background. He reported he is committed to the goal of providing access to health insurance to as many Idahoans as possible. He mentioned YHI is the most successful state-based exchange in the country and he would like to participate in its continued success.

GUBERNATORIAL APPOINTMENT: **Senator Martin** moved to send the gubernatorial appointment of David Jeppesen of Eagle, Idaho, to the Idaho Health Insurance Exchange Board - Your Health Idaho (YHI) to the floor with the recommendation that he be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & HEARING: The gubernatorial appointment of Park Price of Idaho Falls, Idaho to the Public Employee Retirement System (PERSI) Board of Idaho, to serve a term commencing July 21, 2017 and expiring July 1, 2022. **Mr. Price** stated he has the background and experience to provide oversight for PERSI. Currently, no member of the PERSI Board is from Eastern Idaho and he remarked he will be able to bring geographic diversity to the current PERSI Board.

DISCUSSION: **Vice Chairman Guthrie** commented he knows Mr. Price and has been impressed by his proactive attitude. He stated he was glad Mr. Price was willing to serve.

GUBERNATORIAL APPOINTMENT: **Vice Chairman Guthrie** moved to send the gubernatorial appointment of Park Price of Idaho Falls, Idaho, to the PERSI Board of Idaho to the floor with the recommendation that he be confirmed by the Senate. **Senator Potts** seconded the motion. The motion carried by **voice vote**.

H 454

Relating to Insurance Dividends and Other Distributions. **John Mackey**, representing United Heritage Financial Group, remarked the proposed legislation will amend Idaho Code § 41-3812. The amendment will bring it in closer alignment with the majority of states regarding the calculation to determine whether a dividend or distribution by a domestic insurer operating within an insurance holding company system is to be deemed extraordinary or ordinary. The statutory requirements of notice and approval of the dividend vary for the insurer, depending on the determination.

Mr. Mackey explained the changes. He reported the majority of states look at past year's income and 10 percent of surplus when determining dividends. To be deemed extraordinary, the dividend must exceed the greater, as opposed to the lesser of the two values. Because Idaho Code uses "lesser of" language, this creates inconsistency with corporate strategic planning. The inconsistency diminishes the value dividends play in the overall growth and improvement of company financial strength. The use of "greater" is ample proof this factor has provided the appropriate Idaho Department of Insurance (DOI) oversight.

Mr. Mackey pointed out the addition or removal of language for non-life insurers aligns with the National Association of Insurance Commission (NAIC) accreditation standards.

MOTION:

Senator Lakey moved to send **H 454** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

S 1265

Relating to Fees for A Security Freeze. **Senator Jeff Agenbroad** reported this bill amends Idaho Code § 28-52-106, relating to fees for credit report security freezes. This bill allows an Idaho resident to place one credit report security freeze and one temporary lift of a credit report security freeze on their credit report every 12 months; the freeze can be conducted at no cost to the consumer. **Senator Agenbroad** stated that, currently, Idaho Code allows each credit reporting agency to charge up to \$6 to place a credit freeze and \$6 to remove or lift the credit freeze. The one free annual freeze and temporary lift is consistent with the consumers' ability to request one free annual credit report from each of the three credit reporting agencies.

Senator Agenbroad commented credit reports are used more widely today than ever, affecting many areas of daily life. Consumer credit reports are not only used to acquire credit, but also to rent a residence, open deposit accounts, acquire utilities, gain employment, and establish insurance rates. At the same time, consumers are experiencing more credit and information data breaches than ever. He noted this past year Equifax, one of the three primary credit reporting agencies, suffered a data breach that affected 145 million consumers. In 2016, Uber suffered a breach of 57 million consumers' information. In 2015, the Internal Revenue Service (IRS) had 700,000 consumer record breaches. In 2014, Home Depot suffered a breach affecting 50 million consumers.

Senator Agenbroad commented the most important thing a consumer can do to protect themselves from the effects of information breaches and identity theft is to regularly review their credit reports and manage access to their credit information. There should be few barriers that would discourage a consumer from managing their credit information. This proposed legislation removes a financial barrier that has no fiscal impact on the General Fund.

DISCUSSION:

Senator Souza remarked this was an important bill.

MOTION: **Senator Souza** moved to send **S 1265** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1302 **Relating to Insurance - Living Organ Donors.** **Senator Buckner-Webb** reported the Living Donor Protection Act will protect living organ donors and remove barriers to donation. Living organ donors make a substantial contribution to increase the number of transplants performed each year. Each transplant results in a life saved and a life improved for the recipient.

Senator Buckner-Webb stated there is a tremendous need for living kidney donors. She noted there were 95,466 Americans on the kidney transplant waiting list in January 2018. Approximately 13 people die each day while waiting for a transplant. Around 3,000 people are added to the kidney waiting list every month.

Senator Buckner-Webb stated that removing barriers to kidney transplants from living donors makes sense from a government-spending perspective. Medicare spends, on average, \$93,064 per dialysis patient per year. Medicare spends, on average, \$36,389 per transplant recipient per year.

Senator Buckner-Webb explained a living kidney donor goes through extensive medical testing to ensure that organ donation does not adversely impact their health; only the healthiest individuals are accepted as donors.

Senator Buckner-Webb commented living organ donors currently experience higher premiums or denial of insurance coverage based solely on their organ donation. Lack of insurance protection and higher premiums are barriers for those wanting to donate life-saving organs. Under this proposed legislation, insurance companies will be prohibited from denying or limiting disability, life insurance, and long-term care insurance to living donors. It would also prohibit charging higher premiums. There is no fiscal impact to the State because it will only result in policy changes for insurance companies.

DISCUSSION: **Senator Thayn** clarified that, under this proposed legislation, if someone donated a kidney and tried to purchase life insurance, carriers could not discriminate. **Senator Potts** queried if a live organ donation was considered major surgery, he wondered what makes it different from listing any other major surgeries on an application for insurance. **Senator Buckner-Webb** remarked an applicant for insurance would have to disclose the surgery, but with this proposed legislation, the insurance company could not discriminate. **Senator Potts** and **Senator Buckner-Webb** discussed prior surgery records. **Senator Potts** discussed how this proposed legislation could be discriminatory against other types of surgeries. **Senator Buckner-Webb** indicated there was no correlation. A living organ donor who donates a kidney gives the gift of life.

Senator Souza and **Senator Buckner-Webb** had a conversation about discrimination against living organ donors and how that may affect someone before or after an organ is donated.

Senator Lakey agreed that organ donation is a good thing but wondered if there was any discrimination in Idaho. **Senator Buckner-Webb** remarked there was no evidence, but, after talking to insurance company providers and other stakeholders, there was no opposition to the proposed legislation.

TESTIMONY: **Dean Cameron**, Director, Idaho Department of Insurance (DOI), testified he had not seen any evidence of discrimination for a live organ donor. He said he viewed this proposed legislation as preventative. He remarked other states have experienced issues. **Mr. Cameron** stated it was inappropriate for an insurance company to quote higher rates to an organ donor.

DISCUSSION: **Senator Potts** and **Mr. Cameron**, discussed life insurance, long-term care, and disability as it related to live organ donors. **Mr. Cameron** advised if an insurance company was discriminatory, the DOI would take action. He mentioned the DOI approves all forms, policies, language, and applications from insurance companies, which are required to be non-discriminatory.

Vice Chairman Guthrie, **Mr. Cameron**, and **Senator Buckner-Webb** discussed whether the live organ donor or the donee could be discriminated against and the costs involved for the surgeries.

TESTIMONY: **Marty Durand**, kidney recipient, testified on behalf of herself and in support of the bill. She summarized her health issues and reported she was diagnosed with chronic kidney issues. She began testing to find out if she was a viable candidate for a transplant. Testing took a year and then she was put on a waiting list while undergoing dialysis. The wait time is approximately three to five years. If she stayed on dialysis, her predicted life span was five to ten years. **Ms. Durand** reported potential donors were tested and, in August 2016, she received a new kidney, which will last her the rest of her life. She remarked that she is here today because someone literally saved her life.

Senator Burgoyne asked about the cost and the responsibility for payment. **Ms. Durand** disclosed her private insurer paid for her transplant and for testing of the donor. She remarked this bill would not impact health insurance.

Donna Yule, kidney donor, testified on behalf of herself and in support of the bill. She acknowledged she donated one of her kidneys to Ms. Durand. **Ms. Yule** summarized the rigorous tests she underwent for a year in order to show she was extremely healthy and able to donate her kidney. She reported there are not enough organ donors. Donors have more out-of-pocket expenses.

MOTION: **Senator Ward-Engelking** moved to send **S 1265** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

DISCUSSION: **Senator Lakey** asked Mr. Cameron to clarify whether disability insurance would include health insurance. **Mr. Cameron** remarked that health insurance falls under disability insurance but is worded as a disability policy. **Mr. Cameron** indicated this is something that needs to be explored with legal counsel. Discrimination is already prohibited by the Affordable Care Act (ACA). He mentioned he was not sure if this proposed legislation would have a major impact. He would gather information and submit a letter to Chairman Patrick.

Senator Potts remarked that life insurance and disability insurance are discriminatory against a person's health if something is removed from their body. He mentioned that is how insurance companies set their fees. He stated he agreed with organ donation, but he was concerned about making organ donors and donees a protected class. He commented it was not fair to insurance companies and others who have had surgeries. He noted he would be voting "nay."

VOTE: The motion carried by **voice vote**. **Senator Potts** asked to be recorded as voting **nay**.

Relating to Workforce Development Council: Revise Makeup, Composition, and Duties. **Mark Warbis**, Communications Director, Senior Special Assistant, Office of the Governor, stated this legislation stems directly from the recommendations of the Governor's Workforce Development Task Force (WDTF). He gave a brief history of the WDTF. The WDTF was asked to consider how to best address the gap between the number and types of jobs that Idaho's economy is creating and the kind of educated, skilled workers that employers increasingly need.

Mr. Warbis outlined the first and third recommendations, which were to: a) increase the role and responsibilities of an industry-driven WDTF to champion the development and implementation of a Statewide, strategic workforce development plan that meets industries' needs today and tomorrow; and b) develop and implement a comprehensive Statewide public engagement initiative utilizing technology and other engagement strategies to increase awareness of career opportunities for all Idahoans.

Mr. Warbis acknowledged this proposed legislation essentially empowers Idaho employers with a bigger role in determining how the WDTF money, which they contribute through the unemployment insurance tax, is used to produce the kind of employees they need.

Mr. Warbis outlined the implementation of key recommendations of the Governor's WDTF. This report can be found at https://labor.idaho.gov/publications/workforce_taskforce_final_report.pdf.

TESTIMONY:

Trent Clark, Chairman, Workforce Development Council; Government and Public Affairs Director and representative of Monsanto, Incorporated, asked the Committee to look at **H 335** which already passed. **H 335** relates to employment and taxable wages, and indicates that jobs have changed, which require using higher skills. There is a deficit in the workforce in providing higher-skilled workers for companies. He commented that a reduction in unemployment taxes was offered to companies, but companies wanted to use the money instead to give workers an option to learn a trade. He pointed out there was no guarantee as to what the companies would receive for a reduction in taxes and they declined. **Mr. Clark** remarked this proposed legislation is part of the equation to show companies what they will receive through workforce training money. He stated he is a believer there are reforms to be done collaboratively.

DISCUSSION:

Chairman Patrick asked for an explanation of the fiscal note. **Mr. Warbis** said the Idaho Department of Labor (DOL) was not being decimated. The money is in the Workforce Funds, which is a dedicated fund. He deferred to **Matt Warnick**. **Matt Warnick**, Senior Financial Management Analyst, Economic Development, Department of Commerce, reported there will be a reduction in personnel and an overall reduction of money at the DOL. Funding would be aligned to ensure training is available for the future. This move is in line with spending.

Senator Lakey asked Mr. Warbis to summarize how this decision-making process is different than what is occurring now. **Mr. Warbis** gave a brief history and overview of the Workforce Council stating it was advisory only. He reported there was no accountability or transparency. There was a request for accountability. Grant applications were taken for workforce accountability grants. The matrix used gave a better idea as to how the money was being spent. Because there seemed to be no value, this led to the WDCTF. The Governor created an Executive Order which included an executive committee structure. The Council, which includes industry, will make decisions as to how money is spent.

Senator Souza commented the cost of the program is approximately \$8.5 million. **Mr. Warbis** remarked that is the current balance. **Senator Souza** asked who would choose the Executive Director and the full-time person. **Mr. Warbis** stated the Governor chooses the Executive Director, who will hire the full-time person.

MOTION: **Senator Ward-Engelking** moved to send **H 432** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:55 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, February 22, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>RS25709</u>	Unanimous Consent Relating to the Barber and Cosmetology Services Act	Senator Den Hartog
MINUTES APPROVAL	Minutes of February 15, 2018	Senator Lakey
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Margaret Henbest, Idaho Health Insurance Exchange Board - Your Health Idaho	Margaret Henbest
<u>S 1288</u>	Relating to Authorization of Out-of-State Insurers	Senator Foreman
<u>S 1285</u>	Relating to Banking - Credit Unions	Ryan Fitzgerald, NW Credit Union Association
<u>S 1287</u>	Relating to Covenants Not to Compete	Senator Guthrie

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 22, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

**ABSENT/
EXCUSED:** Senator Martin

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

RS 25709 **Unanimous Consent Relating to the Barber and Cosmetology Services Act.** **Senator Den Hartog** stated this bill combines the Idaho Board of Barber Examiners and the Idaho Board of Cosmetology. This merger protects the public, ensures safety and disinfection training for licensees and certificate holders, and provides more flexibility to individuals entering the profession by allowing them to select a more focused area of preparation and practice. She outlined the provisions. **Senator Den Hartog** reported the combined Barber Examiners and Cosmetology Board will include representation from both professions and the public; it will facilitate efficiencies in the administration of the law.

Senator Den Hartog commented there is no fiscal impact to the General Fund. It is anticipated this legislation will reduce the Idaho Bureau of Occupational Licenses' dedicated fund expenditures. Combining boards will result in fewer total board meetings and fewer board members, which should result in, lower expenses.

**UNANIMOUS
CONSENT REQUEST:** **Senator Thayn** asked for unanimous consent to send **RS 25709** to the Senate State Affairs Committee for printing. There were no objections.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of February 15, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL
APPOINTMENT &
HEARING:** The re-appointment of Margaret Henbest of Boise, Idaho, to the Idaho Health Insurance Exchange (Exchange) Board - Your Health Idaho (YHI), term commencing April 10, 2017 and expiring April 10, 2021. **Ms. Henbest** explained she has been honored to serve on the Exchange Board since its inception. She serves as Governance Committee Chair.

DISCUSSION: **Senator Potts** asked Ms. Henbest what she was doing to advocate on the part of Idahoans. **Ms. Henbest** remarked she did not have the role of advocacy. Her role was to shed a positive light on the Exchange. **Senator Potts** asked what the key focus was moving forward for YHI. **Ms. Henbest** replied the Exchange Board always works within the confines of legislation and use that as a guide for good decision-making.

**GUBERNATORIAL
APPOINTMENT:**

Senator Burgoyne moved to send the gubernatorial appointment of Margaret Henbest to the Idaho Health Insurance Exchange Board - Your Health Idaho, to the floor with the recommendation that she be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1288

Relating to Authorization of Out-of-State Insurers. **Senator Foreman** reported the Idaho Free Market Insurance Act (IFMIA) will allow individuals and groups to purchase health and accident insurance plans from out-of-state insurance companies. He stated this should introduce increased competition and a greater selection of health care plans into the State's health insurance market place. The intended results are lower health insurance premiums and improved availability of health care policies better-suited to offering flexibility and consumer choice to Idahoans.

Senator Foreman stated this legislation is designed to ensure consumer protection for the people of Idaho. He mentioned he has worked closely with Director Dean Cameron, Idaho Department of Insurance (DOI), in crafting this bill. This bill incorporates safeguards and tools to enables the DOI to uphold and enforce high standards of consumer protection for citizens purchasing health insurance policies from out-of-state insurers.

Senator Foreman commented this bill requires all out-of-state insurers selling accident and health insurance policies in Idaho to: be licensed in good standing in another state; use appropriate insurance forms that are clear and not misleading, as determined by the DOI; and use agents licensed in the State of Idaho. The IFMIA also mandates any disputes regarding an out-of-state insurer's policies, benefits, contracts, or coverages purchased by Idaho residents shall be covered by Idaho law and litigated in Idaho.

The foreign insurer must submit to the jurisdiction of the DOI in all related matters and agree to be subject to all rules and regulations promulgated by the State of Idaho with respect to insurers transacting accident and sickness insurance in Idaho. This proposed legislation requires out-of-state insurers to remit the Idaho premium tax and participate in the State's High-Risk Reinsurance Pool (HRRP). The DOI Director will be authorized to enter into compacts with other states to assure consumer protection of Idahoans purchasing policies from out-of-state insurance companies.

Senator Foreman remarked this proposed legislation is a good, solid first step in the proper direction for Idaho consumers. Along with the non-Affordable Care Act (ACA) health care policies, the Executive Order initiative by the Governor represents small, but measurable and needed progress to restore competition, lower prices, and enable a greater selection of health insurance products for the Idaho marketplace.

TESTIMONY:

Steve Thomas, representing Idaho Association of Health Plans (IAHP), stated IAHP had no position either in support or against this bill. **Mr. Thomas** posed several questions and made a few comments in order to assist the Committee in their deliberations. **Mr. Thomas** remarked the members of IAHP have no problem with competition. There is across-the-state-line competition already in place. The problem the IAHP members have is whether the consumers in Idaho will enjoy all of the same consumer protections as under existing law.

Fred Birnbaum, representing the Idaho Freedom Foundation, testified in support of the proposed legislation. **Mr. Birnbaum** stated the ACA maintains the strong context of State regulation, so there is no danger that - if the ACA is repealed - that the ability of states to regulate will slip away. However, if in the future there is more market-style transparency, this legislation will facilitate the sale of products across state lines and provide the opportunity for increased competition. He noted this proposed legislation contains language that protects consumers.

DISCUSSION:

Senator Souza wondered if an out-of-state insurance company would have to submit to the jurisdiction of the DOI. She queried why out-of-state insurers would not become licensed or certified in Idaho. **Mr. Birnbaum** said this proposed legislation provides options. There are participants in this market who are not domiciled in the State. He remarked he did not see the downside. **Senator Souza** wondered, if an insurer based in Wyoming who had fulfilled all the requirements in that State, would the DOI be confident that the insurer was legitimate and could come into this market without vetting. **Mr. Birnbaum** remarked this bill protected the consumer from fraudulent companies.

TESTIMONY:

Dean Cameron, Director, DOI, noted his job is to protect Idaho consumers. This proposed legislation provides an option. This bill allows the DOI to enter into an agreement with another state. A compact is an option. There are some states with which the DOI would not want to have an agreement. He said a majority of the states strive to follow requirements and adopt National Association of Insurance Commissioners (NAIC) model acts.

Mr. Cameron answered the questions posed by Mr. Thomas earlier in the meeting. He stated the DOI does not have the authority to reject rates or push back. The Guaranty Association would be included by specific language. Any carrier who does business in Idaho would have to participate. There is an advantage if a carrier is in good standing with another state. Health insurance is based on networks and the ability of a carrier to obtain an appropriate network is not easy. A major carrier is more likely to sign a contract with an out-of-state company as opposed to an in-state company.

DISCUSSION:

Senator Burgoyne commented that Mr. Cameron stated there would be an advantage for an out-of-state carrier to do business in Idaho. **Mr. Cameron** stated, for the record, it is not a hard threshold to get a license in Idaho. All companies are not selling major medical insurance. An out-of-state company may have to make and maintain a financial deposit, which is rare. If a company was in good standing in their state, the DOI would look at forms and rates to make sure an out-of-state company was responsive to customers. **Senator Burgoyne** asked if there was anything in this proposed legislation, with respect to licensing, that the DOI would not require of other carriers. **Mr. Cameron** remarked there was nothing in the legislation that the DOI could not ask a carrier to provide.

Senator Potts queried if the DOI was concerned about out-of-state

companies policy rates and if they be competitive. He wondered how the carrier would be counted if based in Utah. **Mr. Cameron** reported the broader the risk could be spread, the lower the rates. The carrier would be counted in the Idaho pool. The most important thing for an out-of-state carrier is to obtain the lowest possible rate in their provider contracts. He mentioned the DOI has some oversight, but it is not adequate and could potentially be problematic. The DOI falls back on the ACA definition in enforcing network adequacy.

Senator Potts asked how an influx of people from out-of-state would impact the DOI relating to growth costs in making sure these audits are performed. **Mr. Cameron** stated there was no impact. Audits are only done on domiciled companies in the State of Idaho. The DOI conducts cooperative audits with the states of Washington, Oregon, and Utah, examining all four departments of insurance, working together to examine different components to be most efficient. There could be more carriers who would decide to domicile in Idaho because Idaho's regulation has not been onerous.

Senator Burgoyne queried if the out-of-state carriers would be required to participate in the Guaranty Association. **Mr. Cameron** stated that was his interpretation. He commented the proposed legislation also gives the DOI the ability to promulgate rules.

MOTION:

Senator Souza moved to send **S 1288** to the floor with a **do pass** recommendation. **Senator Potts** seconded the motion.

DISCUSSION:

Senator Burgoyne commented he supported the motion, but reserved the right to change his vote on the floor as he had a concern on page 2, line 29 of the bill. **Senator Thayne** spoke in support of the motion.

VOTE:

The motion carried by **voice vote**.

S 1285

Relating to Banking - Credit Unions. **Ryan Fitzgerald**, Northwest Credit Union Association, reported this proposed legislation updates and modernizes internal governance provisions of the Idaho Credit Union Act. The legislation updates the requirements for annual credit union membership meetings in order to allow greater access for members. It also provides for updated voting mechanisms with new technology.

The updates also outline reasoning and procedures for holding special membership meetings and outline the size, qualifications, and fiduciary responsibilities of a credit union's board of directors. Updates affect meeting requirements and locations, election procedures, terms, and vacancies for a credit union board of directors. Additional updates include the basic powers and duties of a board of directors and what duties may not be delegated to other committees, officers, or employees.

The proposed legislation also provides a reorganization of a credit union supervisory committee. Further, it advises minor additions to the stated powers of the supervisory committee, including requiring biennial member account verification and credit union oversight. Other provisions outline the bond requirements that each credit union is required to carry in order to insure against risk. The bond must be reviewed by the board of directors annually.

Mr. Fitzgerald stated there is no fiscal impact to the General Fund. He referred to Joint Rule 18, which states the provisions of this proposed legislation specifically relate to corporate governance of state-chartered

credit unions and will require no additional resources of the Idaho Department of Finance (DOF). The changes will not increase or decrease the DOF's revenues.

MOTION:

Senator Potts moved to send **S 1285** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1287

Relating to Covenants Not to Compete. **Vice Chairman Guthrie** stated the purpose of this proposed legislation is to revise covenants not to compete by removing and revising the requirements for rebuttable presumptions in Idaho's non-compete employment law. The proposed legislation makes a technical correction to Idaho Code § 44-2702 by striking "section" and replacing it with "Chapter." The bill also provides clear definitions of "key employee," "key independent contractor," and "legitimate business interest," in order to be consistent with the other sections of Idaho Code.

Vice Chairman Guthrie remarked that, because this proposed legislation deals with Idaho Code sections that set parameters for private covenants surrounding Idaho employment laws, there will be no fiscal impact to the General Fund or any other State or local government fund. This section does not and will not require any government expenditures.

Vice Chairman Guthrie reported that Idaho Code § 44-2704 contains the main changes. He noted in this proposed legislation the language on lines 10 through 21 eliminate Sections 5 and 6. He asked that the bill be sent to the amending order with the intent of restoring Section 5, lines 10 through 15. **Vice Chairman Guthrie** reported this represents a compromise among interested parties. The changes are being proposed because there is a perception that Idaho is not business or employee-friendly. He remarked that employers need some ability to protect their investments and trade secrets. Employees need to have opportunities for advancement and career change.

Vice Chairman Guthrie outlined an article published in the *Idaho State Journal* on January 14, 2018 by former Attorney General and Chief Justice Jim Jones. The article was titled, "Idaho Went Too Far on Non-competition Agreements." He noted non-competes can be used to unnecessarily stifle competition to keep talented people from advancing. They might also squelch innovation or the innovative employee who wants to start out on their own. The only way an employee can rebut the presumption of irreparable harm under the proposed legislation would be for the employer to prove a negative. Proving negatives in court is a very difficult thing to do.

DISCUSSION:

Senator Ward-Engelking voiced support for the bill.

TESTIMONY:

Elisa Cooper and **Matt Serlin** testified in support of this bill. Although they live in Idaho, due to the current non-compete clause, they are unable to hire employees in Idaho.

Norris Krueger, Ph.D., testified in support of this bill. He remarked this bill will help companies.

DISCUSSION:

Senator Burgoyne commented he was not sure if he would support the bill. He implored the sponsor to leave lines 13 through 15 in the bill on page 2. He stated that, to rebut such presumption, an employee or independent contractor must show that it has no ability to adversely affect the employer's legitimate business interests. He remarked he found the language very troubling. An employee has no chance of winning their suite. He said he would vote to send the bill to the 14th Order.

Vice Chairman Guthrie stated the bill represents a good compromise as to what is already in code. **Senator Lakey** commented he was concerned with language that creates an irrebuttable presumption. He said he looked at Subsections 5 and 6 separately. He said Subsection 5 addressed whether a person is a key employee. Subsection 6 deals with harm as a result of being a key employee. He remarked he appreciated the balance. He supported the motion and the change.

MOTION:

Senator Ward-Engelking moved to send **S 1287** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:49 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, February 27, 2018

SUBJECT	DESCRIPTION	PRESENTER
GUBERNATORIAL APPOINTMENT & VOTE	Committee Consideration of the Gubernatorial Appointment of Amy Manning, Idaho Personnel Commission	Amy Manning
MINUTES APPROVAL:	Minutes of February 20, 2018	Senator Thayn
<u>S 1281</u>	Relating to Health Benefit Plans - Contraceptives	Senator Cherie Buckner-Webb
<u>H 411</u>	Relating to Sign Language Interpreters - Revise Minimum Age for Licensure	Representative Kelley Packer
<u>H 434</u>	Relating to Administrative Bidding	Barry Miller, Deputy Administrator, Division of Public Works
<u>H 458</u>	Relating to Architects	Joan Callahan, Attorney, Bureau of Occupational Licenses
<u>H 459</u>	Relating to Real Estate Appraisal Reviews	Scott Calhoun, Real Estate Appraisal Board
<u>RS26192</u>	Resolution Rejecting Docket No. 07-0901-1701	Vice Chairman Guthrie
<u>RS26193</u>	Resolution Rejecting Docket No. 07-0401-1701	Vice Chairman Guthrie

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 27, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:33 p.m.

GUBERNATORIAL APPOINTMENT & HEARING: The gubernatorial appointment of Amy Manning of Pocatello, Idaho, to the Idaho Personnel Commission term commencing September 26, 2017 and expiring July 1, 2023. **Ms. Manning** provided a brief overview of her background. She reported her work history has given her the opportunity to deal with personnel issues on many levels. She stated she believed she would be an asset regarding matters of personnel and appreciated the opportunity to serve.

GUBERNATORIAL APPOINTMENT: **Senator Guthrie** moved to send the gubernatorial appointment of Amy Manning of Pocatello, Idaho, to the Idaho Personnel Commission to the floor with the recommendation that she be confirmed by the Senate. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Thayn** moved to approve the Minutes of February 20, 2018. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1281 **Relating to Health Benefit Plans - Contraceptives.** **Senator Buckner-Webb** reported this proposed legislation will require health benefit plans to provide reimbursement for a 12-month supply of contraceptives. Currently, many insurance plans reimburse for only a one to three-month supply of contraception. This legislation will require any health benefit plan issued or renewed on or after January 1, 2019 that covers contraceptives approved by the federal Food and Drug Administration (FDA), to provide reimbursement for a 12-month refill of contraception obtained at one time by the enrollee. The enrollee or the prescribing provider may request a smaller contraceptive supply.

DISCUSSION: **Senator Buckner-Webb** stated there is no foreseen fiscal impact to the State because it will only result in policy changes for insurance companies. **Senator Potts** and **Senator Buckner-Webb** had a conversation about how this legislation would affect women's lives and the ramifications of including other types of medications in future legislation.

MOTION: **Senator Ward-Engelking** moved to send **S 1281** to the floor with a **do pass** recommendation. The motion died due to the lack of a second.

TESTIMONY:

Mistie Tolman, Idaho Legislative Director, Planned Parenthood, testified in support of the proposed legislation. She remarked that the passage of this legislation would improve access to birth control, particularly for women living in rural parts of the State. She asserted the legislation would also decrease unintended pregnancies, lessens the need for abortions, and lower direct costs for insurance companies.

Ms. Tolman reported one in four women say they have missed pills because they could not get the next pack in time. Of the 19 percent of women who inconsistently use birth control, 43 percent account for unintended pregnancies. While hormonal birth control is over 95 percent effective with perfect use, monthly trips to the pharmacy can make perfect use difficult or impossible for many women.

Ms. Tolman stated improving access to contraception is the best way to reduce unintended pregnancies and abortions. One study found that providing a 12-month supply of birth control decreased unintended pregnancies by 30 percent, compared with a supply of just one or three months. The same study found that giving women a year's supply of birth control reduced the odds of those women obtaining an abortion by 46 percent.

DISCUSSION:

Senator Lakey and **Ms. Tolman** had a conversation about the concept of other types of medications being provided for 12 months. **Senator Souza** discussed with **Ms. Tolman** the preservation of prescriptions and the length of time the 12-month prescription policy has been in effect in 11 states. **Ms. Tolman** stated the State of California has had this policy in effect since 2006. **Senator Souza** commented that bodies change and it would be a fair compromise to fill prescriptions for six months rather than a year.

Senator Thayn remarked he was interested in the current practice for dispensation and the cost of birth control prescriptions. **Ms. Tolman** stated dispensation depended on the reimbursement policy of the insurance carrier. She commented this bill requires the insurance company to allow a one-year supply of pills so a woman does not have to return to the pharmacy every month.

Senator Lakey and **Ms. Tolman** discussed expiration dates for oral birth control pills and similar expiration dates for other medications.

Senator Potts and **Ms. Tolman** discussed ordering prescriptions by mail, and the process if someone lost their 12-month supply of pills.

Senator Souza expressed concern about some companies not being able to meet the criteria of supplying medication on-site. **Ms. Tolman** referred to the bill and commented the criteria only applies to those providers who supply that service.

Senator Thayn and **Ms. Tolman** discussed the concerns of the insurance companies and if this legislation would increase costs.

TESTIMONY:

The following testified in support of the bill: **Shayla DeVisser, Tess Wallace, Reverend Sara LaWall, Paige McMahon, Elyse Durand, Maria Solis-Kennedy, Dr. Eve Preus, Nirmala Sandhu, and Lynn Latimer**. All told personal stories of issues they encountered when receiving only one or three months' supply of birth control pills.

DISCUSSION: **Senator Burgoyne** queried if endometriosis could be a life-threatening disease. **Dr. Preus** replied that was a difficult question to answer. He wondered if endometriosis could grow in the body cavity. **Dr. Prius** replied that it could.

Senator Martin remarked there may be some questions relating to the wording in the bill and asked Senator Buckner-Webb if she would be agreeable if the bill was sent to the amending order. **Senator Buckner-Webb** voiced a concern for a positive outcome.

Vice Chairman Guthrie asked Senator Buckner-Webb to explain how reimbursement from the insurance companies would work under this proposed legislation. **Senator Buckner-Webb** reported reimbursement has to do with what the insurance company provides for contraceptives and each policy is different.

Senator Burgoyne commented the doctor decides the period of time for a prescription, which is appropriate. **Senator Burgoyne** and **Chairman Patrick** had a discussion about health plans accommodating what the doctor prescribes.

Senator Thayn stated he was uncomfortable with the lack of input from health insurance companies.

TESTIMONY: **Norm Varin**, representing PacificSource Health Plans, stated he was in support of women's health. He remarked there are rules about allowing prescriptions to be picked up either one or three months ahead of time. His company has no official position either for or against this bill.

DISCUSSION: **Chairman Patrick** queried if the prescription changed, would the patient be out quite a bit of money. **Mr. Varin** remarked there is no copay as the company considers birth control preventative.

Senator Souza posed a hypothetical situation in which a patient schedules several procedures, has the insurance company pay, and then drops the policy after one month. **Mr. Varin** stated it could be possible, but not likely. **Senator Souza** asked Mr. Varin to estimate the average cost of birth control for a year. **Mr. Varin** estimated the cost per month would be between \$10 and \$20 for a generic form of birth control pills.

Senator Lakey questioned if mail order prescriptions were extended for more than one to three months. **Mr. Varin** stated that mail order prescriptions were extended.

Senator Ward-Engelking queried if there were any drawbacks to this bill. **Mr. Varin** remarked a challenge for the system could be created, but could be worked out. The other issue is there are other medications for other illnesses that could fall into this category.

MOTION: **Senator Souza** moved to send **S 1281** to the **14th Order** with a recommendation of a six-month access. **Senator Martin** seconded the motion.

SUBSTITUTE MOTION: **Senator Ward-Engelking** moved to send **S 1281** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

DISCUSSION: **Senator Lakey** remarked he did not view it as within the purview of the government to mandate how often birth control prescriptions can be picked up. **Senator Potts** commented he agreed with Senator Lakey. He stated he opposed sending this bill to the 14th Order.

Senator Ward-Engelking pointed out birth control is already prescribed by doctors. It is important that young women have the ability to access birth control medications in a timely way. This bill is very simple and provides a safety net.

Vice Chairman Guthrie commented access to birth control pills is not being denied today, but the timeframe is the subject of discussion. He stated he was not comfortable with this legislation.

AMENDED SUBSTITUTE MOTION: **Vice Chairman Guthrie** moved to return the bill to the sponsor. **Senator Potts** seconded the motion.

ROLL CALL VOTE: **Chairman Patrick** called for a roll call vote. **Vice Chairman Guthrie** and **Senators Lakey, Thayn, Potts,** and **Chairman Patrick** voted **aye**. **Senators Martin, Souza, Ward-Engelking** and **Burgoyne** voted **nay**. The motion carried.

RS 26192 **Resolution Rejecting Docket No. 07-0901-1701.** **Vice Chairman Guthrie** reported this RS rejects a certain rule of the Division of Building Safety (DBS), **Docket No. 07-0901-1701**, relating to safety and health rules for places of public employment. There is no fiscal impact because the rule does not take effect.

MOTION: **Vice Chairman Guthrie** asked for unanimous consent to send **RS 26192** to a privileged committee to print. There were no objections.

RS 26193 **Resolution Rejecting Docket No. 07-0401-1701.** **Vice Chairman Guthrie** reported this RS rejects a certain rule of the Division of Building Safety (DBS), **Docket No. 07-0401-1701**, relating to rules governing safety inspections. There is no fiscal impact because the rule does not take effect.

UNANIMOUS CONSENT: **Vice Chairman Guthrie** asked for unanimous consent to send **RS 26193** to a privileged committee to print. There were no objections.

H 411 **Relating to Sign Language Interpreters - Revise Minimum Age for Licensure.** **Representative Packer** reported this legislation clarifies an exemption to new licensing for certified individuals that reside outside of Idaho and are interpreting for thirty days or less within Idaho. The bill also includes an exemption for education interpreters who already meet the requirements of the Idaho Educational Interpreter Act. Additionally, it reduces the required age from 21 to 18. **Representative Packer** commented this legislation will have no fiscal impact.

MOTION: **Senator Potts** moved to send **H 411** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 458

Relating to Architects. **Joan Callahan**, Attorney, Idaho Bureau of Occupational Licenses (BOL), reported this legislation, proposed by the Idaho Board of Architectural Examiners (BAE), modernizes and reorders the provisions of Idaho Code, Chapter 3, Title 54, so it is better organized and easier to understand. The proposal gives the chapter a title, provides legislative intent, and organizes the Idaho Architecture Practice Act in a manner consistent with the way legislation for regulated professions and occupations is currently written. It increases honoraria for board members from \$75 to \$100 for meetings.

Ms. Callahan stated there is no impact to the General Fund as the BOL Board operates solely on dedicated funds. The impact to the BOL's dedicated fund would be \$750 per year based upon six members meeting five times per year.

DISCUSSION:

Senator Souza remarked that certain acts were a misdemeanor, she viewed this approach as harsh and wondered if this was new language. **Ms. Callahan** stated this was current language.

MOTION:

Senator Martin moved to send **H 458** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

H 434

Relating to Administrative Bidding. **Chairman Patrick** announced that due to the lack of time, this bill would be heard on March 1, 2018.

H 459

Relating to Real Estate Appraisal Reviews. **Scott Calhoun**, Idaho Real Estate Appraisal Board (REAB) member, stated that the Idaho Legislature passed a law regulating Appraisal Management Companies (AMCs) in Idaho in 2016. The REAB is proposing a change to its current law to reflect the language used in the AMC legislation. This change will provide consistency between AMC appraisers and non-AMC appraisers in Idaho pertaining to appraisal reviews.

Mr. Calhoun reported there is no impact to the General Fund because the REAB operates solely on dedicated funds. There is no impact to the BOL's dedicated fund since the proposed legislation will not alter the number of board meetings held each year or require more services be provided to the REAB.

MOTION:

Vice Chairman Guthrie moved to send **H 459** to the floor with a **do pass** recommendation. **Senator Potts** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 3:04 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

Testimony in Support of Senate Bill 1281
Mistie Tolman (Legislative Director, Planned Parenthood Votes)

Mr. Chairman, members of the committee, my name is Mistie Tolman. I am the Legislative Director for Planned Parenthood Votes in Idaho. I am here today in strong support of Senate Bill 1281.

Planned Parenthood provides high-quality, evidence-based health care to patients in Idaho and across the country. This includes providing patients with the full range of contraceptive methods and the counseling necessary to ensure that patients receive the method that will best suit their unique needs. In 2016 over 90% of the services provided at our health centers were preventive services such as contraception.

Consistent use of birth control is the best way to reduce unintended pregnancies and abortions. Senate Bill 1281 would require private insurance to cover a year's supply of contraception, dispensed on-site at the provider's office if available. This bill would improve access to birth control, particularly for women living in rural parts of our state. In turn it would also decrease unintended pregnancies, decrease the need for abortions, and save money for insurance plans.

This bill would have a huge impact for women and families, especially in a state as rural as Idaho. Women without reliable access to transportation or who live in rural areas have more barriers to dependable access to birth control, making it more likely that they will experience an unintended pregnancy. In fact, one in four women say they have missed pills because they could not get the next pack in time, and the 19% of women who inconsistently use birth control account for 43% of unintended pregnancies. While hormonal birth control is over 95% effective with perfect use, monthly trips to the pharmacy can make perfect use difficult or impossible for many women.

Improving access to contraception is the best way to reduce unintended pregnancies and abortions. One study found that providing a 12-month supply of birth control decreased unintended pregnancies by 30 percent compared with a supply of just one or three months. This same study found that giving women a year's supply of birth control reduced the odds of those women obtaining an abortion by 46 percent.

This bill would make a real difference for women in our state, and it would also be cost-effective to both insurance plans and our state budget. Research has shown that insurance plans that dispense a one-year's supply of birth control instead of limiting dispensing to one or three cycles lower their direct costs on follow-up visits and pregnancy tests, as well as long-term unintended pregnancy management.

Thank you for holding a hearing on this important bill. We encourage members of this committee to support Senate Bill 1281 and move it to the floor.

S 1281
2/27/18 (1)

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Thursday, March 01, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>S 1281</u>	Relating to Health Benefit Plans - Contraceptives - No Testimony	Senator Cherie Buckner-Webb
MINUTES APPROVAL	Minutes of February 22, 2018	Senator Souza
<u>RS26276</u>	Relating to Pharmacy Benefit Managers	Chairman Patrick
<u>H 434</u>	Relating to Administrative Bidding	Barry Miller, Deputy Administrator, Division of Public Works
<u>H 431</u>	Relating to the State Personnel System - Medical Director Employed at State Hospitals	David Taylor, Deputy Director, Department of Health and Welfare
<u>H 489</u>	Relating to Personnel System Appointments	Susan Buxton, Director, Division of Human Resources
<u>H 490</u>	Relating to Non-Classified State Officers and Employees' Bonuses	Susan Buxton
<u>H 521</u>	Relating to Motor Vehicle Service Contracts	Lance Giles, Motor Vehicle Protection Products Association
<u>S 1324</u>	Relating to the Barber and Cosmetology Services Act	Senator Den Hartog

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 01, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

S 1281 **Relating to Health Benefit Plans - Contraceptives - No Testimony.** **Chairman Patrick** announced the motion made in the previous meeting was out of order and there would be no testimony. **Chairman Patrick** advised Vice Chairman Guthrie to make a new motion.

MOTION: **Vice Chairman Guthrie** moved to hold **S 1281** in Committee. **Senator Potts** seconded the motion. The motion carried by **voice vote**. **Senators Burgoyne** and **Martin** wanted to be recorded as voting **nay**.

MINUTES APPROVAL: **Senator Souza** moved to approve the Minutes of February 22, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 26276 **Relating to Pharmacy Benefit Managers.** **Chairman Patrick** stated this proposed legislation defines a Pharmacy Benefit Manager (PBM). Medicaid is excluded. The bill requires a PBM to register with Idaho beginning in 2020. The creation of the rules and enforcement will be managed by the Director of the Idaho Department of Insurance (DOI).

Chairman Patrick reported the legislation prevents a PBM from limiting an entity or an individual's choice of pharmacy or from forcing or incentivizing an individual to use a pharmacy owned by the PBM. The legislation establishes rules in which the PBM needs to use to determine Maximum Allowable Cost (MAC) pricing. The legislation establishes a process by which a pharmacy can appeal a MAC price and ensures a PBM will not charge a fee not specified in the contract. This bill will provide a platform for future rules and regulations related to the pharmacy and PBM relationship.

UNANIMOUS CONSENT: **Chairman Patrick** asked for unanimous consent to send **RS 26276** to a privileged committee to print. There were no objections.

H 434

Relating to Administrative Bidding. **Barry Miller**, Deputy Administrator, Idaho Division of Public Works (DPW), remarked this legislation will provide legal authority for the DPW to reject bids that exceed the appropriation available for a project.

Mr. Miller reported this proposed legislation clarifies the State's authority to reject public works bids in excess of available appropriation, which has been the policy followed by the DPW. There is no obligation imposed on the State. There is no fiscal impact.

Mr. Miller related the DPW notified the bidders that bids were rejected due to exceeding the appropriation. A few days later, the DPW received a letter from the attorney representing the low bidder. The letter declared Idaho Code § 67-5711C states that when bids are received, the project shall be awarded to the lowest bidder. No exceptions are identified in that section of code. This bill would add the clause, "subject to the provisions of Idaho Code § 59-1015." This would prohibit the awarding of a contract which exceeds the appropriation made for the project.

MOTION:

Senator Martin moved to send **H 434** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 431

Relating to the State Personnel System - Medical Director Employed at State Hospitals. **David Taylor**, Deputy Director, Idaho Department of Health and Welfare (DHW), reported the DHW operates two mental health hospitals: State Hospital North (SHN) and State Hospital South (SHS). He stated employing physicians as medical directors at the hospitals is necessary, yet the DHW struggles to recruit and retain staff. One barrier to successful recruitment is salary, as market rates are significantly higher than rates allowed by the State's classified pay schedule. The Physician Medical Director Institution job classification has already received multiple pay-line exceptions pursuant to Idaho Code §67-5309D; however, the existing pay schedule is insufficient to recruit and retain qualified candidates.

Mr. Taylor remarked the DHW also operates a residential care facility for people with disabilities called the Southwest Idaho Treatment Center (SWITC). Currently, SWITC does not have a need for a medical director. The purpose of this legislation is to designate individuals employed as Physician Medical Director of the Institutions at the DHW as non-classified and not subject to Idaho Code § 67-5301.

Mr. Taylor stated the total annual General Fund impact is currently estimated at \$65,400 and will be used to increase the compensation of the medical directors of SHS and SHN. It should be noted the DHW believes there will be a reduction in the need for the General Fund in the Community Hospitalization appropriation should it successfully retain or recruit medical directors for each State hospital location.

Mr. Taylor noted the fiscal impact is based on the recommendation contained in a September 2017 Physician Compensation Market Analysis compiled by the DHW. He explained the report (Attachment 1). He pointed out the additional responsibilities required of the Medical Director for SHS for which he is paid an additional \$1.56 per hour. He remarked this is a challenge, which explains why the Medical Director position at SHN was vacant for 17 months.

Mr. Taylor reported data demonstrates this vacancy had a direct and substantial impact on the DHW's Community Hospital appropriation which increased by over \$1 million in the General Fund from fiscal year (FY) 2016 to the current fiscal year. In **H 475** the Community Hospitalization appropriation is used to pay for mental health patient care, once an individual is committed to State custody, and before a bed is available in one of the two State hospitals. Consider the average daily cost for community hospitalization of \$1,000 per patient per day (range: \$800 per day to

\$1,200 per day) versus only \$528 per patient per day for SHN and \$636 per patient per day for adults at SHS, which explains the financial importance of having State hospitals operating at maximum capacity. One of the best defenses for containing community hospitalization costs is a strong State mental health hospital system. It should be noted the DHW believes if this bill becomes law, there will be a reduction in the need for money from the General Fund in the Community Hospitalization appropriation.

Mr. Taylor asked the Committee to help improve the State's mental health system in order to reduce Idaho's Community Hospitalization costs and stabilize the executive leadership of the hospital's medical staff.

DISCUSSION: **Senator Burgoyne** wondered if the medical director and administrator positions were separate or combined. **Mr. Taylor** stated the positions were two separate positions, but treated as one position. He noted there were two individuals at each State hospital. He remarked the Medical Director handles patient treatment of all medical decisions that are made at the hospital. **Senator Burgoyne** voiced a concern about the incumbent medical directors having to re-apply for the job, since the change would be from classified to non-classified. **Mr. Taylor** stated the administrators and medical directors would have to apply, but the positions would be held for them. In addition, **Mr. Taylor** stated he has spoken with the administrators and medical directors and they were comfortable with reapplying.

Senator Lakey asked Mr. Taylor to explain why the DHW anticipated costs would decrease. **Mr. Taylor** explained, when hospitals cannot operate at maximum efficiency, there is a waiting list. When medical positions are in place, the hospital can function at maximum efficiency, thus lowering costs.

Senator Souza inquired as to the salary for these positions, since the statistics were per hour. She asked how the annual impact to the General Fund was calculated. **Mr. Taylor** remarked the State increased eight salaries last year. He noted the difference is to move the Medical Director to the salary the DHW is requesting.

Vice Chairman Guthrie wanted to know if the Medical Director would make more money than the Administrator, causing compression. **Mr. Taylor** remarked the Medical Director is already earning more money than the administrator and that would not change.

Senator Burgoyne commented the positions should not be empty for a long period of time.

MOTION: **Senator Ward-Engelking** moved to send **H 431** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 489 **Relating to Personnel System Appointments.** **Susan Buxton**, Administrator, Idaho Division of Human Resources (DHR), reported Idaho Code § 67-5309, Rules of the DHR and the Personnel Commission, removes section (k) concerning provisional appointments, as it is no longer used. The bill also proposes to make technical corrections. Idaho Code § 67-5316 provides a correct code reference related to the deletion of provisional appointments.

There is no fiscal impact to the General Fund or dedicated fund as the agency is removing "provisional appointment." This will not increase or decrease funding.

MOTION: **Senator Lakey** moved to send **H 489** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

DISCUSSION: **Senator Souza** and **Ms. Buxton** discussed relating the hiring and probationary processes at the State.

VOTE: The motion carried by **voice vote**.

H 490 **Relating to Non-Classified State Officers and Employees' Bonuses.** **Susan Buxton**, Administrator, Idaho Division of Human Resources (DHR), indicated the purpose of this proposed legislation is to clarify ambiguity in Idaho Code § 59-1603 (11), for the implementation, authorization, and enforcement of the issuance of recruitment and retention bonuses for non-classified employees.

There is no fiscal impact. This bill allows recruitment and retention bonuses to continue to be utilized within existing agency budgets. Enforcement collection of recruitment and retention bonuses will be conducted by the agencies and the DHR using current resources.

DISCUSSION: **Senator Potts** and **Ms. Buxton** discussed the clarification of the ambiguity in the language and the enforcement collection of recruitment and retention bonuses. **Ms. Buxton** commented the Idaho Attorney General's Office requested these changes.

MOTION: **Senator Potts** moved to send **H 490** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

H 521 **Relating to Motor Vehicle Service Contracts.** **Lance Giles**, Motor Vehicle Protection Products Association, reported the proposed legislation updates the Idaho Motor Vehicle Service Contract Act, which was enacted into law in 1993. The proposed legislation moves the authority to enforce the Act from the Attorney General to the Idaho Department of Insurance (DOI). **Mr. Giles** stated, in addition, the proposed legislation clarifies the definition of a service contract to expressly authorize the following types of contracts: 1) contracts to repair or replace tires or wheels damaged by road hazards; 2) contracts to repair or replace windshield damage by road hazards; 3) contracts to remove dents and dings in a vehicle without sanding, bonding, or repainting; and 4) contracts to repair or replace lost, stolen, or damaged vehicle key fobs.

Mr. Giles stated, the proposed legislation maintains similar penalties for violations and does not preclude a cause of action under the Idaho Consumer Protection Act. There is no fiscal impact because the DOI would not have to hire any additional personnel to enforce the proposed legislation. Based on previous history, there are expected to be very few enforcement actions. To date, there has been a total of one enforcement action brought under the Idaho Motor Vehicle Service Contract Act. **Mr. Giles** indicated there was no opposition to the bill. He stated he worked with Representatives Luker and Gannon, the Idaho Freedom Foundation, the Idaho Attorney General's Office, the DOI, the Idaho Autobody Craftsmen's Association, and the Property Casualty Insurers Association of America.

DISCUSSION: **Senator Burgoyne** and **Mr. Giles** discussed customary performance guarantees or warranties offered at no additional charge when purchasing a vehicle. They also discussed additional charges for a warranty for the purchase of a used vehicle.

MOTION: **Senator Martin** moved to send **H 521** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

Relating to the Barber and Cosmetology Services Act. Senator Den Hartog reported this bill combines the Boards of Barber Examiners and Cosmetology, protects the public, ensures safety and disinfection training for licensees and certificate holders, and provides more flexibility to individuals entering the profession by allowing them to select a more focused area of preparation and practice.

Senator Den Hartog introduced **Joan Callahan**, Attorney, Idaho Bureau of Occupational Licenses (IBOL) who explained the provisions:

- Reduce the minimum hours of instruction required for a cosmetology license;
- Reduce the minimum hours of instruction required for an electrology license;
- Create a new certificate for people who only want to perform makeup artistry and not practice the full scope of cosmetology or esthetics;
- Allow licensees to perform certain services for compensation outside of licensed establishments without limit;
- Allow transfer of educational hours between the professions (thus reducing the number of hours needed to obtain another related license);
- Allow employees of retail thermal styling equipment dealers to demonstrate equipment on potential customers;
- Exempt out-of-state licensees whose work in Idaho is incidental to theatrical or visual arts productions; and
- Expand exemptions for students and out-of-state licensees who are in Idaho to demonstrate or teach.

The combined barber examiners and cosmetology boards will include representation from both professions and the public; they will facilitate efficiencies in the administration of the law.

Ms. Callahan stated there is no impact to the General Fund. It is anticipated this legislation will reduce the Idaho Bureau of Occupational Licenses' (BOL) dedicated fund expenditures. Combining boards will result in fewer total BOL Board meetings, fewer board members, and lower expenses.

DISCUSSION: **Senator Lakey** and **Ms. Callahan** discussed the issuance of certificates for experienced makeup artists who would not require further education and education for those who could not demonstrate strong sanitation experience.

Senator Souza asked about requirements for makeup artists coming from out-of-state. **Ms. Callahan** stated no test would be required; however, an applicant would have to produce evidence of course completion. A discussion ensued about notification of the BOL by out-of-state artists obtaining a certificate to work at an event. Theatrical and demonstrations are exempt.

Senator Martin asked what the results were of those in favor of combining the boards and the reduction in hours. **Ms. Callahan** stated the question was difficult to answer due to the many issues addressed. The issue where the greatest disagreement occurred was about the reduction in hours.

TESTIMONY: **Kris Ellis**, Northwest (NW) College Federation, testified in support of this bill.

Lou Starita, Paul Mitchell Schools of Boise and Nampa, testified in support of the bill. He remarked one of the benefits of the bill is a student could graduate three months sooner and save thousands of dollars to attend barber school after graduation from cosmetology. He thanked the BOL for their leadership.

DISCUSSION: **Senator Den Hartog** thanked the Barber Examiners and Cosmetology Boards for their tremendous leadership. She commented this bill fits in well with the current atmosphere, where there is a focus on occupational licensing and the protection of public health and safety.

MOTION: **Senator Souza** moved to send **S 1324** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:29 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

SEPTEMBER

2017

PHYSICIAN COMPENSATION DHW MARKET ANALYSIS

PREPARED BY HUMAN RESOURCES

H 431
attachment 1
3-1-18

PHYSICIAN COMPENSATION

INTRODUCTION

Human Resources conducted a salary review on physician compensation within DHW, other state agencies and the market in general. This was an effort to see what other employers pay and what salary adjustments, if any, might be needed within the DHW to increase competitiveness in this very difficult market as well as retain our current physicians.

For this analysis, numerous sources were reviewed to obtain a larger sample size of data, thereby providing a broader compensation evaluation. Sources include Idaho state agencies, surrounding state government agencies, the Idaho Department of Labor, the US Bureau of Labor Statistics and several national salary surveys.

HR completed a similar market analysis July 2016. Since then, the physician shortage has continued to increase and employers are spending more to fill physician vacancies. There has also been an increase in physicians becoming locum tenens and contractors due to the higher pay and the flexibility it affords. As a result, many employers, including DHW, have seen higher employee turnover and have increased usage of locums.

Below is a summary of the market analysis including recommended pay ranges for Department physicians.

MARKET ANALYSIS – STATE GOVERNMENT

The Department currently employs eight physicians who work in the below classifications. All physician classes are in pay grade V. The policy rate is \$85.25 and the maximum of the pay grade is \$106.56.

- ❖ Physician, Public Health
- ❖ Physician/Epidemiologist, State
- ❖ Physician, Medical Clinic - Institution
- ❖ Physician, Medical Director - Institution
- ❖ Physician, Psychiatric Specialty

DHW

The Division of Public Health employs two classified physicians, one in the Physician/Epidemiologist, State and one in the Physician Public Health class. Both positions are located in Boise.

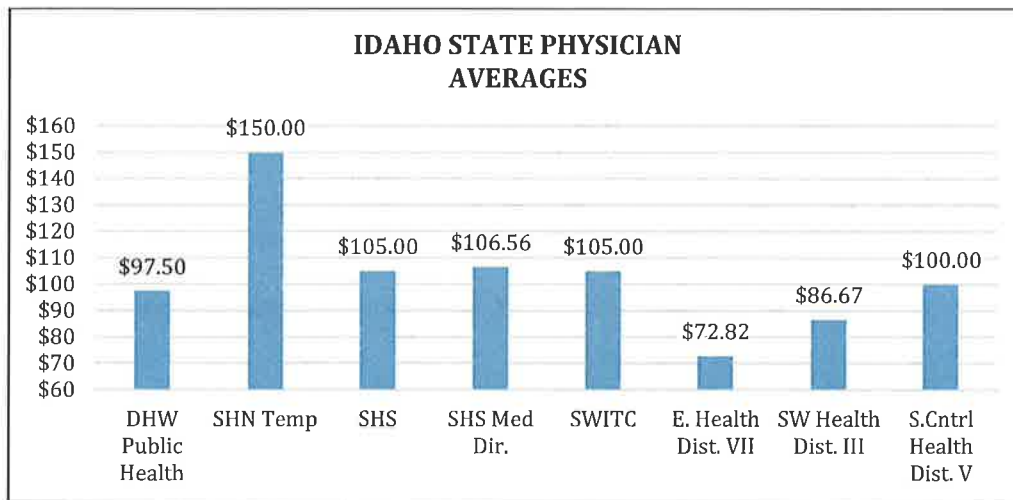
The Division of Behavioral Health employs six physicians who work at either State Hospital North or State Hospital South. State Hospital North has one part-time temporary staff physician and one vacant medical director position. State Hospital South has one medical director, two general physicians and two psychiatrists.

During the 2017 legislative session, funding was approved to increase DHW staff physicians to \$105 per hour and medical directors to \$106.56. The only exception is the Physician Public Health, who earns \$90 per hour; she was hired in 2017.

Health Districts

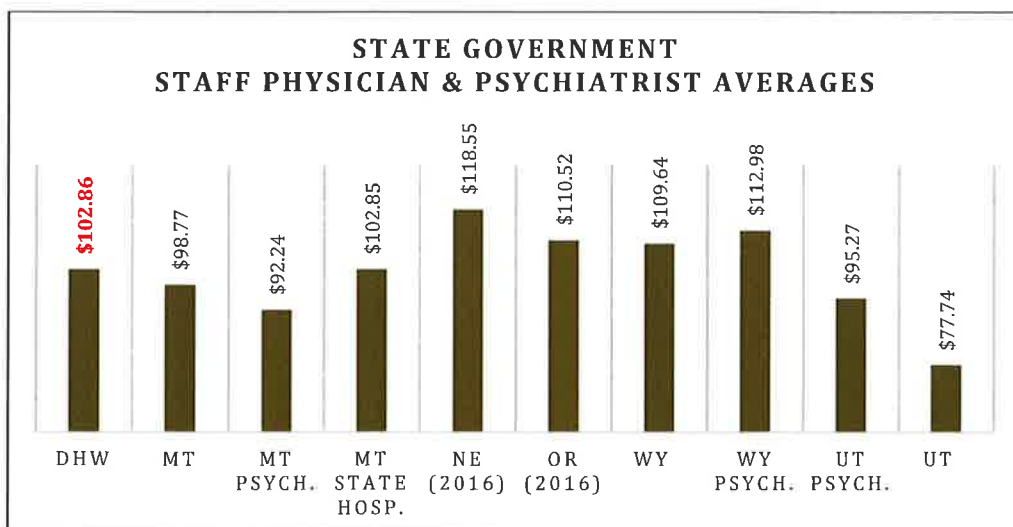
Three Public Health Districts also utilize physicians as temporary employees. There are six physicians between three Health Districts, all of whom are in temporary positions. Due to limited need, the physicians generally work 1-3 hours per month to order medications, review charts or facilitate monthly clinics.

- ❖ Southwest Health District III has three temporary physicians. Two are paid at \$100.00 and one, a dentist, is paid \$60.00.
- ❖ South Central Public Health District VI has one temporary physician who is paid \$100.00.
- ❖ Eastern Idaho Health District VII has two physicians; one earns \$68.00, and the other \$73.63.



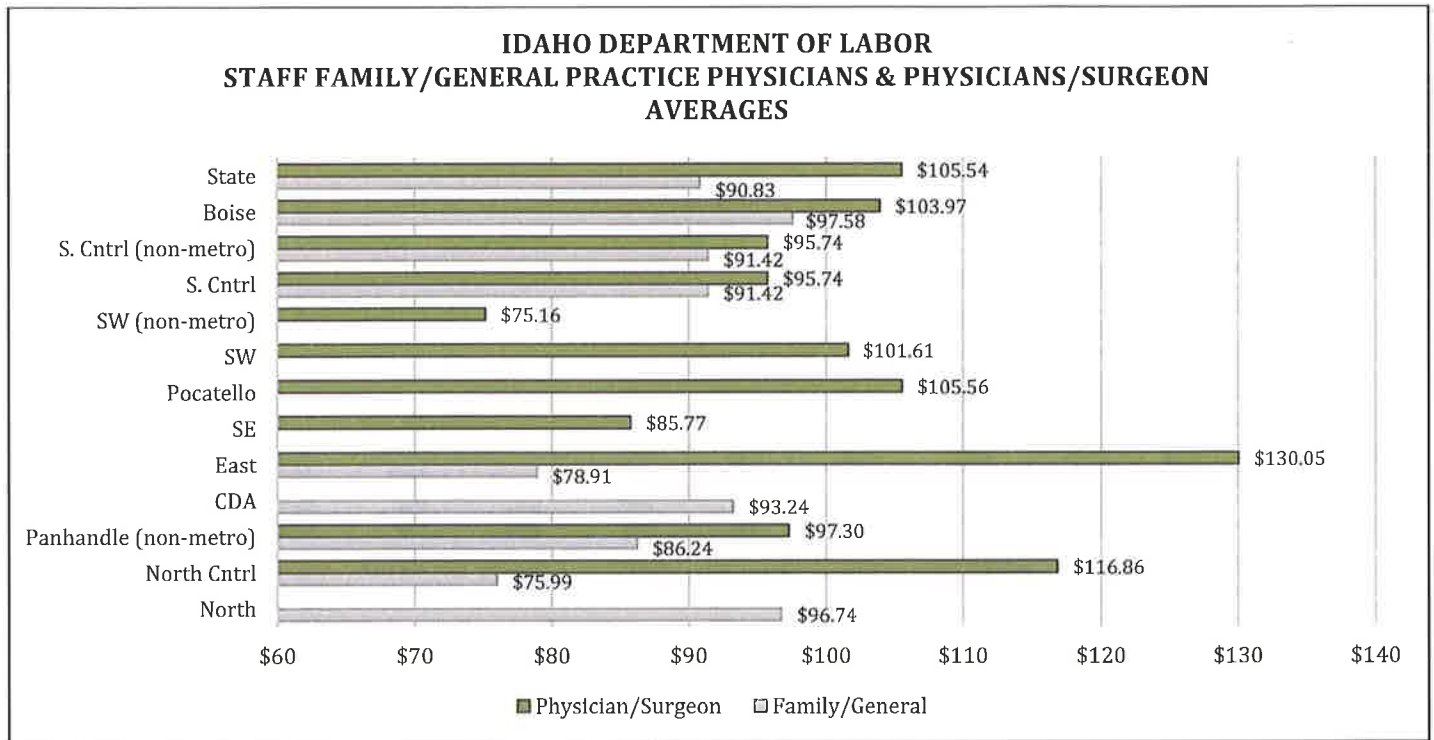
Idaho and Neighboring/Other States

The below graphs show average hourly rates for physicians and psychiatrists ("Psych"). Information was gathered from individual states on staff physicians. DHW's average rate for classified staff physicians is \$102.86 and is an average of the seven physician's pay rates. This does not include the SHS Medical Director and SHN's temp.

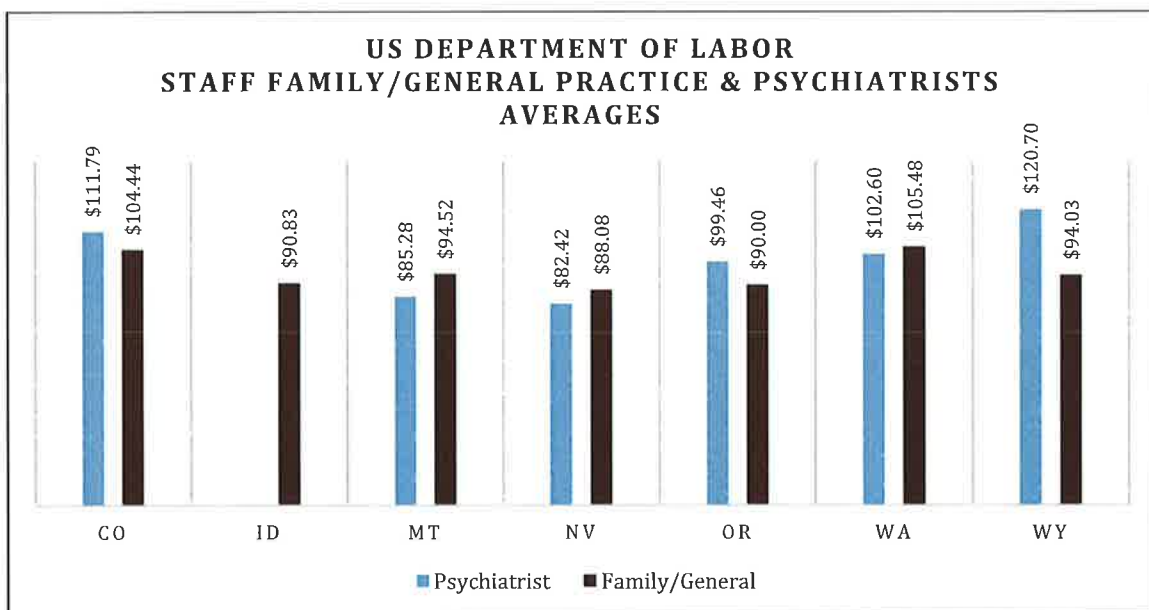


MARKET ANALYSIS – DEPARTMENT OF LABOR

The below graphs includes data from the Idaho Department of Labor’s 2017 wage survey and the US Bureau of Labor Statistics 2017 wage survey. The Idaho Department of Labor graph includes family/general practice physicians and physician/surgeons. Psychiatrist data was not available.

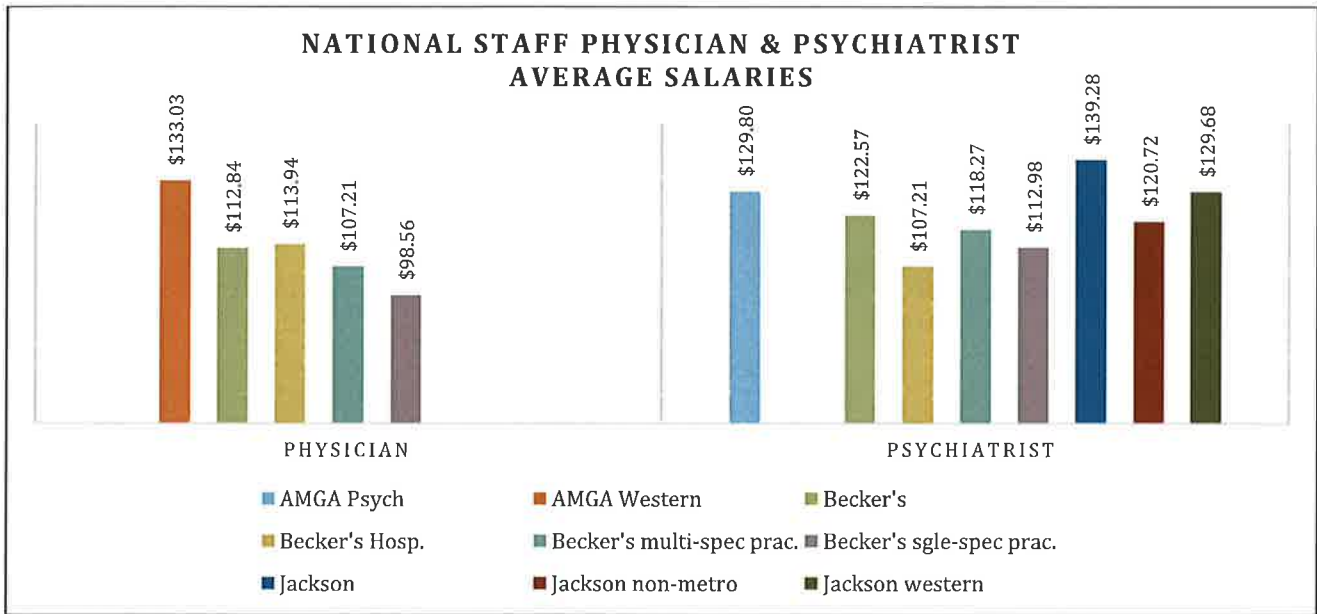


The US Department of Labor includes psychiatrists and family/general physicians.



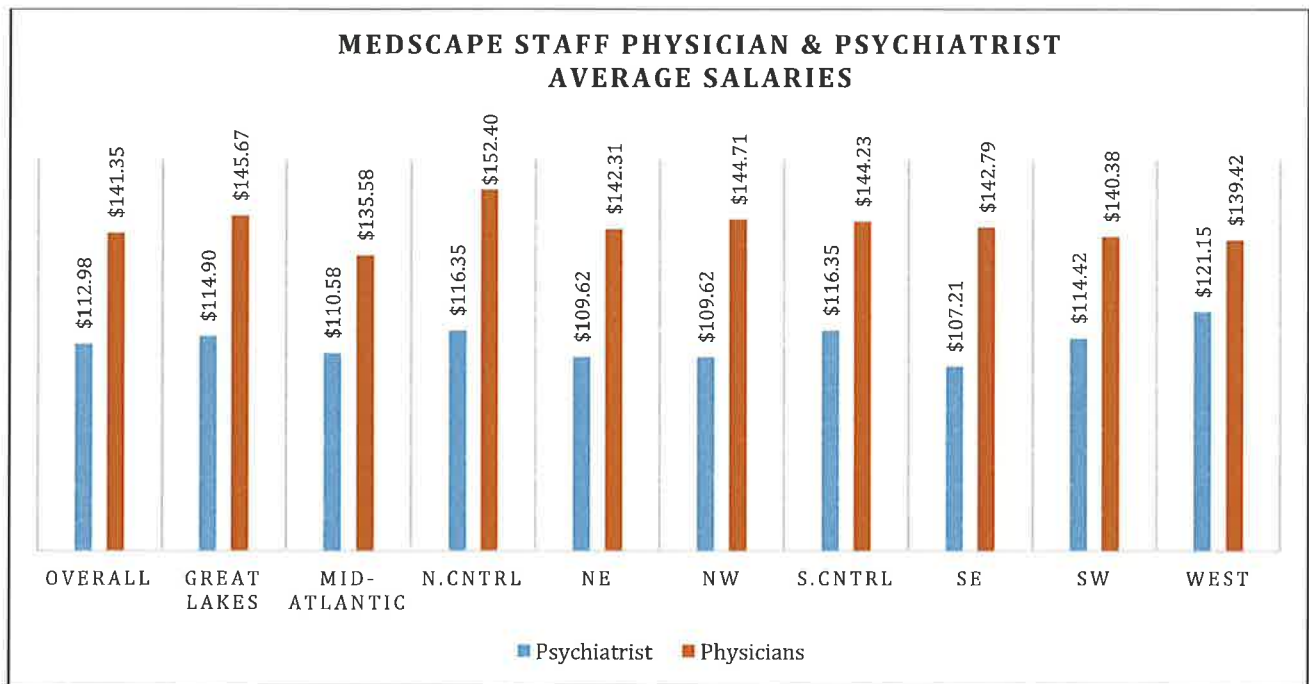
NATIONAL DATA

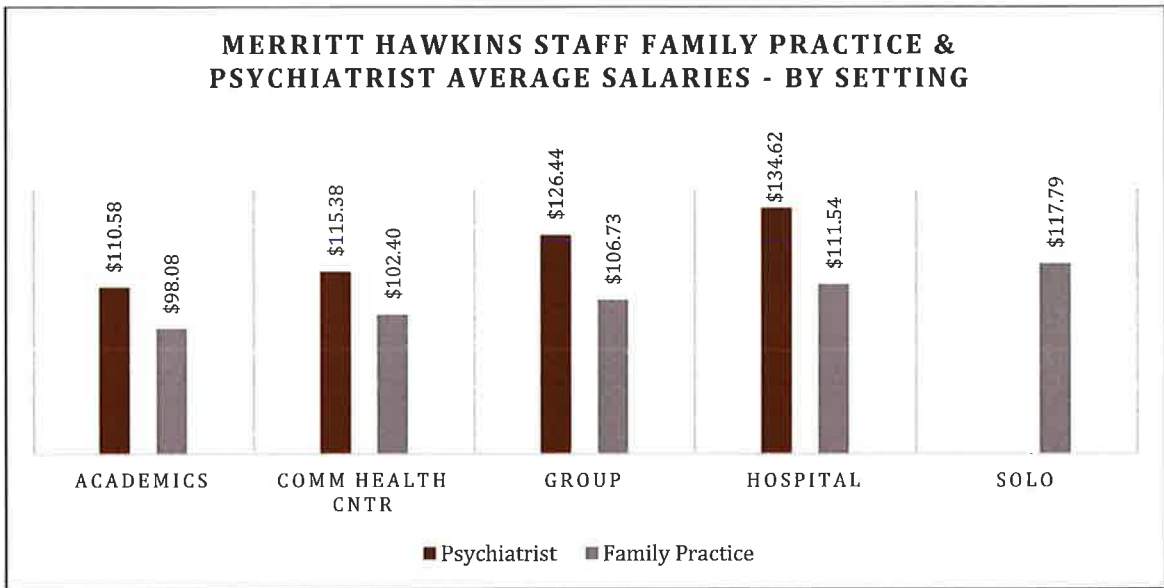
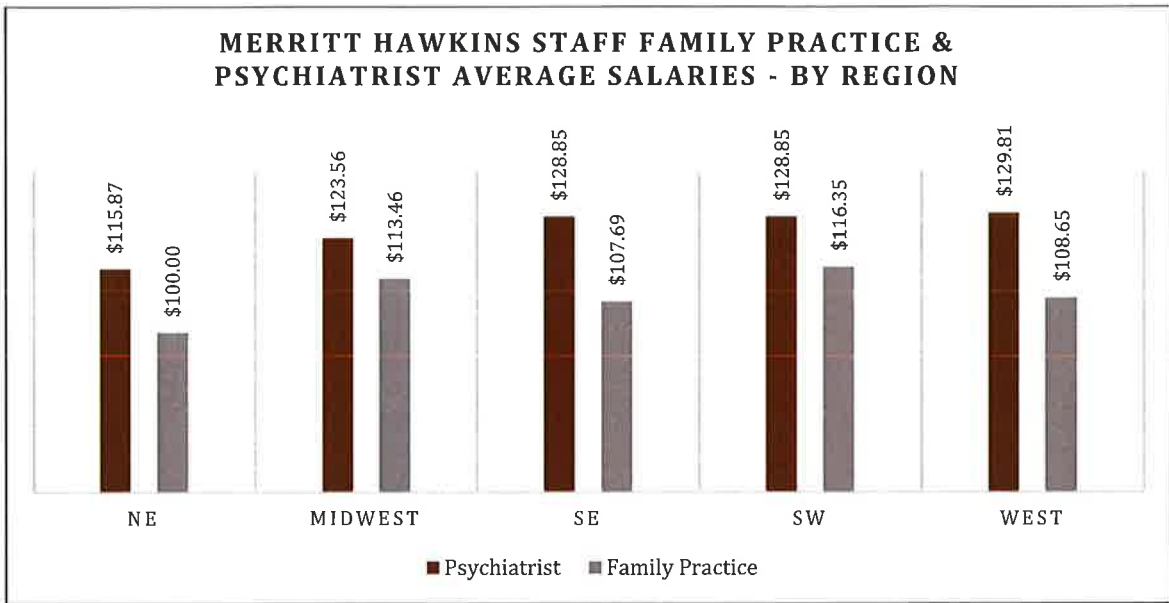
Additional sources of market information included salary survey and research conducted by physician recruitment firms such as Merritt Hawkins and industry publications including the "Medscape Physician and Psychiatrist Compensation Reports 2017."



AMGA – American Medical Group Assoc.
 Jackson – Physician Recruitment Firm

Becker's – Becker's Hospital Publication
 Merritt Hawkins – Physician Recruitment Firm





PUBLICATIONS

- ❖ **Becker's Hospital Review's article "207 Statistics on Physician Compensation 2017"** published July 20, 2017 cites:
 - Seventy-seven percent of physician specialties saw median increases from 2016 to 2017, with the overall average physician pay increase of 2.9%.

- ❖ **Weatherby Healthcare's article "Physician Salary 2017: Doctor's Earnings on the Rise,"** published May 10, 2017 cites:
 - Geographic area plays a significant role in compensation. This year's report revealed that, for the second year in a row, doctors earned the most in the mostly rural northern Great Plains (average income \$317,000).

- ❖ **Pacific Companies** (Physician Recruitment Firm) provided DHW psychiatrist information in April 2017.
 - "There has been an upward pressure on compensation. In the past, if clients were close to the nationwide median of the Medical Group Management Association (\$255,543, 2016 Report), in a suburban location, we would have a good chance of securing the candidate. However, in the past year, we have found our clients have been offering in the \$280K - \$300K range to secure those same candidates. For smaller communities in need of a psychiatrist, we have seen initial salaries over \$300K. We have started to see signing bonuses approaching \$40K. We have seen an increase in retention bonuses that are paid at the end of years 2, 3 and 4."

- ❖ **Modern Healthcare's article "Competition for New Docs Pushing Pay Higher,"** published July 16, 2016 states:
 - In response to a question: "What are the toughest specialties to recruit?" five of our participating head hunter firms and group practice organizations said internal medicine; four picked psychiatry; and three chose family medicine.
 - Dr. Munger (interim CEO of St. Lukes in Kansas) stated "the competition for those half-dozen family practitioners was fierce. "We've actually increased our starting offer by 20% to 25% over the past year."
 - The trend ups the ante for rural healthcare organizations, which have traditionally faced difficulty recruiting physicians. Salaries are already higher and "virtually everyone is offering a signing bonus, virtually everyone is giving loan forgiveness," the article cited. "That was the only arrow in a quiver for some rural areas." But as those inducements become commonplace in metro areas, "it's getting difficult" for rural areas to compete, he said.
 - The article also states there has been a movement to close the divide between behavioral and general health, which is also pushing up the pay for psychiatrists.

- ❖ **Medscape's article "Use of Locum Tenens Physicians Keeps Growing,"** published January 20, 2017 states:
 - Of the 206 managers of healthcare facilities who participated in their 2016 survey, "94% said they had employed locum tenens physicians within the past 12 months, compared to 91% in 2014 and 74% in 2012."

- The increased use of locum tenens doctors is being driven by the nationwide physician shortage and the employed physician model, "which for many healthcare facilities increases physician turnover."
- Sixty-five percent of locum tenens physicians have more than two decades of practice experience.
- The article cites a locum would like to join a private practice someday, "but for now, I like the high pay rates and the ability to practice in and experience different areas of the country. "She also likes not being under the thumb of an employer.

RECOMMENDED PAY RANGES

Physician recruitment, especially at the hospitals, has repeatedly proven difficult mainly due to pay and location. For State Hospital North and State Hospital South, compensation should account for the hospital's rural locations to increase the overall attractiveness of those positions. By providing a competitive salary as well as loan repayment, the Department will find itself in a better position to compete for talent, in a particularly challenging environment.

In consideration of the analysis and aforementioned challenges, a recommended range to pay staff physicians would be \$105 - \$115 ¹per hour and \$120 - \$130 for medical directors.

¹ Pay grade V maximum is \$106.56. IDHR approval required to increase maximum for increases beyond this rate.

AMENDED AGENDA #1
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:30 P.M.
Room WW54
Tuesday, March 06, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>RS26295</u>	Unanimous Consent Relating to Cosmetologists and Estheticians	Senator Den Hartog
<u>H 548</u>	Relating to Idaho Life and Health Insurance Guarantee Association	Tim Olson, Pinnacle Business Group
MINUTES APPROVAL	Minutes of February 27, 2018	Senator Antony Potts
<u>H 526</u>	Relating to Farm Equipment	Roger Batt, Western Equipment Dealers Association
<u>H 400</u>	Relating to PERSI - Revise A Provision	Don Drum, Executive Director, PERSI
<u>H 401</u>	Relating to PERSI, - Revise Definitions	Don Drum
<u>H 402</u>	Relating to Fireman's Retirement Fund	Don Drum
<u>H 399</u>	Amending Juvenile Corrections Law	Sharon Harrigfeld, Director, Department of Juvenile Corrections
<u>H 433</u>	Relating to Director Control	Keith Reynolds, Deputy Director, Department of Administration
<u>HCR 41</u>	Relating to Group Insurance and Total Compensation Study	Senator Todd Lakey

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 06, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

RS 26295 **Relating to Cosmetologists and Estheticians. Senator Den Hartog** reported this legislation is a trailer bill to **S 1324**, which combines the Boards of Barber Examiners and Cosmetology and makes other changes that will facilitate efficiencies, create flexibility, and new opportunities for licensees and people entering those professions. **Senator Den Hartog** advised this trailer bill will clarify eyelash extensions are within the scope of practice for cosmetologists and estheticians. She remarked, as the Board of Cosmetology worked on this comprehensive joint legislation, further clarification on this issue became important because the application of eyelash extensions is a public health issue; it was deemed a public health issue as it poses risks of infection and to client safety.

Senator Den Hartog noted there is no impact to the General Fund or the Idaho Bureau of Occupational Licenses' (BOL) dedicated fund because the proposed legislation will not alter the number of board meetings held each year or require more services be provided to the Boards of Barber Examiners and Cosmetology.

UNANIMOUS CONSENT: **Chairman Patrick** asked for unanimous consent to send **RS 26295** to a privileged committee to print. There were no objections.

H 548 **Relating to Idaho Life and Health Insurance Guarantee Association (LHIGA).** **Tim Olson**, Pinnacle Business Group, stated this legislation is intended to incorporate into Idaho insurance law newly adopted provisions of the National Association of Insurance Commissioners (NAIC) LHIGA Model Act. The provisions are regarding the assessment formula for costs incurred by the Idaho LHIGA for long-term care insurance policies of insurance company members that become insolvent. **Mr. Olson** pointed out that, if adopted, the new assessment formula will split the cost of long-term care policies as follows: 50 percent to the life and annuity insurance company members and 50 percent to the health insurance company members.

Mr. Olson commented, currently, long-term care coverage costs are assessed only for health insurance company members. The life and annuity and health insurance company members have agreed the current assessment formula is flawed, as the assessment is not properly borne by the companies that write long-term care insurance. **Mr. Olson** noted this legislation would give the Idaho LHIGA authority to cancel Affordable Care Act (ACA) health plans issued by bankrupt insurance companies and immediately move policy holders to a new, financially solvent

insurer.

Mr. Olson stated there is no fiscal impact to the General Fund or any other State fund or expenditure with the change to the long-term care assessment formula. These provisions would only change the companies that are assessed for the LHIGA's costs for long-term care coverage.

DISCUSSION: **Senator Burgoyne** asked for clarification of spreading costs to other carriers. **Dean Cameron**, Director, Idaho Department of Insurance (DOI), reported there was no way of knowing which company would go into bankruptcy. He explained this proposal helps insurance companies and taxpayers. He asserted this legislation will protect consumers and spread costs out to as many carriers as possible. **Senator Burgoyne** commented this was a good bill.

MOTION: **Senator Lakey** moved to send **H 548** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Potts** moved to approve the Minutes of February 27, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 526 **Relating to Farm Equipment.** **Roger Batt**, Western Equipment Dealers Association, reported the purpose of this legislation is to provide clarification of the original legislative intent of the Idaho Equipment Dealer Protection Act by prohibiting equipment suppliers from substantially changing the equipment dealer's competitive circumstances without good cause. He explained "competitive circumstances" as having an equipment manufacturer who already has a contract with a farm equipment dealer to place another dealership into the existing farm equipment dealer's area of retail. **Mr. Batt** explained the existing dealer is then forced to sell or close their business down.

Mr. Batt noted farm equipment manufacturers have far greater bargaining strength compared to Idaho farm equipment dealers. He stated this is due to the fact farm equipment dealers have to sign contracts of adhesion with the equipment manufacturer in order to continue to stay in business. These contracts are non-negotiable, "take it or leave it type of contracts," where the farm equipment dealer assumes all of the risk. **Mr. Batt** cited these types of incidents have already happened in Idaho and many other states. Idaho farm equipment dealers recognize this practice as harmful to existing business owners and not in conformance with the intent of Idaho's Equipment Dealer Protection Act or industry business practices.

Mr. Batt commented this legislation also adds clarity to ensure that persons interpreting the statute understand the terms of a dealer agreement may not impact the determination of whether there has been a substantial change in the dealer's competitive circumstances. He noted other states have passed similar laws to protect farm equipment dealers. **Mr. Batt** acknowledged this legislation only applies to new contracts or those where both parties renew on or after July 1, 2018; as such, legislation does not apply to existing contracts.

Mr. Batt remarked there is no fiscal impact to the General Fund because this legislation addresses contracts between equipment dealers and equipment suppliers.

DISCUSSION: **Senator Potts** asked Mr. Batt to define the term "a substantial change." **Mr. Batt** replied the definition would be up to the court and referred to page 4, lines 36 and 37, which noted the supplier would have to provide written notice of its intention at least one year in advance; and page 5 of the bill, subsection 4, which details an act or omission that has a detrimental effect on a retailer's ability to compete with another retailer that sells the same brand of farm implements.

MOTION: **Vice Chairman Guthrie** moved to send **H 526** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

H 400 **Relating to Public Employee Retirement System of Idaho (PERSI) - Revise A Provision.** **Don Drum**, Executive Director, PERSI, remarked computation of Service Retirement Allowance, Idaho Code § 59-1342 and Early Retirement Allowance, Idaho Code § 59-1346, are contained in two separate sections of Idaho Code. The Service Retirement Allowance section contains two provisions that should also be included in the Early Retirement Allowance section. **Mr. Drum** remarked specifically, Idaho Code § 59-1342(6) and 59-1342(8) should be included in the Early Retirement Allowance section.

Mr. Drum related Idaho Code § 59-1342(6) provides that a member's initial service retirement benefit shall not be equal to more than the member's accrued benefit, or 100 percent of the member's average compensation for the three consecutive years of employment which produced the greatest aggregate compensation. **Mr. Drum** commented this definition should be replicated in the Early Retirement Allowance, Idaho Code § 59-1346.

Mr. Drum cited Idaho Code § 59-1342(8) provides a computation calculation for members who have a significant break in service and end up with two separate periods of employment. Both periods would qualify the member for retirement benefits. **Mr. Drum** explained the language for this calculation should be replicated in the Early Retirement Allowance to maintain consistency in calculations.

Mr. Drum stated there would be no fiscal impact with the additional language added to this statute. Retirement allowance computations are currently consistently applied for both Service and Early Retirement Allowance. This update would codify this practice.

MOTION: **Senator Martin** moved to send **H 400** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

H 401 **Relating to Public Employee Retirement System of Idaho (PERSI) - Revise Definitions.** **Don Drum**, Executive Director, PERSI, stated Idaho Code § 59-1302 does not include a definition of "ineligible" or "termination from employment." This amendment is to add those two definitions and to amend the definitions of "disability retirement allowance," "early retirement allowance," "inactive member," "retirement," and "separation benefit" to clarify the meaning of those terms.

Mr. Drum explained PERSI historically used the term "ineligible" to define members who are not eligible under statute, to participate and/or contribute as an employee of a PERSI employer, not eligible to receive a retirement benefit, or not eligible to receive a separation benefit. The lack of a specific definition of members who are not eligible has allowed some to attempt an interpretation of the code that is not in line with the intent of the statute or with requirements of a qualified plan.

Mr. Drum stated, in addressing the definition of "ineligible," the phrase "termination from employment" is also used; this phrase needs to be defined in code to clarify its meaning for purposes of retirement. He mentioned a recent legal process noted Idaho Code § 59-1302 does not define "ineligible" and PERSI should not use a definition which is not defined in code. The court determined, since "ineligible" was not defined in code, PERSI could not consider members of the Judges Retirement Fund (JRF) to be ineligible to receive the PERSI benefit when they reached eligible age, even though they had not terminated from State employment. **Mr. Drum** explained this change would not affect those who have already transitioned to the JRF, but it would close the loophole for the future. Internal Revenue Service

(IRS) rules require a "termination from employment" in order to be eligible to begin drawing plan benefits. **Mr. Drum** pointed out, on page 8 of the bill, the definition of "termination of employment" describes if an employee is a participant in the PERSI plan but is no longer active, no longer contributing, and has not been terminated from the employer.

Mr. Drum pointed out the IRS does allow for "double-dipping," but refers to the term as "in-service distribution." He specified the Idaho teacher's union passed a bill that allowed teachers who had reached service age retirement to continue working. The teacher terminates and the school district can make a decision to rehire the teacher. The teacher can begin drawing PERSI benefits and wages allowed by the school district, since this was put into code and in compliance with the IRS. **Mr. Drum** indicated PERSI was an IRS-qualified pension plan. If this bill does not pass, PERSI would be out-of-compliance with IRS requirements.

Mr. Drum stated there would be no fiscal impact with the added definitions. Additional detail for these terms would clarify the current practices already employed under this statute.

DISCUSSION: **Senator Burgoyne** remarked this bill appears to be a calculation as opposed to the concept of "ineligible." **Mr. Drum** affirmed the PERSI Board is trying to rectify a number of challenges in code, especially the use of the term "ineligible."

TESTIMONY: **Judge Barry Wood**, Senior District Judge, Fifth Judicial District, serving as Administrative Director of the Courts, testified in opposition to the bill. He remarked this bill would be an impediment to both recruitment and retention of district and appellate judges, but particularly to district judges. He cited three incidents that occurred in 2017 when recruiting for district judge vacancies.

Judge Wood remarked this bill would directly affect two of the three pools of judicial candidates; namely, lawyers in public law practice who are contributing to a PERSI retirement, such as prosecutors, and the magistrate judges. Many attorneys in private practice do not apply because salaries are comparatively low and they do not want to risk a career change by a contested election.

Judge Wood remarked this legislation would also negatively impact recruitment of magistrate judges because they will be faced with foregoing or delaying a PERSI retirement, once they become eligible, in order to sit on the district or appellate bench. He asserted this legislation would also negatively affect retention of those who have a vested PERSI benefit and are on the district or appellate bench. The incentive will be to seek retirement from the district or appellate bench at the earliest possible moment, thus depriving Idaho of highly experienced and capable jurists who are foregoing a previously earned benefit.

DISCUSSION: **Senator Burgoyne** queried if amendments should be made or if the bill should be held. **Judge Wood** replied he did not want to impair PERSI status with IRS.

TESTIMONY: **Magistrate Judge Jayme Sullivan**, president of the Idaho Magistrate Judges Association, testified in opposition and addressed the implications on the future of the judiciary. She remarked this legislation will effectively close the door on recruitment of magistrates to lead the judiciary and serve the State of Idaho at the district and appellate bench, as well as deter the retention of magistrate judges.

Judge Sullivan stated magistrates participate in PERSI. District and appellate judges participate in the JRF, which is separate and apart from PERSI. She remarked not every jurist wants to be a district or an appellate judge. Many magistrates do aspire to utilize the skills they have developed as a trial judge in another career on the bench. By defining "ineligible," magistrates would not be able

to draw PERSI retirement earned as a magistrate, while further serving communities and the State as a district or appellate judge and contributing to the JRF.

Judge Sullivan commented, in contrast, the same magistrate could draw from PERSI, while working in a private law firm. She remarked pursuing a career outside of the judiciary does not have the same financial implications as pursuing advancement inside the judiciary. **Judge Sullivan** outlined two scenarios for retirement, one under PERSI and the other under the JRF. She pointed out that, for some magistrates, leaving the bench may not be favorable because of retirement consequences. In short, defining "ineligible" is a deterrent from magistrates applying for other positions in the judiciary.

Judge Sullivan reported there are 44 sitting district judges serving the State. Ten judges began their judicial careers as a magistrate judge. She cited the careers of several judges who first became magistrate judges early in their careers. She cautioned the Committee this bill will deter recruitment and retention of the backbone of the judiciary.

DISCUSSION:

Senator Lakey commented compliance with the IRS seemed to be the primary concerns of the PERSI Board. **Senator Lakey** and **Judge Wood** had a discussion about finding a workable solution with PERSI. **Mr. Drum** explained the history of this bill. He commented it was suggested to the judges several years ago to use the same recommended language passed by the teacher's union. He stated any type of recommendation comes from the employer. He reported this legislation would affect only those appointed after July 1, 2018.

Senator Burgoyne and **Judge Wood** discussed the JRF, whether a judge can elect to stay in PERSI, and the financial advantages and disadvantages of remaining in PERSI or the JRF.

Vice Chairman Guthrie and **Mr. Drum** discussed the definition of "double-dipping," or drawing a retirement benefit while continuing to work. **Mr. Drum** explained PERSI defines "double-dipping" as an inservice benefit. He explained when teachers retire, they are terminated from the school district and rehired. **Mr. Drum** reiterated, if the bill does not pass, there are some severe implications with IRS due to being out-of-compliance.

Mr. Drum and **Senator Burgoyne** addressed the discussions between the PERSI Board and the courts related to compliance with the IRS. **Mr. Drum** explained interest is still paid on PERSI account contributions until retirement, when a judge moves from a magistrate judge to a district judge, as benefits are based on years of service.

Chairman Patrick asked what the penalties were if the PERSI plan was found to be out-of-compliance. **Mr. Drum** stated the penalties could be as minor as a letter of reprimand or the plan could be declared "not qualified," which would put the entire PERSI plan at risk.

Senator Martin suggested the enacting clause be moved from July 1, 2018 to July 1, 2019. **Mr. Drum** said he believed the IRS may not look very favorably upon PERSI if the Legislature did not act. **Senator Burgoyne** commented he thought the bill could be sent to the 14th Order within a week. **Mr. Drum** remarked his goal is to stay in compliance with IRS. **Judge Wood** stated judges would participate to ensure there was consensus regarding the bill.

MOTION:

Senator Burgoyne moved to send **H 401** to the **14th Order**. **Senator Martin** seconded the motion.

DISCUSSION: **Senator Lakey** remarked the PERSI fund could not be out-of-compliance with the IRS. He asserted the effort to amend this legislation is worthwhile. **Senator Ward-Engelking** commented if the language could not be worked out, an amendment could possibly be done to change the enacting clause. **Senator Martin** said he thought that would be worth pursuing. **Senator Potts** commented he thought an amendment may not work. He suggested the best course may be to enact this legislation and an emergency clause.

SUBSTITUTE MOTION: **Senator Potts** moved to send **H 401** to the floor of the Senate with the understanding the enacting clause be worked on next year. The motion died due to the lack of a second.

AMENDED SUBSTITUTE MOTION: **Vice Chairman Guthrie** moved to hold **H 401** subject to the call of the Chair. **Senator Potts** seconded the motion.

DISCUSSION: **Vice Chairman Guthrie** remarked the House did not have a single "no" vote. He remarked this is an important issue and the burden has been put on the Committee. He said he did not want to put the PERSI fund in jeopardy.

VOTE: The motion carried by **voice vote**.

H 402 **Relating to Firemen's Retirement Fund.** **Don Drum**, Executive Director, Public Employee Retirement System of Idaho (PERSI), gave a brief history of the Firemen's Retirement Fund (FRF), which PERSI administers. He advised the FRF was closed in 1980 and the 22 employers who were paying into the FRF were responsible to address the funded status and for sustaining the FRF for the participants. **Mr. Drum** remarked, if one of these employers is annexed into a fire district, it is imperative the liabilities associated with the FRF be transferred to the new employer.

Mr. Drum stated current Idaho Code § 72-1432 is not specific regarding the transfer of funding requirements if a new fire district is formed and annexes another city or district's fire responsibilities. He disclosed this lack of specificity could create a situation in which a city or fire district believes it can circumvent the funding requirement by forming a new entity to provide fire coverage for its geographical area. Adding clarifying language in this code section would explicitly state that the funding responsibility transfers to the annexing entity.

Mr. Drum advised there is no fiscal impact with this additional language. The funding mechanism currently outlined in this statute would remain the same and be transferred to the new entity.

MOTION: **Senator Thayn** moved to send **H 402** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

H 399 **Amending Juvenile Corrections Law.** **Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections, stated currently the PERSI Retirement Rule of 90 applies to officers of the Idaho Department of Juvenile Corrections and those employed by Idaho's counties that work in the areas of juvenile detention, juvenile probation, and misdemeanor probation. These professionals are required to have Idaho Peace Officers Standards and Training (POST) certification. She advised staff are not able to stay in these positions until they reach the age of 65 because of the physical demands.

Ms. Harrigfeld reported the change in classification from the Rule of 90 to the Rule of 80 will acknowledge the safety, security, and stress individuals in these positions experience. **Ms. Harrigfeld** remarked, in addition, agencies will have another tool to recruit and retain employees that require extensive and extended training in their field. An emergency clause is necessary to allow current employees an opportunity

to elect to remain at the Rule of 90.

DISCUSSION: **Senator Martin** asked if the change in classification was optional or a requirement. **Ms. Harrigfeld** remarked incumbents have an option, but anyone hired July 1, 2018 or later will be required to be enrolled in the Rule of 80. **Senator Martin** and **Ms. Harrigfeld** conversed regarding the retirement contribution responsibilities of an employee.

Vice Chairman Guthrie and **Ms. Harrigfeld** discussed the requirements for retirement, working at another job after retirement, and PERSI.

TESTIMONY: **Skip Clapp**, Idaho Association of County Juvenile Justice Administrators, testified in support of this bill. He stated his organization believes the juvenile detention officers and the juvenile probation officers deserve the benefit of the Rule of 80. He remarked both of these positions require a high degree of professionalism and ongoing training to maintain best practices and POST certification. The cost is not significant.

DISCUSSION: **Senator Potts** asked, what were the chances of an employee being hired in an administrative position under the Rule of 80. **Mr. Clapp** answered if an employee retired from PERSI, but was hired for another job with PERSI benefits, they are only allowed to work a certain number of hours or they would lose their PERSI benefits.

Mr. Drum reported if an employee was under the Rule of 80, there would be no impact on PERSI. **Senator Potts** and **Mr. Drum** discussed mixed service, earning under the Rule of 80, and transitioning to the Rule of 90, drawing full retirement, and suspension of retirement when working full-time.

MOTION: **Senator Ward-Engelking** moved to send **H 399** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Guthrie** voted **nay**.

Chairman Patrick announced **H 433** and **HCR 41** would be continued to the March 8, 2018 meeting due to time constraints.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 3:11 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

AMENDED AGENDA #4
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Thursday, March 08, 2018

SUBJECT	DESCRIPTION	PRESENTER
<u>H 527</u>	Relating to Labor	Pam Eaton, Idaho Retailers' Association
<u>RS26344</u>	Unanimous Consent Request Relating to An Interim Committee, Regulatory Reform Joint Sub-Committee	Senator Lakey Representative Gayann DeMordaunt
<u>RS26317</u>	Unanimous Consent Request Relating to An Interim Committee, Pharmacy Benefit Managers	Chairman Patrick
MINUTES APPROVAL	Minutes of March 1, 2018	Senator Ward-Engelking
<u>H 621</u>	Unanimous Consent to Refer Back to the Floor of the Senate – To Be Reassigned to Another Committee – Relating to Private Land Surveying.	Representative Terry Gestrin
<u>H 433</u>	Relating to Director Control	Keith Reynolds, Deputy Director, Department of Administration
<u>HCR 41</u>	Relating to Group Insurance and Total Compensation Study	Senator Todd Lakey
<u>S 1343</u>	Relating to Cosmetologists and Estheticians	Senator Den Hartog
<u>H 478</u>	Relating to Electrical Contractors and Journeymen	Warren Wing, Electrical Program Manager, Division of Building Safety
<u>H 479</u>	Relating to Electrical Contractors and Journeymen	Warren Wing
<u>H 480</u>	Relating to Electrical Contractors and Journeymen	Warren Wing
<u>H 522</u>	Relating to Certificates of Insurance	Representative Caroline Nilsson Troy
<u>H 519</u>	Relating to Title Insurance	Representative Megan Blacksmma
<u>H 481</u>	Relating to Plumbing and Plumbers	John Nielsen, Plumbing and HVAC Program Manager, Division of Building Safety
<u>H 482</u>	Relating to HVAC Certificate of Competency	John Nielsen
<u>H 483</u>	Relating to HVAC Exams	John Nielsen
<u>H 484</u>	Relating to Plumbing and Plumbers - Removal of a Provision	John Nielsen

<u>H 642</u>	Relating to Homeowner Associations and Condominiums	Representative Anderst
<u>H 405</u>	Relating to Unfair Sales Act	Senator Grant Burgoyne
<u>H 401</u>	Relating to PERSI - Revise Definitions	Don Drum, Executive Director, PERSI

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick	Sen Souza
Vice Chairman Guthrie	Sen Potts
Sen Martin	Sen Ward-Engelking
Sen Lakey	Sen Burgoyne
Sen Thayn	

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 08, 2018

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Vice Chairman Guthrie** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:02 p.m.

H 527 **Relating to Labor. Pam Eaton**, Idaho Retailers Association, stated the key to a successful franchise is the protection of the business format and the franchisor/franchisee relationship. She remarked this legislation would effectively codify the traditional joint employer standard of "direct and immediate control" for purposes of State law; it would protect businesses in those states from certain joint employment claims. She noted the legislation proposes to codify the multi-decade status quo and eliminate uncertainty created by the National Labor Relations Board (NRLB) "indirect or potential to exert indirect control" standard. Additionally, **Ms. Eaton** commented, this bill provides clarity to State agencies when presented with joint employment claims. For decades, the test to determine joint employment was based on having "direct and immediate" control over the employment conditions of an employee. This legislation removes any uncertainty.

Ms. Eaton remarked this legislation does not impact existing worker rights and or limit potential redress of any employment claims of an employee. This legislation makes clear a franchisee is the owner of the business and the ultimate employer of individuals who work in that business. A franchisee's employees are not employees of the franchisor.

Ms. Eaton reported there is no fiscal impact to the General Fund, since this pertains to a private business.

PASSED THE GAVEL: Vice Chairman Guthrie passed the gavel to Chairman Patrick.

MOTION: **Senator Souza** moved to send **H 527** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 26344 **Unanimous Consent Request Relating to An Interim Committee, Regulatory Reform Joint SubCommittee (RRJS).** **Senator Lakey** commented this resolution, recommended by the RRJS, would authorize the Legislative Council to appoint an interim committee to: (1) study occupational licensing and certification laws and rules in Idaho, and (2) evaluate the necessity for such laws and rules. The purpose of the RRJS's study would be to ensure Idaho's occupational licensing and certification laws and rules are in the public interest and are not anti-competitive in intent or effect. The RRJS's cost would not exceed \$10,000 and would be paid out of the Legislative Account.

**UNANIMOUS
CONSENT:**

Senator Lakey asked for unanimous consent to send **RS 26344** to a privileged committee to print. There were no objections.

RS 26317

Unanimous Consent Request Relating to An Interim Committee, Pharmacy Benefit Managers (PBMs). **Chairman Patrick** remarked this resolution would authorize the Legislative Council to form an interim committee to resolve issues dealing with PBMs, the Idaho Department of Insurance, and the Idaho pharmacists, in order to lower costs. The cost of the PBM meetings - amounting to no more than three meetings and including per diem and travel - are not expected to exceed \$10,000.

**UNANIMOUS
CONSENT:**

Chairman Patrick asked for unanimous consent to send **RS 26317** to a privileged committee to print. There were no objections.

**MINUTES
APPROVAL:**

Senator Ward-Engelking moved to approve the Minutes of March 1, 2018. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

H 621

Unanimous Consent to Refer Back to the Floor of the Senate To Be Reassigned to Another Committee - Relating to Private Land Surveying. **Representative Terry Gestrin** reported this bill proposes to amend Idaho's land surveying statutes by providing procedures for access to private land for professional land surveyors performing a land survey. He noted this legislation does not have any fiscal impact on the General Fund or any county or other government fund.

**UNANIMOUS
CONSENT:**

Chairman Patrick asked for unanimous consent to send **H 621** to the floor of the Senate to be reassigned to another committee. There were no objections.

H 433

Relating to Director Control. **Keith Reynolds**, Deputy Director, Idaho Department of Administration (DOA), stated this bill clarifies the authority of the DOA to promulgate rules for multi-agency facilities; the bill also clarifies the ability of the DOA to use the proceeds from rents received for the operation and management of those locations. The need for these changes is a result of the purchase of the office complex located on Chinden Road in Boise, Idaho. He asserted neither change obligates the State and there is no fiscal impact.

Mr. Reynolds explained Idaho Code § 67-5708 charges the DOA with managing multi-agency facilities "constructed, acquired or refurbished through the State building authority." This includes the Chinden Campus and State office buildings in Lewiston and Idaho Falls which are all managed by the DOA. He reported the changes are a companion to the management directive in Idaho Code § 67-5708. In addition to defining the Capitol Mall, Idaho Code § 67-5709 addresses rulemaking authority for State-managed facilities and the use of rent proceeds received from the tenants of those facilities.

Mr. Reynolds remarked the changes proposed in this bill add clarity to the DOA's ability to promulgate rules for the new location and the ability to collect and use rents for the maintenance and operation of the facility.

MOTION:

Senator Burgoyne moved to send **H 433** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

HCR 41 **Relating to Group Insurance and Total Compensation Study. Senator Todd Lakey** stated this resolution would authorize the Legislative Council to reappoint the State Employee's Group Insurance Benefits Interim Committee (SEGIBIC) to negotiate a new contract with the SEGIBIC's contractor. It would also authorize the Legislative Council, in conjunction with the Department of Administration (DOA), to issue a new Request for Proposal (RFP) for an array of options for healthcare benefits for State employees. The RFP would be issued according to the 2017 SEGIBIC's final report recommendations.

Senator Lakey advised the cost of the SEGIBIC meetings, including per diem and travel, are not expected to exceed a total of \$10,000. The cost to retain the services of a health care plan consultant or analyst, with prior approval from the Speaker of the House and the President Pro Tempore of the Senate, is estimated not to exceed \$135,000. He explained these costs will be paid by the Senate and the House of Representatives by a General Fund transfer to the Legislative Account. **Senator Lakey** indicated - to the extent possible - existing data, analysis, and resources will be utilized to complete the study; however, there may be additional expenses incurred by the DOA for actuarial analysis related to the State employee group insurance component of the study.

MOTION: **Senator Burgoyne** moved to send **HCR 41** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1343 **Relating to Cosmetologists and Estheticians. Senator Den Hartog** reported this is a trailer bill to **S 1324** and only amends the definition to add eyelash extensions. This bill would clarify eyelash extensions are within the scope of practice for cosmetologists and estheticians. This clarification is necessary because the application of eyelash extensions is a public health issue; it was deemed a public health issue as it poses risks of infection and to client safety.

MOTION: **Senator Souza** moved to send **S 1343** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

H 478 **Relating to Electrical Contractors and Journeymen. Warren Wing**, Electrical Program Manager, Idaho Division of Building Safety (DBS), outlined the proposed changes. He clarified inspectors can be journeymen or master electricians. **Mr. Wing** advised language in this bill would allow the DBS to administer their own inspector test. DBS has the ability to test inspectors to ensure they understand the National Electric Code (NEC) requirements, amendments, statutes, and administrative rules of the State of Idaho.

Mr. Wing stated the requirements to maintain the certification mandate require inspectors to submit 24 hours of continuing education courses; the courses must be approved by the certifying agency. The inspectors must also pay the certifying agency a renewal fee. He explained Idaho electrical inspectors are already required to take 24 hours of continued education courses to maintain their electrical licenses. The change would eliminate the cost of renewing certifications every three years and would not create any additional requirements or services to be provided by the certifying agency.

MOTION: **Senator Ward-Engelking** moved to send **H 478** to the floor with a **do pass** recommendation. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

H 479

Relating to Electrical Contractors and Journeymen. **Warren Wing**, Electrical Program Manager, Idaho Division of Building Safety (DBS), outlined the proposed changes. He clarified the code adopted by the Idaho Electrical Board (EB) and the Legislature through the rulemaking process can be amended. He commented the bill would remove the need to update the date of the National Electrical Code each time it is adopted. He asserted the legislation clarifies only the amendments adopted by the EB and Legislature through the rulemaking process are applicable. He remarked the National Fire Protection Association (NFPA) makes tentative amendments between code-making cycles. These would not be applicable in Idaho unless adopted through rulemaking.

Mr. Wing reported the changes make facility accounts legal and provide a way for other municipalities to sell permits. He asserted only the State can issue non-transferable registrations. He noted the DBS is provided options that align with technological changes to notify contractors of required corrections. **Mr. Wing** advised code and safety violations are enforced, but if something is defective but meets code and is not a safety issue - it is not within the authority of the DBS to enforce. Inspection tags are no longer used. Several of the other changes are housekeeping measures.

DISCUSSION:

Senator Lakey and **Mr. Wing** discussed the changes in the bill, including NFPA amendments. **Senator Potts** and **Mr. Wing** addressed licensing of maintenance workers related to installations. **Mr. Wing** pointed out currently maintenance workers cannot do installations. This bill is an attempt to align statutes with rules.

Vice Chairman Guthrie remarked the proposed legislation would give more latitude to a maintenance person. **Senator Burgoyne** agreed with Vice Chairman Guthrie's remark.

Senator Souza stated this legislation is an attempt to align statute with rules, but it appears to be reversed. **Mr. Wing** explained there are some aspects of the rules which do not align with the statute, but this legislation is an attempt to align with statute. He remarked some rules are in violation of the statute. **Senator Souza** stated she did not think rules which did not match statute should be accepted. **Mr. Wing** reiterated the DBS is attempting to align them now.

MOTION:

Senator Martin moved to send **H 479** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. **Senator Potts** voted **nay**.

H 480

Relating to Electrical Contractors and Journeymen. **Warren Wing**, Electrical Program Manager, Idaho Division of Building Safety (DBS), outlined changes which were mostly housekeeping measures. He stated there were wording changes, such as "special" to "limited," and "classification" to "categories." **Mr. Wing** clarified licensing provisions are required for "limited electrical contractors." "Limited electrical installers" are restricted to limited types of electrical installations.

MOTION:

Senator Ward-Engelking moved to send **H 480** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

H 522

Relating to Certificates of Insurance. Randy Pipal, Vice President and Legislative Chairman, Independent Insurance Agents and Brokers of Idaho, gave a brief background of the bill. He remarked a Certificate of Insurance is intended to be a brief summary of an insurance policy at the time it was issued. He noted a vast majority of these certificates are issued in the construction and service industries to prove active liability and workers' compensation coverage.

He asserted the proposed legislation repeals the first sentence of Idaho Code § 41-1850(10) and replaces it with language which would allow for a Certificate of Insurance to include reference to a contract number or description, or a project number or description. **Mr. Pipal** noted this inclusion would not create any additional rights to the certificate holder or replace or extend coverage on the policy. The legislation would allow for contract or project descriptions to be referenced on the Certificate of Insurance. The legislation would eliminate some of the paperwork involved.

Mr. Pipal reported there is no fiscal impact to the General Fund or any other State fund or expenditure because all Certificates of Insurance are prepared by individual businesses that sell liability insurance. The State regulates what appears on the certificate, but does not participate in the cost of producing the certificates.

MOTION:

Senator Burgoyne moved to send **H 522** to the floor with a **do pass** recommendation. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

H 519

Relating to Title Insurance. John Nielsen, Plumbing and Heating, Ventilation, and Air Conditioning (HVAC) Manager, Idaho Division of Building Safety (DBS), stated the purpose of this bill is to amend portions of Idaho Code Title 41, Chapter 3, to allow title insurance companies to reimburse bona-fide employees for both title insurance premiums and escrow fees, otherwise payable by the employee to the insurance agent or company, in connection with the employee's non-business real estate transactions.

MOTION:

Vice Chairman Guthrie moved to send **H 519** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 481

Relating to Plumbing and Plumbers. John Nielsen, Plumbing and Heating, Ventilation, and Air Conditioning (HVAC) Manager, Idaho Division of Building Safety (DBS), stated this bill allows property owners to perform plumbing work; it provides exemptions from plumbing licensure and certain maintenance plumbing work. The exceptions currently allow property owners of a single or duplex family dwelling to perform plumbing work and allow employers to perform alterations, extensions, and new construction on the premises of their place of employment using regularly employed maintenance plumbers without a certificate of competency.

Mr. Nielsen indicated the DBS Plumbing Board members and industry representatives recommend the statute should more clearly indicate a homeowner should be allowed to perform plumbing work on the owner's primary or secondary residence, accessory buildings, quarters, and grounds used for non-commercial purposes. **Mr. Nielsen** advised in places of employment in commercial buildings, maintenance personnel should be allowed to perform repairs and replacements of fixtures and equipment. Any alterations, extensions, or new construction must be done by a licensed plumbing contractor.

He affirmed there is no fiscal impact on the dedicated DBS Plumbing Board fund or the General Fund, as permits are required regardless of the licensure exemption.

He advised there could potentially be a negative impact on facility owners currently utilizing non-certified plumbers to perform new installations on their own premises.

DISCUSSION: **Senator Thayne** inquired as to the definition of "non-commercial purposes." **Mr. Nielsen** remarked residential and rental properties were defined as non-commercial. A discussion ensued between **Senator Thayne** and **Mr. Nielsen** about what constituted exempt and non-exempt, as it related to property owners. **Senator Thayne** stated he did not think rentals were residences of the property owner and the language did not correspond in the bill. **Mr. Nielsen** explained a rental is considered residential in code.

Senator Burgoyne inquired as to clarification of an owner's primary and secondary residence. **Mr. Nielsen** explained a renter is not a property owner. A renter can ask the owner to come over to do work. **Senator Burgoyne** commented the bill should be amended. **Senator Potts** stated he was concerned with the wording in the bill.

MOTION: **Senator Potts** moved to hold **H 481** in Committee, subject to the call of the Chair. **Senator Souza** seconded the motion. **Senator Thayne** declared a conflict of interest as he owns rental properties. The motion carried by **voice vote**.

H 482 **Relating to Heating, Ventilation and Air Conditioning (HVAC) Certificate of Competency.** **John Nielsen**, Plumbing and HVAC Manager, Idaho Division of Building Safety (DBS), stated this bill was the same as **H 481**, except it related to HVAC.

MOTION: **Senator Potts** moved to hold **H 482** in Committee, subject to the call of the Chair. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 483 **Relating to Heating, Ventilation, and Air Conditioning (HVAC) Exams.** **John Nielsen**, Plumbing and HVAC Manager, Idaho Division of Building Safety (DBS), stated, currently, there is no provision in Idaho Code that establishes a standard for HVAC apprenticeship schooling programs in Idaho. This statutory amendment would provide general authority for the HVAC Board, in conjunction with the Division of Career-Technical Education, to standardize an approved curriculum offered by a school providing HVAC apprenticeship courses of instruction. The proposal would also provide some administrative oversight to ensure schools meet those standards. He indicated there would be a fiscal impact of approximately \$42,000 to the HVAC dedicated funds from this legislation.

MOTION: **Senator Potts** moved to send **H 483** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 484 **Relating to Plumbing and Plumbers - Removal of a Provision.** **John Nielsen**, Plumbing and HVAC Manager, Idaho Division of Building Safety (DBS), stated the current statute allows plumbing and specialty contractors to renew their license annually on an inactive basis at a reduced fee of \$36; inactive basis is permissible if the plumber is not actively engaged in plumbing contracting in the State of Idaho. **Mr. Nielsen** advised the Plumbing Board, industry, and the DBS agree after the payment of the initial fee for placing a license in an inactive status, there should not be any additional annual fee for maintaining inactive status. He explained there would be no significant impact to the dedicated fund of the Plumbing Board and there would be a positive impact on the plumbing contractors.

MOTION: **Senator Thayne** moved to send **H 484** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. **Senator Burgoyne** voted **nay**.

H 642 **Relating to Homeowner Associations (HOAs) and Condominiums.** **Representative Anderst** reported this legislation would require a HOA or its agent to provide a statement of account to a member of the HOA and to the owner's agent, within a reasonable time period, and to disclose, at a time certain, any fees in connection with any transfer of ownership of property or unit. The time period has been shortened from five days to ten days. **Representative Anderst** commented some HOAs charge fees in escrow, such as a rush fee, recording fee, and others. The fees are unknown to a homeowner until the close of escrow. The intention is to direct HOAs to disclose charges once a year.

MOTION: **Senator Lakey** moved to send **H 642** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion.

DISCUSSION: **Senator Potts** expressed concern about excessive regulation. **Representative Anderst** explained existing code is being amended for transparency.

VOTE: The motion carried by **voice vote**. **Senator Potts** voted **nay**.

H 405 **Relating to Unfair Sales Act.** **Senator Burgoyne** explained information contained in a binder accompanying the bill (Attachment 1). He reported the purpose of this legislation is to repeal the Unfair Sales Act, Idaho Code Title 48, Chapter 4. **Senator Burgoyne** advised this Depression-era statute became law in 1939 and, with limited exceptions, required merchandise to be marked up over cost by a minimum, statutorily-set amount. He explained it is common for merchants to offer wares at or below cost as an inducement to patronize the merchandiser and purchase other goods.

Senator Burgoyne stated the petroleum industry wanted the percentage to be kept as a protective measure. He cited an opinion from the Idaho Attorney General's Office that indicated price fixing is prohibited. The Unfair Sales Act does not protect deceptive advertising. **Senator Burgoyne** reported other merchants, such as grocery stores, commonly set prices at very low margins and profit through high volume. Although the law is generally not enforced, violation is a misdemeanor and potentially carries fines and jail time.

Senator Burgoyne stated this Act should be repealed, as the enforcement of such a price-fixing scheme would harm consumers and reduce competition. There is no fiscal impact on State or local government, as this bill does not affect revenues.

MOTION: **Senator Souza** moved to send **H 405** to the floor with a **do pass** recommendation. **Senator Potts** seconded the motion.

Senator Lakey disclosed pursuant to Senate Rule 39(H) he represents some companies that sell fuel and have convenience stores in his private law practice.

TESTIMONY: **Suzanne Budge**, Idaho Petroleum Marketers and Convenience Store Owners, testified in opposition to **H 405**. She remarked some of the members do not have the same level of confidence as the sponsors of the bill.

VOICE VOTE: The motion carried by **voice vote**.

H 401

Relating to Public Employee Retirement System of Idaho (PERSI) - Revise Definitions. **Chairman Patrick** stated this bill was continued from the Committee meeting of Tuesday, March 6, 2018 and testimony was heard at the meeting. He remarked Judge Barry Wood, Senior District Judge, Fifth Judicial District, serving as Administrative Director of the Courts, and Don Drum, Executive Director, PERSI, met and discussed the issue surrounding this bill. They tried to devise a solution. **Chairman Patrick** stated he had a copy of the lawsuit; if this bill fails to pass, PERSI would be in violation of Internal Revenue Service (IRS) code.

Vice Chairman Guthrie commented he wanted a process to move forward to amend this bill; however, that was not possible. The problem is larger and cannot be solved in the amending order. **Chairman Patrick** stated the bill could be rewritten to reflect the same wording as what the teacher's union agreed upon. **Chairman Patrick** said he would allow questions.

DISCUSSION: **Mr. Drum** remarked the problem would be solved if the Judges Retirement Fund (JRF) adopted the same wording as the teacher's union; however, the bill would have to be rewritten. He advised the PERSI Board wanted to include wording as soon as possible and would work with the judges to draft legislation to resolve the problem.

Senator Burgoyne queried if there was any discussion with the Senate leadership to rewrite this bill. **Mr. Drum** stated he had not had any discussions with Senate leadership or the judges. **Chairman Patrick** stated there was not enough time to rewrite the bill.

Senator Potts inquired if any judges were negatively impacted. **Judge Wood** affirmed his understanding that the delay was due to litigation and remarked this bill was brought forth late in the session. His understanding was the way PERSI interpreted the decision, judges were protected by the court's decision until June 30, 2018.

Vice Chairman Guthrie and **Judge Wood** discussed the PERSI Board and the judges working together to find a solution to the issue.

MOTION: **Vice Chairman Guthrie** moved to send **H 401** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion.

DISCUSSION: **Senator Burgoyne** inquired of Judge Wood if it was his understanding the courts were amenable to delaying the effective date to July 1, 2019 or sending the bill to the amending order. **Judge Wood** stated it was his understanding PERSI is protected by the court decision. The delay would be beneficial to the courts, but there is a risk.

SUBSTITUTE MOTION: **Senator Burgoyne** moved to send **H 401** to the **14th Order** to change the effective date to July 1, 2019. **Senator Martin** seconded the motion.

DISCUSSION: **Chairman Patrick** stated he understood from PERSI that was not acceptable. **Mr. Drum** stated the court order technically resolved the issue for the judges in question. PERSI is out-of-compliance with the IRS. **Mr. Drum** explained the IRS could return to the Legislature. In order to make the fund whole, there would be a cost of \$1.5 to \$2 million. The General Fund would have to reimburse PERSI.

Vice Chairman Guthrie spoke in favor of the first motion; he indicated there was too much of a risk in not passing the bill. He advised next year a solution could be crafted with an emergency clause.

Senator Lakey remarked regarding the substitute motion and stated it would be a challenge to amend the bill. He spoke in support of the judiciary. He stated he did not want to put PERSI at risk.

Senator Ward-Engelking advocated for talking to Senate leadership to expedite a bill. **Senator Burgoyne** said he agreed, but did not know if that was possible.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

The following Committee members voted **aye**: **Senators Martin** and **Burgoyne**. The following Committee members voted **nay**: **Senators Lakey, Thayn, Souza, Potts, Ward-Engelking, Vice Chairman Guthrie, and Chairman Patrick**. The motion failed.

**VOTE ON
ORIGINAL
MOTION:**

The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:51 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary

TITLE 48
MONOPOLIES AND TRADE PRACTICES
CHAPTER 4
UNFAIR SALES ACT

48-401. TITLE OF ACT. This act shall be known and designated, and may be cited, as the "Unfair Sales Act."

48-402. DECLARATION OF POLICY AND PURPOSE. The practice of selling certain items of merchandise below cost in order to attract patronage is a deceptive form of advertising and an unfair method of competition. Such practice misleads the consumer, works back against the farmer, obstructs commerce and diverts business from dealers who maintain a fair price policy, with the result of unemployment, underpayment of employees, excessive working hours, nonpayment of taxes and an inevitable train of undesirable consequences including economic depression. This act is designed to make illegal such practice and to promote the general welfare of the state of Idaho.

48-403. DEFINITIONS OF TERMS.

(a) When used in this act, the term "cost to the retailer" shall mean the actual cost of the merchandise to the retailer, or the replacement cost of the merchandise to the retailer at the lowest prices then prevailing in his trade area, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added

(1) freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and

(2) cartage to the retail outlet if done or paid for by the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths (3/4) of one per cent (1%) of the cost to the retailer as herein defined after adding thereto freight charges but before adding thereto cartage and markup, and

Attachment 1

H 405

3/8/18

Tab 1

(3) a markup to cover a proportionate part of the cost of doing business, which markup in the absence of proof of a lesser cost, shall be six per cent (6%) of the cost to the retailer as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup.

(b) When used in this act, the term "cost to the wholesaler" shall mean the actual cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added

(1) freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and

(2) cartage to the retail outlet if done or paid for by the wholesaler, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths (3/4) of one per cent (1%) of the cost to the wholesaler as herein set forth after adding thereto freight charges but before adding thereto cartage and markup, and

(3) a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be two per cent (2%) of the cost to the wholesaler as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup.

(b) (aa) When used in this act, the term "cost to the direct seller" shall mean the actual cost of the merchandise to the direct seller or the replacement cost of the merchandise to the direct seller at the lowest price then prevailing in his trade area, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added

(1) freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and

(2) cartage to the retail outlet if done or paid for by the direct seller, which cartage cost, in the absence of proof of a lesser cost shall be deemed to be one and one-half [per cent] (1 1/2%) of the cost to the direct seller as

herein defined after adding thereto freight charges, but before adding thereto cartage and markup, and

(3) a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost shall be eight per cent (8%) of the cost to the direct seller as herein set forth after adding thereto freight charges, but before adding thereto cartage and markup.

(c) When used in this act the term "replacement cost" shall mean the cost per unit at which the merchandise sold or offered for sale could have been bought at the nearest source of supply by the retailer, wholesaler or direct seller at any time within thirty (30) days prior to the date of sale or the date upon which it is offered for sale by the retailer, wholesaler or direct seller if bought in the same quantity or quantities as the retailer's, wholesaler's or direct seller's last purchase of the said merchandise.

(d) Where one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more other items, each and all of said items shall for the purpose of this act be deemed to be advertised, offered for sale, or sold, and the price of each item named shall be governed by the provisions of subsections (a), (b) and (b-aa) of section 48-403 (this section) respectively.

(e) The terms "cost to the retailer" "cost to the wholesaler" and "cost to the direct seller" as defined in subsections (a), (b) and (b-aa) of this section shall mean bona fide costs; and purchases made by retailers, wholesalers and direct sellers at prices which cannot be justified by prevailing market conditions within this state shall not be used in determining cost to the retailer, cost to the wholesaler and cost to the direct seller. Any manufacturer's published list price, less published discounts, in effect in this state at the time any such manufacturer's merchandise is purchased by a wholesaler, retailer or direct seller is deemed to be competent evidence of the cost of such

manufacturer's merchandise, in the absence of proof of a lesser cost.

(f) The terms "sell at retail," "sales at retail" and "retail sale" shall mean and include any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(g) The term "sell at wholesale," "sales at wholesale" and "wholesale sales" shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purpose of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(h) The term "retailer" shall mean and include every person, partnership, corporation or association engaged in the business of making sales at retail within this state; provided, that in case of a person, partnership, corporation or association engaged in the business of making both sales at retail and sale at wholesale, such terms shall be applied only to the retail portion of such business.

(i) The term "wholesaler" shall mean and include every person, partnership, corporation, or association engaged in the business of making sales at wholesale within this state; provided that in case of a person, partnership, corporation or association engaged in the business of making both sales at wholesale and sales at retail, such term shall apply only to the wholesale portion of such business.

(j) The term "freight charges" when used in this act shall mean minimum rates or charges contained in the lawfully filed tariff of any carriers holding authority from the Idaho Public Utilities Commission of Idaho or the Interstate Commerce Commission which tariff is on file with the said

Idaho Public Utilities Commission or the Interstate Commerce Commission.

(k) The term "direct seller" when used in this act shall mean and include every retailer as herein defined who buys processed merchandise direct from the processor for the purpose of selling such processed merchandise at retail, but a retailer shall be a direct seller only as to the processed merchandise so purchased.

(l) The term "store or outlet" as used in this act, means any place at which goods, wares or merchandise are sold or offered for sale to the public; provided, however, that the term "store or outlet" shall not be construed to include any place at which the gross sales of goods, wares or merchandise in the last preceding calendar year do not exceed \$5,000.00.

(m) The term "person" shall mean any individual, firm, partnership, corporation or association.

48-404. ADVERTISING OR SALES AT LESS THAN COST CONTRARY TO PUBLIC POLICY. It is hereby declared that any advertising, offer to sell or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this act, with the intent, or effect, of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impairs and prevents fair competition, injures public welfare, and is unfair competition and contrary to public policy and the policy of this act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce.

48-405. PENALTY FOR ADVERTISING OR SELLING MERCHANDISE AT LESS THAN COST. Any retailer or direct seller who shall, in contravention of the policy of this act, advertise, offer to sell or sell at retail any item of merchandise, which is subject to this act, at less than cost to the retailer or direct seller as defined in this act, or knowingly buys any

item of merchandise, which is subject to this act, from any wholesaler at less than cost to the wholesaler as herein defined, or any wholesaler who shall, in contravention of the policy of this act, advertise, offer to sell or sell at wholesale any item of merchandise, which is subject to this act, at less than cost to the wholesaler as defined in this act, shall be guilty of a misdemeanor for each single offense, and upon conviction thereof shall be punished by a fine or not more than \$500.00 or by imprisonment not to exceed six months or by both said fine and imprisonment, in the discretion of the court. Proof of any such advertising, offer to sell or sale by any retailer, direct seller or wholesaler in contravention of the policy of this act, shall be prima facie evidence of a violation of this act.

48-406. INJUNCTIONS.

(1) Parties Authorized to Bring. Any person, municipal or other public corporation, or the state of Idaho, may maintain an action to enjoin a continuance of any act or acts in violation of this act.

(2) Authority to Issue. If it appears to the court upon any application for a temporary injunction, or upon the hearing for any order to show cause why a temporary injunction should not be issued, or, if the court shall find, in any such action, that any defendant therein is violating, or has violated, this act, then the court shall enjoin the defendant from doing all acts which are prohibited in said act.

(3) Restraints Which May Be Included. The court may, in its discretion, include in any injunction against a violation of this act such other restraints as it may deem expedient in order to deter the defendant therefrom, and ensure against his committing a future violation of this act.

(4) Article or Products Covered. Any injunction against a violation of this act, whether temporary or final, shall cover every article or product handled or sold by the defendant and not merely the particular article or product involved in the pending action.

(5) Undertaking or Bond. As a condition to the granting of a temporary injunction under this act, the court may require of the plaintiff, excepting when a municipal or public corporation or the state of Idaho is the plaintiff, a written undertaking in such sum as the court deems reasonable and proper in the premises, with sufficient sureties to the effect that the plaintiff will pay to the person enjoined such costs and damages, not exceeding an amount specified in said undertaking, as such person enjoined may incur or sustain by reason of the issuance of a temporary injunction, if it shall be finally decided that plaintiff was not entitled thereto.

Within five (5) days after the service of the temporary injunction, the defendant may except to the sufficiency of the sureties. If the defendant fails to do so he is deemed to have waived all objections to them.

When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) nor more than five (5) days, must justify before the judge, in the same manner as upon bail or arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed the order granting an injunction shall be dissolved.

(6) Injury and Damages. In any action under this act, it is not necessary to allege or prove actual damages or threat thereof, or actual injury or threat thereof, to the plaintiff. But, in addition to injunctive relief, any plaintiff in any such action is entitled to recover the amount of the actual damages, if any, sustained by the plaintiff, as well as the actual damages, if any, sustained by any person who has assigned to the plaintiff his claim for damages resulting from a violation of this act.

History:

48-407. EXEMPTED SALES. The provisions of this act shall not apply to sales at retail or sales at wholesale.

(a) where perishable merchandise must be sold promptly in order to forestall loss;

(b) where merchandise is imperfect or damaged or is being discontinued and is advertised, marked or sold as such;

(c) where merchandise is sold upon the final liquidation of any business;

(d) Where an endeavor is made in good faith to meet the prices of a competitor as herein defined selling substantially the same article or product in the same locality or trade area in the ordinary channels of trade.

(e) where merchandise is sold on contract to departments of the government or governmental agencies;

(f) where merchandise is sold by any officer acting under the order or direction of any court;

(g) where in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such article or product if advertised, marked and sold as such. Provided, however, that any retailer or wholesaler claiming the benefits of any of the exceptions hereinabove provided, shall have the burden of proof of facts entitling such retailer or wholesaler to any of the benefits of such exceptions.

48-408. SUPERVISION AND ADMINISTRATION OF ACT BY GOVERNOR.

(1) The governor of the state of Idaho shall have the responsibility for the supervision and administration of this act and he shall have the authority to designate any department of the state government to supervise and administer this act under his direction.

(2) The governor or the department designated by him to supervise and administer this act shall employ such employees as may be required to supervise and administer this act, whose duties shall be:

(a) To inspect and investigate the sales practices of all persons subject to this act;

(b) To investigate and ascertain violations of this act;

(c) To prosecute all violations of this act, either by injunction proceedings, criminal proceedings or both.

(d) To aid and assist the attorney general of the state of Idaho and the prosecuting attorneys of the various counties in the enforcement of this act.

(e) To collect such taxes as called for in this act.

(f) To perform such other duties in connection with this act as may be designated by the governor.

48-409. WITNESSES - EXEMPTION FROM PROSECUTION BASED UPON TESTIMONY. Any party of record to any civil action or proceeding instituted or brought pursuant to the provisions of this act may be required to testify in such proceeding and to produce books, papers, invoices, contracts, agreements and all material documents before the court in such proceedings, providing, however, that no person compelled under the provisions of this section to testify or produce evidence tending to incriminate him or expose him to public ignominy shall be prosecuted for any crime which such testimony or evidence tends to prove or to which the same relates. This section shall not exempt any person from prosecution for perjury.

48-411. SEPARABILITY. If any section, sentence, clause or provision of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions.

48-412. DECEPTIVE ADVERTISING AS UNFAIR COMPETITION. It is hereby declared to be unlawful, unfair competition and an act or acts within the purview of section 48-406, Idaho Code, for any manufacturer, wholesaler or retailer to advertise for sale, offer for sale or sell any goods, wares or merchandise where the advertisement contains any assertion, representation or statement which is untrue, deceptive or misleading or falsely represents the kind, classification, grade of quality of the goods, wares or merchandise so advertised.

48-413. REBATES UNLAWFUL. The inhibition of this chapter against selling merchandise at less than cost and

unfair competition contrary to public policy shall embrace any scheme of special rebates, collateral contracts or any device of any nature by and among wholesalers, retailers and direct sellers whereby such rebates or agreements are, in substance or fact, effected in violation of the spirit and intent of this chapter. It is hereby declared to be unlawful, unfair competition, and an act or acts within the purview of section 48-406, Idaho Code, for any wholesaler, retailer or direct seller to give or receive special rebates or be a party to any such agreements or devices.



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

April 16, 2014

The Honorable Jason Monks
Idaho State Representative
1002 W. Washington Dr.
Meridian, ID 83642

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: The Idaho Unfair Sales Act

Dear Representative Monks:

You have asked the Attorney General for information regarding the Idaho Unfair Sales Act, Idaho Code § 48-401, *et seq.* (the "Act"). Specifically, you have asked whether there is separate Idaho law addressing the issues of below cost pricing and deceptive advertising should the Act be repealed.

This letter will first provide an overview of the Act and its history. Thereafter, it will address remaining available Idaho law regarding below cost sales and deceptive advertising, should the Act be repealed.

I.
UNFAIR SALES ACT BACKGROUND

A. Legislative History of the Unfair Sales Act

The Unfair Sales Act was originally enacted by the Legislature in 1939. *See* 1939 Idaho Sess. Laws 427-431. The Act, among other things, declared the practice of selling "certain items of merchandise below cost in order to attract patronage" to be a deceptive form of advertising and an unfair method of competition in that it "tends to create a monopoly in commerce." *See* Idaho Code § 48-404. The Act also prohibits deceptive advertising. Idaho Code § 48-412. The Act made it (and still does) a misdemeanor to sell goods below cost and authorized civil actions for injunctive relief and damages against below-cost sellers. *See* Idaho Code §§ 48-405 and 48-406. The original Act placed the duty of prosecuting violators on each county's prosecuting

attorney but also authorized private causes of action (which are still authorized today) for damages and injunctive relief.

The first amendments to the Unfair Sales Act came during the 1941 legislative session. *See* 1941 Idaho Sess. Laws 230-238. These amendments expanded the Act's enforcement provisions and made it a duty of the Attorney General to assist the various prosecuting attorneys in the enforcement of the Act. *Id.* at Sec. 4. Among the new sections that were added to the Act in 1941 were the following: (1) a new Section 8, which directed the Attorney General to appoint and employ investigators, attorneys and legal assistants to aid in prosecuting and enjoining violations of the Act; and (2) new Sections 10 and 11, which levied an excise tax on merchants to be collected for the use of the Attorney General in enforcing the Act and which appropriated the sum of \$20,000 to pay expenses incurred by the Attorney General prior to the effective date of the new taxes.

The amendments of 1945, however, removed the primary responsibility for investigating and enforcing the Unfair Sales Act from the Office of the Attorney General and delegated it instead to the Commissioner of Finance. *See* 1945 Idaho Sess. Laws 387-088. The Act still provided for some involvement by the Attorney General, but this was limited to aiding and assisting in the prosecution of the Act when called upon to do so by the Commissioner of Finance. *Id.* at Sec. 2, amending § 8 of the Act. Since these amendments went into effect in 1945, the role of the Office of the Attorney General under the Act has been limited to that of aiding and assisting other departments of state government in enforcing the Act. The Attorney General has no independent enforcement authority under the law.

The Unfair Sales Act was next amended in 1955. *See* 1955 Sess. Laws 211-219. Section 8 of the Act, which had been codified as Idaho Code § 48-408, was repealed, and a new section 48-408 was enacted. The new section reads as follows:

Supervision and administration of act by governor. -- (1) The governor of the state of Idaho shall have the responsibility for the supervision and administration of this act and he shall have the authority to designate any department of the state government to supervise and administer this act under his direction.

(2) The governor or the department designated by him to supervise and administer this act shall employ such employees as may be required to supervise and administer this act, whose duties shall be:

- (a) To inspect and investigate the sales practices of all persons subject to this act;
- (b) To investigate and ascertain violations of this act;
- (c) To prosecute all violations of this act, either by injunction proceedings, criminal proceedings or both;
- (d) To aid and assist the attorney general of the state of Idaho and the prosecuting attorneys of the various counties in the enforcement of this act;
- (e) To collect such taxes as called for in this act;

- (f) To perform such other duties in connection with this act as may be designated by the governor.

Idaho Code § 48-408, as added by 1955 Idaho Sess. Laws at 211. The language of this section has not been amended in subsequent legislative sessions, nor have there been any reported cases interpreting this section of the Act.

Along with the amendment of Idaho Code § 48-408 in 1955, the Legislature amended the statutory section authorizing the levy and collection of taxes to pay for the enforcement of the Act. *See* 1955 Idaho Sess. Laws 211, Sec. 6, codified at Idaho Code § 48-410. This amendment increased the tax amount collectable from merchants and specifically provided that the funds were to be collected by the Governor's Office or the designated department for the enforcement of both the Act and the Fair Trade Act, title 48, chapter 3, Idaho Code (which the Legislature repealed in 2000). *See* 2000 Idaho Sess. Laws 377.

Interestingly enough, at the same time the Legislature delegated the duty to supervise and enforce the Act to the Governor, or to a department of state government the Governor so designated, the Legislature also enacted legislation creating a state Department of Commerce and Development, and delegated to this new department the responsibility of "administer(ing) and supervis(ing) the provision of Chapters 3 and 4 [the Unfair Sales Act], Title 48, Idaho Code, as amended." *See* 1955 Idaho Sess. Laws 521, Sec. 3(5). The legislation also provided that "all moneys collected pursuant to the tax levied and imposed by Section 48-410, Idaho Code, as amended, shall be deposited to the credit of the Idaho Development and Publicity Fund." *See* Sec. 7 and Sec. 9. This tax, however, was repealed effective January 1, 1979. *See* 1978 Idaho Sess. Laws 412, Sec. 1.

This dual delegation of duties was noted in the 1977 legislative session. At that time, "to eliminate a statutory conflict," the Legislature struck the provision of the statute charging the (then) Division of Tourism and Industrial Development with the duty to administer and supervise the Act. *See* 1977 Idaho Sess. Laws 770-771. The Legislature left the language of Idaho Code § 48-408, assigning the Governor the duty of supervising and administering the Act, quoted above, unchanged.

The most recent substantive amendments to the Act occurred in 2009, wherein the Legislature repealed Idaho Code § 48-405A. This section had prohibited limiting any quantity of a good being sold to any one consumer.

B. Enforcement History of the Unfair Sales Act

As is evident by a review of the Unfair Sales Act's legislative history, enforcement of the Act has rested with either the Governor's Office or a department of state government for all but approximately six of the Act's 75-year history. During those six years (from 1939 through 1945), enforcement responsibilities were delegated to either local county prosecutors or the Attorney General. The result, however, seems to have been the same no matter which division of state government was responsible for enforcing the Act—that is, it does not appear that

aggressive enforcement has ever been the rule. Despite the Act's 75-year history, there are no reported Idaho cases interpreting the below cost provisions of the Act.

There is, however, one unreported district court memorandum decision of which we are aware denying a defendant's motion to dismiss a complaint filed by the state alleging violations of the Unfair Sales Act. The decision came in an old Ada County case, entitled State of Idaho, on Relation of W. D. Searns, Director of Unfair Sales for the Department of Commerce and Development v. Rosauer's Super Markets, Inc., Albertson's, Inc., Safeway Stores Incorporated, and Others, Civil Case No. 36021. In this case, the state alleged that all of the defendants had violated the Act and sought to enjoin future violations. Albertson's filed a motion to dismiss the complaint, alleging that the Act was unconstitutional in a number of respects. The district court denied Albertson's motion. It held, citing to Idaho Code § 48-405, that in order to prove a violation of the Act, the plaintiff must show (1) that the defendant sold product at less than cost, and (2) that he did so in "contravention of the policy" of the Act. The court reviewed the statute that defined the public policy of the Act (Idaho Code § 48-404), and found that a violation of the Act cannot be proven unless it can be shown that the sale of product below cost actually had an injurious effect on the defendant's competitors.

Enforcement of the Act has been perhaps deterred by the various exceptions found in the Act. For example, it is a defense to an allegation of violating the Act that one's competitor lowered his price first, and the accused offender is merely meeting his competitor's low price. Idaho Code § 48-407(d). This requires the prosecutor (or private plaintiff) to bear the burden of proving which business lowered its price below cost first. Other exceptions to the Act exist if the below cost product is a perishable or damaged item, or is the subject of a liquidation or court-ordered sale.

II. BELOW COSTS SALES

With the Unfair Sales Act background in place, we now turn specifically to your first question: Is there Idaho law available to address below costs sales practices should the Act be repealed? As noted, the Act makes illegal the advertising, offer to sell, or retail sale of any merchandise below a statutory definition of cost¹ in the State of Idaho. Idaho Code § 48-404. The Act specifically provides:

¹ The statutory definition of "cost" depends on the type of seller. "Cost to the retailer" is the lower of the actual, bona fide cost of the merchandise to the retailer or the lowest prevailing replacement cost; less all trade discounts (other than cash discounts); plus a "cost of doing business" markup (6% of the cost of the merchandise to the seller) and freight costs (actual) and cartage costs (0.75% of merchandise cost). Idaho Code § 48-403(a)(1) to (3). "Cost to the wholesaler" is calculated in the same manner as "cost to the retailer," but the "cost of doing business" markup is 2% of the cost to the seller plus cartage and freight costs. Idaho Code § 48-403(b)(1) to (3). "Cost to the direct seller" is calculated in the same manner, but permits a cartage cost of 1.5% and a "cost of doing business" markup of 8% based on cost to the seller plus freight. Idaho Code §48-403(b)(aa)(1) to (3).

[A]ny advertising, offer to sell or sale of any merchandise,² either by retailers or wholesalers, at less than cost as defined in this act, with the intent, or effect, of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impairs and prevents fair competition, injures public welfare, and is unfair competition and contrary to public policy and the policy of this act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce.

Idaho Code § 48-404.

Breaking the statutory provision above into its essential elements, the advertisement, offer, or sale of merchandise by a retailer or wholesaler³ violates the Act if each of the following three elements is satisfied:

1. The advertisement, offer, or sale is below "cost," as that term is statutorily defined;
2. The advertisement, offer, or sale is designed to induce purchase of other merchandise or unfairly divert trade from competitors; and
3. The advertisement, offer, or sale results in (a) a tendency to deceive purchasers; (b) substantially lower competition; (c) an unreasonable restraint of trade; or (d) a tendency to create a monopoly.

Element one is fairly straightforward, given the definition in the Unfair Sales Act for "cost." Element two, however, is more problematic: Does not a retailer hope that an advertisement for an item of merchandise will lead to the purchase of other merchandise? There is no readily available test to determine when a specific advertisement is not "designed to induce purchase of other merchandise."⁴ Further, in what instances is it "unfair" to divert trade from competitors? The statute is silent. At a fundamental level, robust competition in the market place involves businesses seeking to win over their competitors' customers and the market place properly rewards the more innovative, lower-priced, better provider of services with more customers and trade. Laws prohibiting such interaction are inimical to the principles of the market place.

² The Act does not define "merchandise." The commonly understood meaning of the term is "Goods or commodities that may be bought or sold." Webster's II New College Dictionary.

³ Section 48-403 of the Act defines a number of terms in addition to costs, including "retailer," "wholesaler," and "direct seller."

⁴ The situation presented here is to be distinguished from bait-and-switch advertising, wherein the seller advertises a good or service with the intent not to sell them but to lure the consumer to the seller's place of business and then switch the consumer from buying the advertised goods or service to other or different goods or service on a basis more advantageous to the seller. See IDAPA 04.02.01.020.06 (defining "bait and switch" sales). For such sales, Idaho law prohibits them as violations of the Idaho Consumer Protection Act. IDAPA 04.02.01.050.

Element three is similarly problematic. It is hard to understand how a below cost sale deceives purchasers, and how, in and of itself, it lowers competition. It is certainly foreseeable, however, as spelled out below, that some below cost sales may unreasonably restrain trade (although the Act itself is silent with respect to delineating those below cost sales which may reasonably restrain trade and those which may not), or have a tendency to create a monopoly. And it cannot be gainsaid but that these sales would be damaging to the market place and ultimately consumers. Thus, there is a valid reason to prohibit these sales. To the degree that such below cost sales occur, however, they are covered and prohibited by other Idaho law, as spelled out below. Thus, the Unfair Sales Act is not needed to prohibit such sales.

Idaho Code § 48-105 of the Idaho Competition Act prohibits predatory pricing. The United States Supreme Court has defined predatory pricing as "pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run."⁵ The United States Supreme Court has made it clear, though, that it is vital to distinguish between procompetitive price cutting and anticompetitive predatory pricing because:

[C]utting prices in order to increase business often is the very essence of competition. Thus, mistaken inferences in cases such as this one are especially costly, because they chill the very conduct the antitrust laws are designed to protect. "[W]e must be concerned lest a rule or precedent that authorizes a search for a particular type of undesirable pricing behavior end up by discouraging legitimate price competition."⁶

Thus, price cutting is not deemed predatory under federal antitrust law merely because it is intended to or does meet or beat competition and, in fact, is below the seller's costs.⁷

In Brooke Group, Ltd. v. Brown & Williamson Tobacco Corp.,⁸ the United States Supreme Court held that two elements must be proved to establish predatory pricing:

⁵ Cargill, Inc. v. Monfort of Colo., Inc., 479 U.S. 104, 117, 107 S. Ct. 484, 493, 93 L.Ed.2d 427 (1986).

⁶ Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 594, 106 S. Ct. 1348, 1360, 89 L.Ed.2d 538 (1986) (citations omitted) (alteration in original); *see also* Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 337-38, 341, 110 S. Ct. 1884, 1890-91, 1893, 109 L.Ed.2d 333 (1990) (cutting prices to get more business is the essence of competition; hence a competitor injured by low but non-predatory price competition suffers no antitrust injury); Cargill, Inc., 479 U.S. at 117-18 (predatory pricing "is a practice that harms both competitors and competition. In contrast to price cutting aimed simply at increasing market share, predatory pricing has as its aim the elimination of competition. Predatory pricing is thus a practice 'inimical to the purposes of [the antitrust] laws, and one capable of inflicting antitrust injury.'") (citation omitted).

⁷ *See, e.g.*, R.W. Int'l Corp. v. Welch Food, Inc., 13 F.3d 478, 488 (1st Cir. 1994) (nonpredatory, aggressive price competition not unlawful); Tri-State Rubbish, Inc. v. Waste Mgmt., Inc., 998 F.2d 1073, 1080 (1st Cir. 1993) ("A company that rationally prices its own product or service at or above its own costs does not violate the Sherman Act merely because its costs, and thus its prices, are lower than a rival's costs . . .") (footnote omitted); American Academic Suppliers, Inc. v. Beckley-Cardy, Inc., 922 F.2d 1317 (7th Cir. 1991) ("Consumers like lower prices. The plaintiff must therefore show that the defendant's lower prices today presage higher, monopolistic prices tomorrow.")

⁸ 509 U.S. 209 (1993).

First, a plaintiff seeking to establish competitive injury resulting from a rival's low prices must prove that the prices complained of are below an appropriate measure of its rival's costs.⁹

....

The second prerequisite to holding a competitor liable under the antitrust laws for charging low prices is a demonstration that the competitor had a . . . dangerous probability, of recouping its investment in below-cost prices. . . . Recoupment is the ultimate object of an unlawful predatory pricing scheme; it is the means by which a predator profits from predation. Without it, predatory pricing produces lower aggregate prices in the market, and consumer welfare is enhanced. Although unsuccessful predatory pricing may encourage some inefficient substitution toward the product being sold at less than its cost, unsuccessful predation is in general a boon to consumers.¹⁰

The Legislature has provided that the provisions of the Idaho Competition Act "shall be construed in harmony with federal judicial interpretation of comparable federal antitrust statutes." Idaho Code § 48-102(3). Thus, the rules laid down by the United States Supreme Court regarding predatory pricing under federal antitrust law would be followed by Idaho courts in applying Idaho's Competition Act. The bottom line, then, is that Idaho's Competition Act presently addresses below cost sales to the extent that such sales are deemed predatory, as set forth above.¹¹

III. DECEPTIVE ADVERTISING

The Unfair Sales Act also prohibits deceptive advertising.¹² The basis for such a provision is readily apparent. The market place works best when truthful information is communicated to consumers. With accurate information, consumers are best equipped to choose the product that best fits their needs. If the consumer is given false, deceptive, or misleading information, this prevents them from making an informed choice. Such a result harms the market place, consumers, and businesses. Thus, a provision like the Act's prohibition of deceptive advertising is important. Even if the Act is repealed, however, there is other Idaho law that prohibits deceptive advertising.

The Idaho Consumer Protection Act was enacted with the purpose of deterring deceptive or unfair trade practices.¹³ Under the Idaho Consumer Protection Act, an act or practice is unfair and deceptive if it is shown "to possess a tendency or capacity to deceive consumers."¹⁴

⁹ *Id.* at 222.

¹⁰ *Id.* at 224.

¹¹ Separate sections of the Competition Act provide a variety of remedies for conduct in violation of the Act's provisions, including civil penalties, damages, injunctive relief, attorney fees and costs and a private cause of action. See Idaho Code §§ 48-108 and 48-112, and 48-113.

¹² Idaho Code § 48-412.

¹³ Idaho Code § 48-601.

¹⁴ *State ex rel. Kidwell v. Master Distribs. Inc.*, 101 Idaho 447, 453, 615 P.2d 116, 122 (1980).

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The Consumer Protection Act sets forth a number of acts or practices that are declared false, deceptive and misleading.¹⁵ Included therein are a number of provisions addressing deceptive representations regarding the advertising or promotion of a product. Subsection 48-603(17) is a "catch-all" provision that prohibits "any act or practice which is otherwise misleading, false, or deceptive to the consumer." The provision is broad in scope and reach.

The provisions of the Consumer Protection Act are enforced by the Attorney General.¹⁶ Furthermore, Idaho Code § 48-608 of the Consumer Protection Act provides for a private cause of action. Thus, in summary, even if the Unfair Sales Act were repealed, remaining Idaho law would still be in place that prohibits deceptive advertising. Attorney General enforcement for deceptive advertising would still be available and a remedy for violations thereof still provided private parties hurt by the deceptive advertising.¹⁷

Thank you for contacting the Attorney General's Office. If you have any further questions or concerns that you would like to discuss, please do not hesitate to contact me at 334-4114.

Sincerely,



BRETT T. DeLANGE
Deputy Attorney General
Consumer Protection Division

¹⁵ See Idaho Code § 48-603.

¹⁶ See Idaho Code § 48-606.

¹⁷ Remedies under the Consumer Protection Act, like the Competition Act, are broad and include provisions for civil penalties, restitution, damages, injunctive relief, attorney fees and costs. See Idaho Code §§ 48-606 and 48-607, and 48-608.

History.

I.C., § 47-1805, as added by 2002, ch. 153, § 1, p. 448.

STATUTORY NOTES

Cross References.

Department of lands, § 58-101 et seq.
State board of land commissioners, Idaho Const., Art IX, § 7, and § 58-101 et seq.

Effective Dates.

Section 2 of S.L. 2002, ch. 153 declared emergency. Approved March 20, 2002.

TITLE 48

MONOPOLIES AND TRADE PRACTICES

CHAPTER.

- 1. IDAHO COMPETITION ACT, §§ 48-101 — 48-119.
- 2. ANTI-PRICE DISCRIMINATION ACT, §§ 48-201 — 48-206.
- 3. FAIR TRADE ACT. [REPEALED.]
- 4. UNFAIR SALES ACT, §§ 48-401 — 48-413.
- 5. REGISTRATION AND PROTECTION OF TRADEMARKS, §§ 48-501 — 48-518.
- 6. CONSUMER PROTECTION ACT, §§ 48-601 — 48-619.
- 7. SHOPLIFTING, §§ 48-701 — 48-705.
- 8. IDAHO TRADE SECRETS ACT, §§ 48-801 — 48-807.
- 9. NEW MOTOR VEHICLE WARRANTIES — MANUFACTURER'S DUTY TO REPAIR, REFUND OR REPLACE, §§ 48-901 — 48-913.

CHAPTER.

- 10. IDAHO TELEPHONE SOLICITATION ACT, §§ 48-1001 — 48-1010.
- 11. IDAHO PAY-PER-TELEPHONE CALL ACT, §§ 48-1101 — 48-1108.
- 12. IDAHO CHARITABLE SOLICITATION ACT, §§ 48-1201 — 48-1206.
- 13. MUSIC LICENSING AND COPYRIGHT ENFORCEMENT ACT, §§ 48-1301 — 48-1308.
- 14. ASSISTIVE TECHNOLOGY WARRANTY ACT, §§ 48-1401 — 48-1407.
- 15. IDAHO NONPROFIT HOSPITAL SALE OR CONVERSION ACT, §§ 48-1501 — 48-1512.
- 16. HEALTH-RELATED CASH DISCOUNT CARDS, §§ 48-1601 — 48-1603.
- 17. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT, §§ 48-1701 — 48-1708.

CHAPTER 1

IDAHO COMPETITION ACT

SECTION.

- 48-101. Short title.
- 48-102. Legislative findings, purpose, interpretation and scope of chapter.
- 48-103. Definitions.
- 48-104. Unreasonable restraint of trade or commerce.
- 48-105. Monopolies.
- 48-106. Acquisitions that substantially lessen competition.
- 48-107. Exempt activities.
- 48-108. Civil actions and settlements by the attorney general.
- 48-109. Civil investigations.
- 48-110. Failure to obey civil investigative demand or subpoena.

SECTION.

- 48-111. Violation of court orders and consent decrees — Penalties.
- 48-112. Additional relief of district court authorized.
- 48-113. Private causes of action.
- 48-114. Awards to the attorney general — Use of moneys.
- 48-115. Statute of limitations.
- 48-116. Action not barred because it affects interstate or foreign commerce.
- 48-117. Service of notice.
- 48-118. Venue.
- 48-119. Purpose of extension to distributors of publications. [Repealed.]

48-101. Short title. — This act shall be known and may be cited as the Idaho Competition Act.”

History.

I.C., § 48-101, as added by 2000, ch. 148, § 1, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-101, which comprised 1911, C.L. 215, § 1, p. 688; reen. C.L. 107:1; C.S., § 2531; I.C.A., § 47-101, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Compiler's Notes.

The term “this act” refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

Tab 3

JUDICIAL DECISIONS

Retroactivity.

Retroactive application of a statute is not allowed unless there is clear legislative intent to that effect; the language of the Idaho Competition Act indicates that it does not apply

retroactively to permit the recovery of damages based upon conduct that occurred before its effective date. *State v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.
 Attorney fees.
 Concerted action.
 Conspiracy.
 Construction of federal antitrust act.
 Contract illegal under federal law.
 Deceptive use of names.
 Elements.
 —Control of market.
 —Intent.
 Exclusive agency contracts.
 Fair market value.
 Geographical terms.
 Illegal practices.
 In general.
 Insufficient evidence.
 Labor combinations.
 Municipal corporations.
 Necessary allegations.
 Per se violation.
 Proof of damages.
 Sale of services.
 Sales below cost.
 Sufficiency of complaint.
 Sufficient to convict.
 Unfair competition.

Application.

This section addresses only conspiracies or other combinations in restraint of trade. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Because this section specifically addresses the subject of attorney fees in cases brought under the antitrust law, it was more specific than § 12-120(3), and was controlling in an action arising from a reimbursement agreement regarding sale of prescription drugs to health insurer's subscribers. *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 918 P.2d 595 (1996).

Attorney Fees.

The peculiar nature of a legal malpractice action requires the action to proceed as a suit within a suit; therefore, an award of attorney fees pursuant to the underlying antitrust action constitutes a part of the measure of damages in the malpractice case and must be submitted as part of the proof of damages under the antitrust claim; it is not sufficient to file a post-trial affidavit of costs and fees

under Idaho R. Civ. P. 54(d). *Fitzgerald v. Walker*, 121 Idaho 589, 826 P.2d 1301 (1992).

Concerted Action.

Concerted action is not necessary to have a violation of this section. *Twin Falls Farm & City Dist., Inc. v. D & B Supply Co., Inc.*, 96 Idaho 351, 528 P.2d 1286 (1974).

Conspiracy.

Employer and his employees were held not guilty of conspiracy to drive competitor out of business, since acts of employees were, in effect, acts of employer. *Udelavitz v. Idaho Junk House*, 46 Idaho 441, 268 P. 15 (1928).

An internal division of a corporation is incapable of conspiring with that corporation, since they are one and the same, and the plurality of actors required for conspiracy is absent. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Since a conspiracy requires the agreement of at least two individuals, a finding of conspiracy against one defendant cannot be upheld where the other alleged conspirators are

tried and absolved of participation in the same proceeding. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Power supplier's antitrust claims failed because a conspiracy among power company, its officers, directors, and agents did not provide the predicate for a successful antitrust claim under the statutes of Idaho. *Afton Energy, Inc. v. Idaho Power Co.*, 122 Idaho 333, 834 P.2d 850 (1992).

The federal courts have placed a "gloss" on the contract element of the federal statute requiring also that there be a "unity of purpose" between the contracting parties to violate the antitrust laws. This element is also a requirement of this section. *K. Hefner, Inc. v. Caremark, Inc.*, 128 Idaho 726, 918 P.2d 595 (1996).

Construction of Federal Antitrust Act.

A federal district court was not required, in determining whether the Idaho statute applied to municipal corporations, to follow construction given to the federal antitrust act by the United States supreme court, on the ground that the state legislature, in enacting the statute, intended to adopt the construction previously given the federal act by the United States supreme court. *Wilcox v. City of Idaho Falls*, 23 F. Supp. 626 (D. Idaho 1938).

Contract Illegal under Federal Law.

Contract concerning exhibition of motion picture films, which was illegal under Sherman Antitrust Act, 15 U.S.C.S. § 1 et seq., could not be enforced in action for damages. *Fox Film Corp. v. Tri-State Theatres*, 51 Idaho 439, 6 P.2d 135 (1931).

Deceptive Use of Names.

Where a complaint alleged that the use of the name "United American Benefit Association, Inc." by the defendant was deceptively similar to the name "American Home Benefit Association, Inc." used by the plaintiff, and alleged that the general public was misled and deceived, and that much embarrassment and inconvenience had been suffered by the plaintiff as a result of the similarity of the names, the complaint was not demurrable on the ground that the plaintiff could not claim exclusive right to the use of the word "American" for the reason that it was broadly geographical. *American Home Benefit Ass'n v. United Am. Benefit Ass'n*, 63 Idaho 754, 125 P.2d 1010 (1942).

The specific intent and dangerous probability requirements of attempted monopolization are fulfilled when it is shown that (1) an entity possesses monopoly power, (2) that monopoly power has been employed so that an actual restraint on trade has been accomplished, and (3) the restraint has been obtained in an additional market within the distribution chain of the relevant product.

Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Elements.

The basic elements necessary to prove a charge of attempted monopoly under the act are: (1) a specific intent by the defendant to monopolize, and (2) overt acts by the defendant which create a dangerous probability that the intended monopoly will be accomplished. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

The specific intent and dangerous probability requirements of attempted monopoly are fulfilled when it is shown that an entity possesses monopoly power, (1) that monopoly power has been employed to obtain an actual restraint on trade has been obtained in an additional market within the distribution chain of the relevant product. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

There are three essential elements in a private antitrust action: (1) a violation of antitrust law, (2) direct injury to the plaintiff from such violations, and (3) damages sustained by the plaintiff. Therefore, a violation by itself does not result in a claim for damages. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Injury arising out of a defendant's violation is an element of proof in an action for civil liability under this section, since to a person's business is essential to the success of the business. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

—Control of Market.

There is no set degree of market power which must be possessed by a defendant to be dangerous to achieving a monopoly. Rather, in determining whether there is a dangerous probability that a monopoly will be achieved, the extent of market power must be evaluated in conjunction with prevailing market conditions, as well as the business performance of the defendant. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

Where even liberally construing the defendant could have had not more than a certain percentage of the insulation market, and of the highly competitive nature of the market, the claim of attempted monopoly was not sustained. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

—Intent.

Generally, since there is rarely any direct evidence of specific intent to monopolize, the existence of specific intent to monopolize may be inferred from anticompetitive conduct of the defendant.

Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

A finding that a defendant has engaged in a particular predatory or illegal act, such as selling below cost, is not the equivalent of finding specific intent, but is merely a basis from which such intent may be inferred; and isolated or occasional instances of selling below cost, while predatory or illegal in nature, do not necessarily indicate a specific intent to monopolize. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

The existence of specific intent to monopolize must be determined by weighing all of the circumstances in the particular case, including the nature of the conduct, its consistency and duration, the conditions of the market, and characteristics of the defendant. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Exclusive Agency Contracts.

Contract creating an exclusive agency for the sale on commission of a given commodity in a specific territory and binding the agent not to sell the goods of any other manufacturer was not in violation of antitrust law. Independent Gas & Oil Co. v. T.B. Smith Co., 51 Idaho 710, 10 P.2d 317 (1932).

Fair Market Value.

Market value has been defined as the price that a reasonably prudent purchaser would pay for the relevant product under the market conditions prevailing at the period of time in question and fair market value may be less than cost. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Geographical Terms.

Geographical terms and words descriptive of character, quality, or places of manufacture or of sale of articles can not be monopolized as trade-marks. American Home Benefit Ass'n v. United Am. Benefit Ass'n, 63 Idaho 754, 125 P.2d 1010 (1942).

Illegal Practices.

Neither buying in volume nor selling back at a profit is of itself illegal or inherently predatory. Such practices may become illegal or predatory only when used as methods of achieving a corner on a market, i.e., obtaining extensive control over the supply of a product so that the product's price might be artificially set in a manner most profitable to the controlling party, and a determination that such control or pending control exists cannot be made without reference to both the quantity of supply of the particular product and the defendant's share of control over that supply. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

In General.

This chapter is patterned after the federal Sherman Antitrust Act, 15 U.S.C.S. § 1 et

seq.; while federal decisions are not binding in interpreting and applying these sections; they do offer persuasive guidance. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Insufficient Evidence.

Where the plaintiff makers of promissory notes to the defendant oil company failed to prove by a preponderance of the evidence that the agreement between the parties, whereby the makers of the notes would provide their land to build a gas station and sell the oil company's gasoline products, was an illegal tying arrangement or that the agreement substantially lessened competition or tended to create a monopoly in favor of the oil company, the Idaho Antitrust Law and the Idaho Anti-Price Discrimination Act were not applicable. Pollard Oil Co. v. Christensen, 103 Idaho 110, 645 P.2d 344 (1982).

Labor Combinations.

Labor is not commodity or article of commerce within purview of statutes. Robison v. Hotel & Restaurant Employees Local No. 782, 35 Idaho 418, 207 P. 132 (1922).

Lawful strike is not prevented by this section. Robison v. Hotel & Restaurant Employees Local No. 782, 35 Idaho 418, 207 P. 132 (1922).

This section raised no justiciable issue of state law when applied to action by independent contractors against labor organization for damages and injunctive relief from picketing. Simpkins v. Southwestern Idaho Painters Dist. Council No. 57, 95 Idaho 165, 505 P.2d 313 (1973).

Municipal Corporations.

Municipal corporations are not amenable to this chapter. Wilcox v. City of Idaho Falls, 23 F. Supp. 626 (D. Idaho 1938); Denman v. City of Idaho Falls, 51 Idaho 118, 4 P.2d 861 (1931).

The Idaho Antitrust Law does not apply to municipal corporations, and hence a holder of notes and bonds of a gas company, whose business was allegedly ruined by the fact that the city operated a hydro-electric plant and monopolized the gas company's business, could not maintain an action against the city for damages resulting to the holder from the city's acts. Wilcox v. City of Idaho Falls, 23 F. Supp. 626 (D. Idaho 1938). See however, Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390, 27 S. Ct. 65, 51 L. Ed. 241 (1906).

Necessary Allegations.

In an action under the antitrust laws of Idaho, it was necessary that plaintiff not only allege sufficient facts to show a violation of the law by the defendant, but it must also appear that, by such violation of the law,

plaintiff had been injured in his business or property. Hurt v. Brandt, 37 Idaho 186, 215 P. 842 (1923).

Per se Violation.

Because agreements between health insurers and pharmacies to allegedly sell prescription drugs "below cost" did not attempt to fix prices to be charged in transactions with third parties, there was no per se illegal vertical combination. K. Hefner, Inc. v. Caremark, Inc., 128 Idaho 726, 918 P.2d 595 (1996).

Proof of Damages.

To meet the minimum requirement of proof in market exclusion cases in which lost profits are sought, the plaintiff must normally produce evidence falling into one of the following categories: (1) comparison of plaintiff's performance before and after the wrongful conduct under otherwise similar conditions, (2) comparison of performance of plaintiff's business, with comparable business in an unrestrained market otherwise comparable to plaintiff's market or (3) loss of specific business or customers. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

In an antitrust case, there was no justification for a trial court's determination that the gross revenues of the defendant company and subsidiary provided a reasonable foundation for calculating the lost profits of plaintiffs, as such a method of figuring damages assumed, without any support in the record, that the defendant's operation would not have won any portion of the market absent antitrust violations, and that the plaintiffs had the capacity to assimilate all of the business which defendant performed, and that plaintiffs would have won that business over other insulators who chose not to participate in the action. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

The factfinder may not determine damages by mere speculation and guesswork, and there must be a reasonable foundation established by the evidence from which the factfinder can calculate the amount of damages. It will be enough if the evidence shows the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Sale of Services.

Language of this section which prohibits the selling of "any article or product at less than its fair market value, or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions" plainly applies only to the sale of an "article or product"; the sale of services is not included. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Sales Below Cost.

This section does not speak in terms of prohibiting sales below cost. The phrase "below cost" in the world of economics is, without further definition, an imprecise term, not always indicative of anticompetitive conduct. Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

While "selling at a loss" might be one factor for a court to consider in determining whether or not specific intent exists to drive a competitor out of business, without additional proof and findings of fact, "selling at a loss" does not constitute a violation of the prohibition against the selling of "any article or product at less than its fair market value . . ." Pope v. Intermountain Gas Co., 103 Idaho 217, 646 P.2d 988 (1982).

Sufficiency of Complaint.

It was necessary that plaintiff allege not only sufficient facts to show violation of law by defendant, but it must also appear that, by reason of such violation of law, plaintiff had been injured in his business or property. Hurt v. Brandt, 37 Idaho 186, 215 P. 842 (1923).

Petition in action for threefold damages need not state facts showing right of action with all fullness and particularity required of indictment, but sufficiency of petition must be tested by local practice obtaining in civil actions. Hurt v. Brandt, 37 Idaho 186, 215 P. 842 (1923).

Sufficient to Convict.

Defendant, and the corporation for which he worked, violated this section when he tore down a sign placed in an adjoining building by plaintiff to notify its customers that it had moved. Twin Falls Farm & City Dist., Inc. v. D & B Supply Co., Inc., 96 Idaho 351, 528 P.2d 1286 (1974).

Unfair Competition.

One is not guilty of unfair competition unless, with the direct purpose of destroying his competitor's business, he forces prices lower than he can honestly believe will yield a profit when he shall have eventually disposed of the commodities purchased. Udelavitz v. Idaho Junk House, 46 Idaho 441, 268 P. 15 (1928).

In order to make out a case of "unfair competition," it was not necessary to show that any person had been actually deceived by defendant's conduct and led to purchase his goods in the belief that they were the goods of the plaintiff, or to deal with the defendant thinking that he was dealing with the plaintiff, and it was sufficient to show that such deception would be the natural and probable result of defendant's acts. American Home Benefit Ass'n v. United Am. Benefit Ass'n, 63 Idaho 754, 125 P.2d 1010 (1942).

The sale of goods of one manufacturer or vendor as those of another was "unfair com-

petition" and constituted a "fraud" which a court of equity could lawfully prevent by injunction. *American Home Benefit Ass'n v. United Am. Benefit Ass'n*, 63 Idaho 754, 125 P.2d 1010 (1942).

RESEARCH REFERENCES

Am. Jur. — 54 *Am. Jur. 2d*, Monopolies, Restraints of Trade, and Unfair Trade Practices, § 668 et seq.

54A *Am. Jur. 2d*, Monopolies, Restraints of Trade, and Unfair Trade Practices, §§ 776, 1012 et seq.

C.J.S. — 58 *C.J.S.*, Monopolies, § 1 et seq.

A.L.R. — Right of corporation to indemnity for civil or criminal liability incurred by em-

ployee's violation of antitrust laws. 37 *A.L.R.3d* 1355.

Enforceability, insofar as restrictions would be reasonable, of contract containing unreasonable restrictions on competition. 61 *A.L.R.3d* 397.

Right of retail buyer of price-fixed product to sue manufacturer on state antitrust claim. 35 *A.L.R.6th* 245.

48-102. Legislative findings, purpose, interpretation and scope of chapter. — (1) The Idaho legislature finds that fair competition is fundamental to the free market system. The unrestrained interaction of competitive forces will yield the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic and social institutions.

(2) The purpose of this chapter is to maintain and promote economic competition in Idaho commerce, to provide the benefits of that competition to consumers and businesses in the state, and to establish efficient and economical procedures to accomplish these purposes and policies.

(3) The provisions of this chapter shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes and consistent with this chapter's purposes, as set forth in subsection (2) of this section.

(4) This chapter applies to conduct proscribed herein that affects Idaho commerce.

History.

I.C., § 48-102, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-102, which comprised 1911, ch. 215, § 2, p. 689; reen. C.L. 107:2; C.S., § 2532; I.C.A., § 47-102, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-103. Definitions. — As used in this act:

(1) "Idaho commerce" means any economic activity occurring wholly or partly within the state of Idaho, or which affects economic activity within the state of Idaho.

(2) "Person" means any natural person, corporation, partnership, trust, association, or any other legal or commercial entity.

History.

I.C., § 48-103, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-103, which comprised 1911, ch. 215, § 3, p. 688; reen. C.L. 107:3; C.S., § 2533; I.C.A., § 47-103, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Compiler's Notes.

The term "this act" in the introductory paragraph refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

48-104. Unreasonable restraint of trade or commerce. — A contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce is unlawful.

History.

I.C., § 48-104, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-104, which comprised 1911, ch. 215, § 4, p. 688; reen. C.L. 107:4; C.S.,

§ 2534; I.C.A., § 47-104, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

JUDICIAL DECISIONS

ANALYSIS

Bid rigging.

Purpose.

Bid Rigging.

Because an agreement not to bid at a sale of county-owned land at public auction constituted illegal bid rigging under this section and § 1 of the Sherman Act, 15 U.S.C.S. § 1, the agreement was unenforceable, and a jury's award of damages for breach of the agreement was overturned. *Pines Grazing Ass'n v. Flying Joseph Ranch, LLC*, 151 Idaho 924, 265 P.3d 1136 (2011).

Purpose.

This section requires a claimant to show a

purpose to drive another out of business, reflecting the notion that unfair competition laws were enacted to protect competition, not competitors. This section strikes the balance between free competition and fair competition by offering relief only where a company can show a competitor's intent to drive the company out of business, rather than simply an intent to compete. *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 243 P.3d 1069 (2010).

48-105. Monopolies. — It is unlawful to monopolize, attempt to monopolize, or combine or conspire to monopolize any line of Idaho commerce.

History.

I.C., § 48-105, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-105, which comprised 1911, ch. 215, § 5, p. 688; reen. C.L. 107:5; C.S.,

§ 2535; I.C.A., § 47-105, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-106. Acquisitions that substantially lessen competition. — (a) It is unlawful for a person to acquire, directly or indirectly, the whole or

any part of the stock, share capital, or other equity interest or the whole or any part of the assets of, another person engaged in Idaho commerce, where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly of any line of Idaho commerce.

(2) This section shall not apply to persons purchasing the stock or other equity interest of another person solely for investment and not using those assets by voting or otherwise to bring about, or attempt to bring about, the substantial lessening of competition. Nothing contained in this section shall prevent a person engaged in Idaho commerce from causing the formation of subsidiary corporations or other business organizations, or from owning and holding all or a part of the stock or equity interest of such subsidiary corporations or other business organizations.

History.

I.C., § 48-106, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-106, which comprised 1911, ch. 215, § 6, p. 688; reen. C.L. 107:6; C.S., § 2536; I.C.A., § 47-106, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-107. Exempt activities. — (1) No provision of this chapter shall be construed to prohibit:

- (a) Activities that are exempt from the operation of the federal antitrust laws.
- (b) Activities required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.
- (c) Activities of a municipality or its officers or employees acting in an official capacity, to the extent that those activities are authorized or directed by state law.
- (d) The existence of, or membership in, organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit; nor shall the provisions of this act forbid or restrain individual members of such organizations from lawfully carrying out legitimate objectives of the organization.
- (e) Activities of any labor organization, individual members of the labor organization, or group of labor organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed predominantly to labor objectives which are permitted under the laws of this state or of the United States.

(2) Persons engaged in the production of agricultural products may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing the products of these persons, to the extent permitted under the laws of this state or of the United States. These associations may have marketing agencies in common and such associations and their members may make the

necessary contracts and agreements to effect such purposes. However, such associations must conform to the requirements of chapter 26, title 22, Idaho Code, or alternatively satisfy the following requirements:

- (a) Operate for the mutual benefit of the members thereof, as producers;
- (b) Not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members; and
- (c) Conform to one (1) or both of the following:
 - (i) That no member of the association is allowed more than one (1) vote because of the amount of stock or membership capital he may own therein; or
 - (ii) That the association does not pay dividends on stock or membership capital in excess of eight percent (8%) per annum.

History.

I.C., § 48-107, as added by 2000, ch. 148, § 3, p. 377; am. 2011, ch. 244, § 1, p. 656.

STATUTORY NOTES

Prior Laws.

Former § 48-107, which comprised 1911, ch. 215, § 7, p. 688; reen. C.L. 107:7; C.S., § 2537; I.C.A., § 47-107, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Amendments.

The 2011 amendment, by ch. 244, added "or alternatively satisfy the following requirements" at the end of the introductory paragraph in subsection (2) and added paragraphs (2)(a) through (2)(c).

Compiler's Notes.

The term "this act" in paragraph (1)(d) refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

Effective Dates.

Section 2 of S.L. 2011, ch. 244 declared an emergency retroactively to July 1, 2000. Approved April 7, 2011.

JUDICIAL DECISIONS

Applicability.

In regulating the collection of solid waste within its city limits, a municipality is exercising its police power function under Idaho Const., Art. XII, § 2, and, under paragraph (1)(c) of this section, it is afforded a statutory

exemption from the Idaho competition act; since § 50-344 does not conflict with granting exclusive solid waste collection franchises, this exercise is valid. *Plummer v. City of Fruitland*, 139 Idaho 810, 87 P.3d 297 (2004).

48-108. Civil actions and settlements by the attorney general. —

- (1) Whenever the attorney general has reason to believe that any person is engaging, has engaged, or is about to engage in any act or practice declared unlawful by this chapter, the attorney general may bring an action in the name of the state against that person:
 - (a) To obtain a declaratory judgment that the act or practice violates the provisions of this chapter;
 - (b) To enjoin any act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice;
 - (c) To recover on behalf of the state and its agencies actual damages or restitution;

(d) To recover civil penalties of up to fifty thousand dollars (\$50,000) per violation of section 48-104 or 48-105, Idaho Code, or any injunction, judgment or consent order issued or entered into pursuant to this chapter and reasonable expenses, investigative costs and attorney's fees; and

(e) To obtain an order requiring divestiture of any assets:

- (i) Acquired in violation of section 48-106, Idaho Code, to the extent determined necessary by the district court to avoid the creation of a monopoly or any likely substantial lessening of competition resulting from such transaction found violative of section 48-106, Idaho Code; or
- (ii) To restore competition in any line of Idaho commerce which has been eliminated by a violation of section 48-105, Idaho Code.

(2) The attorney general also may bring a civil action in the name of the state, as *parens patriae* on behalf of persons residing in this state, to secure monetary relief as provided under this chapter for injury directly or indirectly sustained by those persons because of any violation of section 48-104 or 48-105, Idaho Code, in accordance with the following provisions:

(a) The district court shall award the attorney general as monetary relief the total damages sustained for violations of section 48-104 or 48-105, Idaho Code, and the cost of suit, including a reasonable attorney's fee. The court shall increase any damage recovery to an amount not in excess of three (3) times the damages sustained if the court finds that the violation at issue constituted a *per se* violation of section 48-104, Idaho Code, or an intentional violation of section 48-105, Idaho Code. The court shall exclude from the amount of monetary relief awarded in such action any amount which duplicates amounts which have been awarded for the same injury already or which are allocable to persons who have excluded their claims pursuant to subsection (2)(c) of this section.

(b) In any action brought under this section, the attorney general shall, at such times, in such manner, and with such content as the district court may direct, cause notice of the *parens patriae* action to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person, the court shall direct the attorney general to give such notice as may be required by due process of law.

(c) Any person on whose behalf an action is brought under this section may elect to exclude from such adjudication the portion of the attorney general's claim for monetary relief attributable to him by filing notice of such election with the court within the time period specified in the notice of such action given to the persons to be benefited by the action. Any person failing to give such notice shall be barred during the pendency of such action from commencing an action in his or her own name for the injury alleged in such action and the final judgment in such action shall be *res judicata* as to any claim which could be brought by such person under this act based on the facts alleged or proven in such action.

(d) All damages shall be distributed in such a manner that will afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(3) In lieu of instigating or continuing an action or proceeding, or to conclude an investigation commenced or contemplated under section 48-

109, Idaho Code, the attorney general may accept a consent decree with respect to any act or practice alleged to be a violation of this chapter. A consent decree may include a stipulation for the payment of civil penalties, the attorney general's reasonable expenses, investigative costs and attorney's fees, an agreement to pay damages or to allow for restitution of property or other things received in connection with a violation of this chapter, and agreed to injunctive provisions. Before any consent decree entered into pursuant to this section is effective, it must be approved by the district court and an entry made in the district court in the manner required for making an entry of judgment. If the consent decree submitted to the court is to settle an action brought under subsection (2) of this section, no part of the proposed settlement shall be given in such manner as the court directs. Once court approval is received, any breach of the conditions of a consent decree shall be treated as a violation of a court order, and shall be subject to all penalties provided by law for violation of court order, including the penalties set forth in section 48-111, Idaho Code.

(4) The attorney general may proceed under any antitrust laws in federal courts on behalf of this state or any of its political subdivisions or agencies.

History.

I.C., § 48-108, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Gross References.

Attorney general, § 67-1401 et seq.

§ 2538; I.C.A., § 47-108, was repealed by 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-108, which comprised 1911, ch. 215, § 8, p. 688; reen. C.L. 107:8; C.S.,

Compiler's Notes.

The term "this act" in paragraph (2)(c) refers to S.L. 2000, ch. 148, which is compiled in §§ 18-7803 and 48-101 to 48-118.

48-109. Civil investigations. — (1) Whenever the attorney general has reason to believe that a person is engaging or has engaged in any act or practice declared unlawful by this chapter, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon any person who is believed to have information, documentary material, physical evidence relevant to a civil investigation, a written civil investigative demand requiring that person to appear and give oral testimony, unsworn oath, concerning documentary material or information, or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as may be stated in the investigative demand, and to furnish any combination thereof, concerning the conduct of any Idaho person in commerce that is the subject matter of the investigation. The return date of a civil investigative demand shall be not less than thirty (30) days after the date of service of the demand.

(2) To accomplish the objectives and to carry out the duties prescribed in this chapter, the attorney general may also issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry.

(3)(a) The scope of any civil investigative demand or subpoena shall

consistent with the scope of discovery as provided for by rule 26(b)(1) of the Idaho rules of civil procedure.

(b) Any person who is not the subject of investigation shall be reimbursed the reasonable expenses of complying with a civil investigative demand or subpoena.

(4) At any time before the return date specified in a civil investigative demand, or within thirty (30) days after the demand has been served, whichever period is later, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business or in the district court in Ada county.

(5) Any person who in good faith complies with a subpoena or investigative demand issued under this section shall be immune from criminal or civil liability for such compliance, so long as such person has complied with any express contractual obligation to notify a third party of the civil investigative demand or subpoena.

(6) Except as provided in subsection (7) of this section, any procedure, testimony taken, or material produced under this section shall be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation unless confidentiality is waived by the person whose testimony is disclosed, or waived by the person who produced to the attorney general or his designee the material being disclosed, or the disclosure is authorized by court order.

(7) The attorney general or his designee may disclose the testimony or material to a person who has a need to know such information and is employed by this state, the United States, or any other state, if, before disclosure, the receiving official agrees in writing to comply with the confidentiality provisions of this section and the attorney general or his designee has determined prior to making such disclosure that disclosure to the receiving person is reasonably necessary to permit proper enforcement of the antitrust laws of the United States or any state.

(8) The attorney general or his designee may exclude from the place of any examination under this section any person, except the person being examined and that person's counsel.

History.

I.C., § 48-109, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 48-109, which comprised 1911,

ch. 215, § 9, p. 688; reen. C.L. 107:9, C.S. § 2539; I.C.A., § 47-109, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-110. Failure to obey civil investigative demand or subpoena

— (1) If any person fails or refuses to obey any subpoena or civil investigative demand issued by the attorney general, the attorney general may, after notice, apply to the district court and, after a hearing, request an order

ordering the person to comply with the subpoena or civil investigative demand issued by the attorney general.

(2) The court shall award the prevailing party reasonable expenses and attorney's fees incurred in obtaining or resisting an order under this section if the court finds that the attorney general's request for an order under this section or a person's resistance to obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Disobedience of any order entered under the provisions of this section shall be treated as a violation of a court order, and subject the offending person to all penalties provided by law for violations of court orders, including the payment of civil penalties of not more than ten thousand dollars (\$10,000).

History.

I.C., § 48-110, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 48-110, which comprised 1911,

ch. 215, § 10, p. 688; compiled and reen. C.L. 107:10; C.S., § 2540; I.C.A., § 47-110, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-111. Violation of court orders and consent decrees — Penalties. — Any person who violates the terms of a consent order entered into pursuant to section 48-108, Idaho Code, or any other judgment or final order entered into under the provisions of this chapter, shall forfeit and pay a civil penalty of not more than fifty thousand dollars (\$50,000) for each violation, the amount of the penalty to be determined by the district court issuing the judgment or order, or approving the consent decree.

History.

I.C., § 48-111, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Prior Laws.

Former § 48-111, which comprised 1911, ch. 215, § 11, p. 688; reen. C.L. 107:11; C.S.,

§ 2541; I.C.A., § 47-111, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-112. Additional relief of district court authorized. — When the state prevails in any action brought under section 48-108, Idaho Code, the court shall award reasonable costs and attorney's fees to the attorney general. In addition, the court may:

- (1) Make orders or judgments as necessary to prevent the use or employment by a person of any act or practice declared unlawful by this act;
- (2) Make orders or judgments as necessary to compensate persons for damages sustained or to provide for restitution to persons of money, property or other things received from persons in connection with a violation of this chapter;

(3) Appoint a receiver to oversee assets or order sequestration of assets whenever it appears that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this section and assess the expenses of a master receiver or escrow agent against the defendant; and

(4) Grant other appropriate relief.

History.

I.C., § 48-112, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

§ 2542; I.C.A., § 47-112, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-112, which comprised 1911, ch. 215, § 12, p. 688; reen. C.L. 107:12; C.S.,

Compiler's Notes.

The term "this act" at the end of subsection (1) refers to S.L. 2000, ch. 148, which is compiled as §§ 18-7803 and 48-101 to 48-118.

48-113. Private causes of action. — (1) Any person injured directly or threatened with direct injury by reason of anything prohibited by this chapter, may bring an action for injunctive relief, damages, and, as determined by the court, reasonable costs and attorney's fees. The court shall exclude from the amount of monetary relief awarded to a plaintiff under this section any amount which duplicates amounts allocable to any other actual or potential plaintiff including, without limitation, potential claims by the attorney general on behalf of indirect purchasers for the same conduct of injury.

(2) If the district court finds that the violation at issue constituted a per se violation of section 48-104, Idaho Code, or an intentional violation of section 48-105, Idaho Code, it shall increase the recovery to an amount not in excess of three (3) times the damages sustained.

History.

I.C., § 48-113, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

ch. 215, § 13, p. 688; reen. C.L. 107:13; C.S., § 2543; I.C.A., § 47-113, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-113, which comprised 1911,

RESEARCH REFERENCES

A.L.R. — Right of retail buyer of price-fixed product to sue manufacturer on state anti-trust claim. 35 A.L.R.6th 245.

48-114. Awards to the attorney general — Use of moneys. — All costs and fees recovered by the attorney general under the terms of this

chapter shall be remitted to the consumer protection account [consumer protection fund]. Such costs and fees deposited into the consumer protection account [consumer protection fund] under this chapter shall be treated as interaccount receipts and may be expended pursuant to interaccount appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. All penalties recovered under section 48-108(1)(d), 48-110 or 48-111, Idaho Code, or actual damages or restitution recovered under section 48-108(1)(c), Idaho Code, shall be remitted to the general fund.

History.

I.C., § 48-114, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.
General fund, § 67-1205.

Prior Laws.

Former § 48-114, which comprised 1911, ch. 215, § 14, p. 688; reen. C.L. 107:14; C.S., § 2544; I.C.A., § 47-114, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Compiler's Notes.

The bracketed insertions at the end of the first sentence and near the beginning of the second sentence were added by the compiler to correct the name of the referenced fund. See § 48-606.

48-115. Statute of limitations. — (1) Any action brought by the attorney general pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action accrues.

(2) Any other action brought pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action accrues, or within one (1) year after the conclusion of an action brought by the state pursuant to this chapter based in whole or in part on any matter complained of in the subsequent action, whichever is the latter.

(3) The foregoing statute of limitations shall be tolled during any period when the defendant in any action fraudulently concealed the events upon which the cause of action is based.

History.

I.C., § 48-115, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

ch. 215, § 15, p. 688; reen. C.L. 107:15; C.S., § 2545; I.C.A., § 47-115, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

Prior Laws.

Former § 48-115, which comprised 1911,

48-116. Action not barred because it affects interstate or foreign commerce. — No action under this chapter shall be barred on the ground that the activity or conduct complained of in any way affects or involves interstate or foreign commerce.

History.

I.C., § 48-116, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES**Prior Laws.**

Former § 48-116, which comprised 1911, ch. 215, § 16, p. 688; reen. C.L. 107:16; C.S., § 2546; I.C.A., § 47-116, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-117. Service of notice. — Service of any notice, civil investigative demand, or subpoena under this chapter shall be made personally within this state, but if personal service cannot be obtained, substituted service may be made by mailing service by registered or certified mail to the last known place of business, residence, or abode of the person within or without this state.

History.

I.C., § 48-117, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES**Prior Laws.**

Former § 48-117, which comprised 1911, ch. 215, §§ 17, 18, p. 688; compiled and reen. C.L. 107:17; C.S., § 2547; I.C.A., § 47-117, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-118. Venue. — Any action, application, or motion brought by the attorney general against a person under this chapter may be filed in the district court of the county in which the person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the pleading may be brought in any district court in this state.

History.

I.C., § 48-118, as added by 2000, ch. 148, § 3, p. 377.

STATUTORY NOTES**Prior Laws.**

Former § 48-118, which comprised 1951, ch. 197, § 1, p. 421, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

48-119. Purpose of extension to distributors of publications. [Repealed.]

STATUTORY NOTES**Compiler's Notes.**

This section, which comprised 1951, ch. 197, § 2, p. 421, was repealed by S.L. 2000, ch. 148, § 1, effective July 1, 2000.

CHAPTER 2**ANTI-PRICE DISCRIMINATION ACT****SECTION.****48-201. Definitions.**

48-202. Discrimination unlawful — Differentials — Customer selection — Price changes — Rebutting prima facie case — Commissions or brokerages prohibited — Customer discrimination or

SECTION.

receipt of discrimination prohibited.
48-203. Cooperative associations of persons injurious to the public interest.
48-204. Rights of persons injured by discrimination.
48-205. Title of act.
48-206. Separability.

48-201. Definitions. — The following terms for the purpose are hereby defined as follows:

(a) "Person" means the plural as well as the singular and shall include an individual, partnership, association, a joint stock company, but not an incorporated or unincorporated organization.

(b) The term "price" as used herein shall mean the net price after deduction of all discounts, rebates or other price concessions allowed by the seller.

(c) The term "commerce" means trade or commerce within the state.

History.

1937, ch. 229, § 1, p. 406.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" in the introductory paragraph refers to S.L. 1937, ch. 229, which is compiled as §§ 48-201 to 48-206.

JUDICIAL DECISIONS**Insufficient Evidence.**

Where the plaintiff makers of promissory notes to the defendant oil company failed to prove by a preponderance of the evidence that the agreement between the parties, whereby the makers of the notes would provide their land to build a gas station and sell the oil company's gasoline products, was an illegal

tying arrangement or that the defendant substantially lessened competition to create a monopoly in favor of the defendant company, the Idaho Antitrust Law as amended was not applicable. Pollack v. Christensen, 103 Idaho 110, 688 P.2d 1000 (1982).

48-202. Discrimination unlawful — Differentials — Customer selection — Price changes — Rebutting prima facie case — Commissions or brokerages prohibited — Customer discrimination or receipt of discrimination prohibited. — (a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality or to discriminate in price between different sections, communities or cities or portions thereof or between different locations in such sections, communities, cities or portions of this state, where the effect of such discriminations may be to lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy, or prevent competition with any person w

48-518. Time of taking effect — Repeal of prior acts — Intent of act. — This act shall be in force and effect on July 1, 1996, but shall not affect any suit, proceeding or appeal then pending. All acts relating to marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this act, provided that as to any application, suit, proceeding or appeal, and for that purpose only, pending at the time this act takes effect the repeal shall be deemed not to be effective until final determination of said pending application, suit, proceeding or appeal.

The intent of this act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the trademark act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this act.

History.
I.C., § 48-518, as added by 1996, ch. 404, § 2, p. 1336.

STATUTORY NOTES

Federal References.

The trademark act of 1946 is generally compiled as 15 U.S.C.S. § 1051 et seq.

Compiler's Notes.

The term "this act" throughout the section refers to S.L. 1996, ch. 404, which is compiled as §§ 48-501 to 48-518.

The phrase "the effective date of this act" in the first paragraph refers to the effective date of S.L. 1996, chapter 404, which was effective July 1, 1996.

CHAPTER 6

CONSUMER PROTECTION ACT

- 48-601. Short title and purpose.
- 48-602. Definitions.
- 48-603. Unfair methods and practices.
- 48-603A. Unfair solicitation practices.
- 48-603B. Unfair tax return preparation practices.
- 48-603C. Unconscionable methods, acts or practices.
- 48-603D. Unfair telephone services — Unordered goods and services — Disclosure to consumers.
- 48-603E. Unfair bulk electronic mail advertisement practices.
- 48-603F. Mortgage loan modification fees.
- 48-604. Intent of legislature — Attorney general to make rules and regulations.
- 48-605. Exceptions to chapter.
- 48-606. Proceedings by attorney general.

48-601. Short title and purpose. — This act shall be known and may be cited as the "Idaho consumer protection act". The purpose of this act is to protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade.

commerce, and to provide efficient and economical procedures to secure such protection. It is the intention of the legislature that this chapter be remedial and be so construed.

History.
1971, ch. 181, § 2, p. 847; am. 1990, ch. 273, § 1, p. 766.

STATUTORY NOTES

Cross References.

Chain or pyramid distributor schemes, prohibited, penalties, § 18-3101.

Prior Laws.

Former Chapter 6 which comprised S.L. 1965, ch. 293 §§ 1 to 6, was repealed by S.L. 1971, ch. 181, § 1.

Compiler's Notes.

The term "this act" refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

JUDICIAL DECISIONS

ANALYSIS

Application.

Collection of debts.
In general.
Instruction.
Harmless error.
Legislative intent.
Medical malpractice.
Price negotiations.
Statutory damages.
Written sales presentation.

Application.

The Idaho consumer protection act does not expressly include or exclude commercial transactions and is applicable to protect the ultimate consumer of a product, who intends to use it in a for-profit business. *Myers v. A.O. Smith Harvestors Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).
Individuals selling real property for investment were subject to this chapter, although they were not in the business of selling such property as owners or brokers where the real property was within the definition of "goods" in § 48-602(6) and its sale was "trade" or "commerce." *White v. Mock*, 140 Idaho 882, 757 P.2d 356 (2004).

Collection of Debts.

The collection of debts arising from sales of goods and services is subject to the provisions of this chapter. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 769 P.2d 214 (1990).

General.

This chapter prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce within the State of Idaho. *State ex rel. Sidwell v. Master Distrib., Inc.*, 101 Idaho 471/615 P.2d 116 (1980).

Instruction.

— Harmless Error.

Where, although the jury was not instructed under this chapter, it was instructed regarding the common law fraud claims and the plaintiffs presented no sound basis for a jury to reach a different result under this chapter, the court's refusal to present a claim under this chapter to the jury, even if error, constituted harmless error. *Myers v. A.O. Smith Harvestors Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

Legislative Intent.

The intent of the legislature is that this chapter be liberally construed to effect the legislative intent to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 769 P.2d 214 (1990).

Medical Malpractice.

Plaintiffs must proceed in a medical malpractice action under the negligence standard set forth in § 6-1012; therefore, the plaintiffs could not bring a cause of action under this chapter for the defendants' failure to provide adequate health care after holding them-

Tab 4

selves out as being knowledgeable and capable of providing adequate health care. *Keyser v. St. Mary's Hosp.*, 662 F. Supp. 191 (D. Idaho 1987).

Price Negotiations.

Where the testimony of 15 consumers and two salesmen for a water conditioner salesman indicated that no price negotiations or bargaining occurred during the sale of water conditioner units, and other evidence indicated that all the units sold in the state were sold at the same so-called special discount price, the evidence did not support the trial court's finding that the price of the water conditioners was subject to negotiation or bargaining. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

Statutory Damages.

In a property sale dispute, the trial court's failure to award statutory damages for a

violation of this chapter was error. *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

Written Sales Presentation.

Where in an action brought by the attorney general under this chapter, 15 consumers testified that they purchased water conditioner units from salesmen who read verbatim from a written script prepared by the manufacturer or that the salesmen delivered what appeared to be a memorized sales presentation, and several salesmen testified that the written sales presentation was used in all their sales, the evidence did not support the trial court's finding that the complaints of the individual consumers who testified at the trial could not be correlated with all sales made by the defendants. *State ex rel. Kidwell v. Master Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

Cited in: *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992); *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001).

RESEARCH REFERENCES

A.L.R. — Practices forbidden by state deceptive trade practice and consumer protection acts — Pyramid or Ponzi or referral sales schemes. 48 A.L.R.6th 511.

48-602. Definitions. — As used in this act:

(1) "Person" means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, trusts, business entities, and any other legal entity, or any other group associated in fact although not a legal entity or any agent, assignee, heir, employee, representative or servant thereof.

(2) "Trade" and "commerce" mean the advertising, offering for sale, selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services or distributing goods or services, either to or from locations within the state of Idaho, or directly or indirectly affecting the people of this state.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, audio and/or visual recording, mechanical, photographic or electronic transcription or other tangible document or recording.

(4) "Examination" of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(5) "Appropriate trade premises," mean premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(6) "Goods" mean any property, tangible or intangible, real, personal or

mixed, and any other article, commodity, or thing of value wherever situated, including certificates or coupons exchangeable for such goods.

(7) "Services" mean work, labor or any other act or practice provided or performed by a seller to or on behalf of a consumer.

(8) "Actions or transactions permitted under laws administered by a regulatory body or officer" mean specific acts, practices or transactions authorized by a regulatory body or officer pursuant to a contract, rule or regulation, or other properly issued order, directive or resolution.

(9) "Regulatory body or officer" means any person or governmental entity with authority to act pursuant to state of Idaho or federal statute.

History.

1971, ch. 161, § 3, p. 847; am. 1973, ch. 285, § 1, p. 601; am. 1993, ch. 102, § 1, p. 256.

STATUTORY NOTES

Prior Laws.

Former § 48-602 was repealed. See Prior Laws, § 48-601.

Compiler's Notes.

The term "this act" in the introductory

JUDICIAL DECISIONS

ANALYSIS

Misrepresentations.

"Sale" as crucial event. *Idaho*.

Misrepresentations.

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under this chapter, because there was no difference between what purchaser received and the notes and bounds description in the contract. *Pen v. Neah*, 142 Idaho 775, 133 P.3d 1240 (2006).

"Sale" As Crucial Event.

The collection of a debt arising out of a sale of goods or services is subject to the provisions of this chapter, even when the collection of the debt is by a third party who has purchased the debt from the seller; it is the sale that brings the debt into existence that is the crucial event, and debts that do not arise out of the sale of goods and services subject to the provisions of this chapter are not covered. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

Trade.

The company, which specialized in purchasing structured personal injury and other settlement payment streams for cash and then reselling the settlements or annuities for a profit, engaged in trade or commerce as provided under subsection (2) of this section, where the company attempted to purchase annuity payments for profit, and where the company advertised its product through use of television commercials. *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001).

Individuals selling real property for investment were subject to this chapter, although they were not in the business of selling such property as owners or brokers where the real property was within the definition of "goods" and its sale was "trade" or "commerce." *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

Cited in: *Myers v. A.O. Smith Harvestore Prods., Inc.*, 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988).

48-603. Unfair methods and practices. — The following unfair

methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

- (1) Passing off goods or services as those of another;
- (2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have;
- (6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact;
- (9) Advertising goods or services with intent not to sell them as advertised;
- (10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;
- (13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;
- (14) Making false or misleading statements of fact concerning the extent of use, or mileage of any goods;
- (15) Promising or offering to pay, credit or allow to any buyer or lessee, any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;
- (16) Representing that services, replacements or repairs are needed if they are not needed, or providing services, replacements or repairs that are not needed;
- (17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer.

(18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C, Idaho Code, provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in section 28-41-301, Idaho Code;

(19) Taking advantage of a disaster or emergency declared by the governor under chapter 10, title 46, Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. section 5121 et seq., by selling or offering to sell to the ultimate consumer fuel or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency. In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances including, but not limited to:

- (a) A comparison between the price paid by the alleged violator for the fuel, food, pharmaceuticals, or water and the price for which the alleged violator sold those same items to the ultimate consumer immediately before and after the period specified by the disaster or emergency declaration;
 - (b) Additional costs of doing business incurred by the alleged violator because of the disaster or emergency;
 - (c) The duration of the disaster or emergency declaration.
- Notwithstanding anything to the contrary contained elsewhere in the act, no private cause of action exists under this subsection.

History.

1971, ch. 181, § 4, p. 847; am. 1973, ch. 285, § 2, p. 601; am. 1990, ch. 273, § 2, p. 766; am.

2002, ch. 358, § 1, p. 1015; am. 2002, ch. 361, § 2, p. 1019; am. 2013, ch. 54, § 16, p. 108.

STATUTORY NOTES

Prior Laws.

Former § 48-603 was repealed. See Prior Laws, § 48-601.

Amendments.

This section was amended by two 2002 acts which appear to be compatible and have been compiled together.

The 2002 amendment by ch. 358, § 1, effective July 1, 2002, in subsection (19), inserted "to the ultimate consumer" following "by selling or offering to sell", substituted "pharmaceuticals" for "medicine" following "fuel or food", added "in determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances, including, but not limited to:"; added subsections 19(a), (b), (c); and added the last sentence.

The 2002 amendment by ch. 361, § 2, effective March 27, 2002, added the section on at the end of subsection (18) and added subsection (19).

The 2013 amendment, by ch. 54, deleted subsection (37) of preceding section 28-41-301, Idaho Code near the end of subsection (18).

Legislative Intent.

Section 1 of S.L. 2002, ch. 361 provides: "The Legislature finds that during emergencies or disasters, some persons may take unfair advantage of consumers by greatly increasing prices for essential goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or disaster results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited."

Compiler's Notes.

The term "this act" in the last paragraph

refers to S.L. 2002, ch. 356, which is compiled as this section only.

JUDICIAL DECISIONS

ANALYSIS

Contract or other document.

— Failure to deliver.

Goods.

Legislative intent.

Liability for sales program.

Misrepresentations.

— "Sale" as crucial event.

Tendency to deceive.

Trade names.

Unconscionable conduct.

Contract or Other Document.

— Failure to Deliver.

Insurance company's failure to give insured a copy of a promissory note signed by insured did not violate this chapter; the debt underlying the promissory note arose from the purchase of insurance through an insurance agency which is a sale explicitly excluded from this chapter. *Irvin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992).

Goods.

Although "goods" defined under the act include intangible property which could encompass money, it would take a strained construction of the act to be able to hold that the signing of a personal guarantee for a loan to a corporation was "purchase of goods." *Idaho First Nat'l Bank v. Wells*, 100 Idaho 256, 596 P.2d 429 (1979).

Legislative Intent.

The intent of the legislature is that this chapter be liberally construed to effect the legislative intent to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

Liability for Sales Program.

Where Master Manufacturing Company created and furnished the sales program utilized by Master Distributors in Idaho, participated in the hiring and training of Master Distributors' sales personnel, was involved on a nearly daily basis with the ongoing operation of the sales program in Idaho, and knowingly distributed its products in Idaho through Master Distributors, Inc., Master Manufacturing Company was subject to liability under this chapter for any unfair or deceptive practices utilized in the Idaho sales program. *State ex rel. Kitwell v. Master*

Kitwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

Trade Names.

The unauthorized advertising, display and/or sale by defendant of merchandise bearing plaintiffs' "private label" trade-names and/or trade-marks constituted unfair and deceptive trade practices in violation of this section. *J.C. Penney Co. v. Parrish Co.*, 339 F. Supp. 728 (D. Idaho 1972).

Unconscionable Conduct.

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim, pricing of products that are not sold directly to

consumers is not an unconscionable act within the meaning of this section, which addresses the prevention of outrageous transactions involving vulnerable consumers. *State v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

Well driller misled landowners by providing them with unneeded drilling services; the well was drilled much deeper than necessary and the driller continued to drill after encountering low temperature geothermal conditions which were not appropriate for a cold water domestic use well. *Dusriya v. Fillmore*, 154 Idaho 27, 293 P.3d 651 (2013).

Cited in: *McNeil v. Gisler*, 100 Idaho 693, 604 P.2d 707 (1979); *Yellow Pine Water User's Ass'n v. Inel*, 105 Idaho 349, 670 P.2d 574 (1983).

RESEARCH REFERENCES

Am. Jur. — 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices, § 1131 et seq.

ALR. — World wide web domain as vi-

48-603A. Unfair solicitation practices. — (1) It is unlawful for any person to solicit a sale or order for sale of goods or services at other than appropriate trade premises, in person or by means of telephone, without clearly affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, and before making any other statement, except a greeting, or asking the prospective buyer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following:

(a) Stating the identity of the person making the solicitation;

(b) Stating the trade name of the person represented by the person making the solicitation;

(c) Stating the kind of goods or services being offered for sale;

(d) And, in the case of an "in person" contact, the person making the solicitation shall, in addition to meeting the requirements of paragraphs (a), (b) and (c) of this section, show or display identification which states the information required by paragraphs (a) and (b) of this section as well as the address of the place of business of one (1) of such persons so identified.

(2) It is unlawful for any person, in soliciting a sale or order for the sale of goods or services at other than his appropriate trade premises, in person or by telephone, to use any plan, scheme, or ruse which misrepresents his true status or mission for the purpose of making such sale or order for the sale of goods or services.

(3) It is unlawful in the sale or offering for sale of goods or services for any person conducting a mail order or catalog business in this state and utilizing a post office box address to fail to disclose the legal name under which business is done and the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms.

Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

Misrepresentations.

In action by plaintiff who had purchased property from third party, against original owners, who had sold property to third party, claiming that fence lines' failure to match property described in deed was a material misrepresentation, the court found that there was no actionable misrepresentation under this chapter, because there was no difference between what purchaser received and the metes and bounds description in the contract. *Fenn v. Noah*, 142 Idaho 775, 133 P.3d 124 (2006).

Because a creditor who sued his debtor attorneys did not allege that he entered into contractual relationship with the attorneys, he lacked standing under § 48-603(1), moreover, he failed to identify specific prohibitive actions deemed to be unfair or deceptive. *McNichols*, 149 Idaho 826, 243 P.3d 64 (2010).

"Sale" as Crucial Event.

The collection of a debt arising out of a sale of goods or services is subject to the provisions of this chapter, even when the collection of the debt is by a third party who has purchased the debt from the seller; it is the sale that brings the debt into existence that is the crucial event, and debts that do not arise out of the sale of goods and services subject to provisions of the chapter are not covered. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

Tendency to Deceive.

An act or practice is unfair if it is shown to possess a tendency or capacity to deceive consumers, and neither proof of an intent to deceive nor any actual damage to the public need be shown in order to establish a trade practice as unfair or deceptive. *State ex rel.*

History.

I.C., § 48-603A, as added by 1973, ch. 285, § 3, p. 601.

48-603B. Unfair tax return preparation practices. — (1) As used in this section, unless the context otherwise requires:

(a) "Tax preparer" means a person who, for a fee, engages in the business of assisting with, or preparing, federal, state, or local government income tax returns.

(b) "Fee" means any moneys or valuable consideration paid or promised to be paid for services rendered or to be rendered by any person or persons functioning as or conducting the business of a tax preparer.

(2) The following acts or omissions related to the conduct of the business of the tax preparer, which are done by the tax preparer or any employee, partner, officer, or member of the tax preparer are unlawful:

(a) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading.

(b) Causing or allowing a consumer to sign any document in blank relating to a tax return thereof.

(c) Failing or refusing to give to a consumer a copy of any document requiring his signature, as soon as the consumer signs such document.

(d) Failing to maintain a copy of any tax return prepared for a consumer for the applicable statute of limitation period on federal tax returns and state tax returns.

(e) Making false promises of a character likely to influence, persuade, or induce a consumer to authorize the tax preparation service.

(3)(a) It is unlawful for any person, including an individual, firm, corporation, association, partnership, joint venture, or any employee or agent thereof, to use or disclose any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns unless such use or disclosure is within any of the following:

(i) Consented to in writing by the taxpayer in a separate document

(ii) Expressly authorized by state or federal law.

(iii) Necessary to the preparation of the return.

(iv) Pursuant to court order.

(b) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns if he does either of the following:

(i) Advertises, or gives publicity to the effect that he prepares or assists others in the preparation of state or federal income tax returns.

(ii) Prepares or assists others in the preparation of state or federal income tax returns for compensation.

(4)(a) It is unlawful for any person, including any individual, association, partnership, joint venture, or any employee or agent thereof, to fail to sign any state income tax return, or to fail to include his name, address, and social security number or preparer identification number issued under 26 U.S.C. 6109 on any state income tax return, which he prepares for another for compensation, or which he assists another in the preparation of for compensation.

(b) It is unlawful for any corporation to fail to include its name and address on any state income tax return which it prepares for another for compensation, or which it assists another in the preparation of for compensation.

(5) A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document is not considered, for the purposes of this section, as preparing the return, declaration, statement or other document.

History.

I.C., § 48-603B, as added by 1973, ch. 285,

§ 4, p. 601; am. 1993, ch. 102, § 2, p. 256; am. 2000, ch. 26, § 2, p. 45.

STATUTORY NOTES**Effective Dates.**

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

48-603C. Unconscionable methods, acts or practices. — (1) Any unconscionable method, act or practice in the conduct of any trade or commerce violates the provisions of this chapter whether it occurs before, during, or after the conduct of the trade or commerce.

(2) In determining whether a method, act or practice is unconscionable, the following circumstances shall be taken into consideration by the court:

(a) Whether the alleged violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his interest because of physical infirmity, ignorance, illiteracy, inability to understand the language of the agreement or similar factor;

(b) Whether, at the time the consumer transaction was entered into, the alleged violator knew or had reason to know that the price grossly exceeded the price at which similar goods or services were readily available in similar transactions by similar persons, although price alone is insufficient to prove an unconscionable method, act or practice;

(c) Whether the alleged violator knowingly or with reason to know, induced the consumer to enter into a transaction that was excessively one-sided in favor of the alleged violator;

(d) Whether the sales conduct or pattern of sales conduct would outrage or offend the public conscience, as determined by the court.

History.

I.C., § 48-603C, as added by 1990, ch. 273, § 5, p. 768.

JUDICIAL DECISIONS**Price Fixing.**

In a case of alleged price-fixing by manufacturers, the district court, after dismissing an unfair competition claim, did not err in denying the state's request to amend its complaint to allege a consumer protection claim; price-fixing of products that are not sold directly to consumers is not an unconscionable act within the meaning of this section, which

addresses the prevention of outrageous transactions involving vulnerable consumers. *State v. Daitel Chem. Indus., Ltd.*, 141 Idaho 102, 106 P.3d 428 (2005).

Cited in: *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 839 (Bankr. D. Idaho 2001).

48-603D. Unfair telephone services — Unordered goods and services — Disclosure to consumers. — (1) As used in this section:

- (a) "Telecommunications provider" means a person that provides telecommunications service.
- (b) "Telecommunications service" means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum. Telecommunications service does not include cable television service or broadcast service.
- (c) "Telecommunications service agreement" means a contract between the telecommunications provider and a consumer for telecommunications service that is provided to the consumer on a continuing or periodic basis. The term includes an oral, written, or electronically recorded contract and includes any material amendment to an existing contract.
- (2)(a) Section 48-605, Idaho Code, notwithstanding, it is unlawful for a telecommunications provider to request a change in a consumer's local exchange or interexchange carrier without the consumer's verified consent.

(b) For purposes of subsection (2)(a) of this section:

- (i) It is the responsibility of the telecommunications provider requesting a change in a telephone service subscriber's local exchange or interexchange carrier to verify that the consumer has authorized the change. A telecommunications provider that does not verify a consumer's change in his or her local exchange or interexchange carrier in accordance with the verification procedures, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of 47 CFR 64, as those procedures are from time to time amended, commits an unlawful practice within the meaning of this act. A telephone company, wireless carrier or telecommunications carrier providing local exchange service who has been requested by another telecommunications provider to process a change in a consumer's carrier is only liable under this section if it knowingly participates in processing a requested change that is unauthorized or not properly verified; and
- (ii) Compliance with applicable federal verification procedures is a complete defense to an allegation of consumer fraud under subsection (2)(a) of this section.

(3)(a) Section 48-605, Idaho Code, notwithstanding, it is unlawful for a telecommunications provider to bill a consumer for goods or services that are in addition to the consumer's telecommunications services without the consumer's authorization adding the goods or services to the consumer's service order.

(b) For purposes of subsection (3)(a) of this section, a telephone company or telecommunications carrier providing billing services for another telecommunications provider is only liable under this section if it knowingly participates in billing a consumer for goods or services without the consumer's authorization for the addition of those goods or services to the consumer's service order.

(4)(a) A telecommunications provider shall be solely responsible for providing written notice to a consumer who has agreed to enter into

telecommunications service agreement with the telecommunications provider.

(b) The notice shall clearly and conspicuously disclose to the consumer that the consumer's local exchange or interexchange carrier has been changed. The notice shall also advise the consumer that the consumer may change back to the previous carrier or select a new carrier by calling the previous carrier or the consumer's preferred carrier. The notice shall also provide the consumer with a toll-free number to call for further information.

(c) The notice shall be sent on or before the fifteenth day after the consumer enters into the telecommunications service agreement, or on or before the day the telecommunications provider first bills the consumer under the agreement, whichever is later.

(d) The notice must be a separate document sent for the sole purpose of advising the consumer of his or her entering into a telecommunications service agreement. The notice shall also not be combined with any sweepstakes entry form in the same document or other like inducement.

(e) The sending of this notice shall not constitute a defense to a charge that a consumer did not consent to enter into a telecommunications service agreement or that the consumer's consent was verified according to federal law.

(f) Compliance with the notification requirements, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of 47 CFR 64, shall be deemed to be compliance with this subsection.

(g) A consumer who selects a different carrier within three (3) days after receiving the notice under subsection (4)(a) of this section may not be charged a cancellation charge or disconnect fee unless the consumer has more than five (5) telephone lines and has entered into a written agreement which specifies such charges and fees, and the telecommunications provider has complied with the verification procedures under subsection (2)(b) of this section.

History.

IC, § 48-603D, as added by 1998, ch. 274, § 1, p. 904.

Federal References.

The telecommunications act of 1996, referred to in paragraph (2)(b)(ii) and paragraph (4)(f), generally appears as 47 U.S.C.S. § 151.

Compiler's Notes.

The term "this act" at the end of the second

sentence in paragraph (2)(b)(i) refers to S.L. 1998, ch. 274, which is codified as this section.

Effective Dates.

Section 2 of S.L. 1998, ch. 274 declared an emergency. Approved March 24, 1998.

STATUTORY NOTES

48-603E. Unfair bulk electronic mail advertisement practices. —

(a) For purposes of this section, unless the context otherwise requires:

(a) "Bulk electronic mail advertisement" means an electronic message,

containing the same or similar advertisement, which is contemporaneously transmitted to two (2) or more recipients, pursuant to an internet intranet computer network.

(b) "Computer network" means a set of related, remotely connected devices and communication facilities, including two (2) or more computers, with the capability to transmit data among them through communication facilities.

(c) "Interactive computer service" means an information service, system or access software provider that provides or enables computer access to multiple users to a computer server, including specifically a service or system that provides access to the internet, and such systems operated by services offered by a library or an educational institution.

(d) "Recipient" means a person who receives any bulk electronic mail advertisements.

(2) Any person who uses an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement shall provide an electronic mail address readily identifiable in the bulk electronic mail advertisement to which the recipient may send a request declining such mail.

(3) It is unlawful for a person to use an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement to any recipient that the sender knows, or has reason to know, engages in any of the following:

(a) Uses the name of a fictitious name of a third party in the return address field without the permission of the third party.

(b) Misrepresents any information in identifying the point of origin of the transmission path of the bulk electronic mail advertisement.

(c) Fails to contain information identifying the point of origin of the transmission path of the bulk electronic mail advertisement.

(d) Sends or transmits, at any time after five (5) business days of declination, any bulk electronic mail advertisement to a recipient who provided the sender with a request declining the receipt of such advertisements.

(4) Pursuant to section 48-608, Idaho Code, a recipient that receives a bulk electronic mail advertisement in violation of this section may bring an action to recover actual damages. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such bulk electronic mail advertisement the greater of one hundred dollars (\$100) for each bulk electronic mail advertisement transmitted in violation of this section or one thousand dollars (\$1,000).

(5) This section does not apply to any of the following:

(a) A person, including an interactive computer service, who provides users with access to a computer network, and as part of that service transmits electronic mail on behalf of those users, unless such person transmits bulk electronic mail advertisements on behalf of those users which the person knows, or should have known, were transmitted in violation of this section.

(b) Electronic mail advertisements which are accessed by the recipient from an electronic bulletin board.

(c) A person who provides users with access at no charge to electronic mail, including receiving and transmitting bulk electronic mail advertisements, and, as a condition of providing such access, requires such users to receive unsolicited advertisements.

(d) The transmission of bulk electronic mail advertisements from an organization or similar entity to the members of such organization.

(6) An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any bulk electronic mail advertisement which is reasonably believed to be in violation of this section.

History.
I.C. § 48-603E, as added by 2000, ch. 423,
§ 1, p. 1373.

Effective Dates.

Section 2 of S.L. 2000, ch. 423, provided

that the act shall be in full force and effect on and after July 1, 2000.

STATUTORY NOTES

RESEARCH REFERENCES

A.L.R. — World wide web domain as violations under commerce clause and First Amendment of federal constitution. 98 A.L.R.5th 167
Validity, construction, and application of federal and state statutes regulating unsolicited e-mail or "spam". 10 A.L.R.6th 1.

48-603F. Mortgage loan modification fees. — (1) For purposes of this section, unless the context otherwise requires:

(a) "Fee" means any item of value including, but not limited to, goods or services.

(b) "Loan modification activities" is defined in section 26-31-201(3), Idaho Code.

(2) Charging or collecting any fee in connection with mortgage loan modification activities shall constitute a violation of the Idaho consumer protection act, unless the person charging or collecting such fees is licensed pursuant to chapter 20, title 54, Idaho Code, or licensed, exempt or excluded from licensing pursuant to part 2 or 3, chapter 31, title 26, Idaho Code.

History.
I.C. § 48-603F, as added by 2011, ch. 323,
§ 3, p. 939.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2011, ch. 323 provided:

"This act shall be in full force and effect on and after September 1, 2011."

48-604. Intent of legislature — Attorney general to make rules and regulations. — (1) It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation

tation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), and from time to time amended; and

(2) The attorney general may make rules and regulations interpreting the provisions of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), as from time to time amended. Rules and regulations shall be promulgated as provided in chapter 52, title 67, Idaho Code.

History.

1971, ch. 181, § 5, p. 847; am. 1973, ch. 285, § 5, p. 601.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Prior Laws.

Former § 48-604 was repealed. See Prior Laws, § 48-601.

Compiler's Notes.

The term "this act" in subsections (1) and

(2) refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604, 48-608 and 48-610 to 48-619.

The references enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Federal Law.

Federal case law as it has developed under § 5(2)(1) of the Federal Trade Commission Act, although not binding, is persuasive in application of this chapter. *State ex rel. Kidwell v. Masfer Distrib., Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

Cited in: Idaho First Nat'l Bank v. Wells, 100 Idaho 286, 596 P.2d 429 (1979); *Hansen v. Glass*, 102 Idaho 785, 640 P.2d 1186 (Oct. 1982); *Myers v. A.O. Smith Harvestore Prod. Inc.*, 114 Idaho 432, 757 P.2d 695 (Oct. 1988).

48-605. Exceptions to chapter. — Nothing in this act shall apply to

(1) Actions or transactions permitted under laws administered by the state public utility commission or other regulatory body or officer acting under statutory authority of this state or the United States.

(2) Acts done by publishers, broadcasters, printers, retailers, or their employees, in the publication or dissemination of an advertisement in good faith on the basis of information or material supplied by others and without knowledge or reason to know of the misleading or deceptive character of such advertisement or the information or material furnished.

(3) Persons subject to chapter 13, title 41, Idaho Code (sections 41-1301 through 41-1327), defining, and providing for the determination by the director of the department of insurance of unfair methods of competition, unfair or deceptive acts or practices in the business of insurance.

History.

1971, ch. 181, § 6, p. 847.

STATUTORY NOTES

Cross References.

Director of department of insurance, § 41-102.
Public utilities commission, § 61-201.

Prior Laws.

Former § 48-605 was repealed. See Prior Laws, § 48-601.

Compiler's Notes.

The name of the commissioner of insurance appeared in the law as enacted.

has been changed to the director of the department of insurance on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 11, § 3 (§ 41-203).

The term "this act" in the introductory paragraph refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

The reference enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Insurance.

Insurance company's failure to give insured copy of a promissory note signed by insured did not violate this chapter; the debt underlying the promissory note arose from the

purchase of insurance through an insurance agency which is a sale explicitly excluded from the act's provisions. *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct. App. 1992).

48-606. Proceedings by attorney general. — (1) Whenever the attorney general has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this chapter to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person:

(a) To obtain a declaratory judgment that a method, act or practice violates the provisions of this chapter;

(b) To enjoin any method, act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to that person as provided by the Idaho rules of civil procedure;

(c) To recover on behalf of consumers actual damages or restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;

(d) To order specific performance by the violator;

(e) To recover from the alleged violator civil penalties of up to five thousand dollars (\$5,000) per violation for violation of the provisions of this chapter; and

(f) To recover from the alleged violator reasonable expenses, investigative costs and attorney's fees incurred by the attorney general.

(2) The action may be brought in the district court of the county in which such person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the action may be brought in any district court in this state. The said courts are authorized to issue temporary restraining orders or preliminary or permanent injunctions to restrain and prevent violations of the provisions of this chapter, and such injunctions shall be issued without bond.

(3) Unless the attorney general finds in writing that the purposes of this chapter will be substantially and materially impaired by delay in instituting legal proceedings, he shall, before initiating any legal proceedings as

provided in this section, give notice in writing that such proceedings are contemplated to the person against whom proceedings are contemplated, and allow such person a reasonable opportunity to appear before the attorney general and execute an assurance of voluntary compliance with consent judgment as in this chapter provided.

(4) In lieu of investigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice alleged to be a violation of the provisions of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The consent judgment may also include a stipulation for civil penalties to be paid, not in excess of five thousand dollars (\$5,000) per alleged violation; stipulation to pay to consumers actual damages or to allow for restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter; and/or a stipulation for specific performance. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry in judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all penalties provided by law therefor, including the penalties set forth in section 48-615, Idaho Code.

(5) All penalties, costs and fees recovered by the attorney general shall be remitted to the consumer protection fund which is hereby created in the state treasury. Moneys in the fund may be expended pursuant to legislative appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. At the beginning of each fiscal year those moneys in the consumer protection fund which exceed the current year's appropriations plus any residual encumbrances made against prior years' appropriations by fifty percent (50%) or more shall be transferred to the general fund.

(6) Any moneys collected by the attorney general as trustee for distributions to injured consumers shall be deposited in the state treasury until such time as payment is made to an individual or individuals for purposes of restitution or pursuant to a court approved cy pres distribution.

History.

1971, ch. 181, § 7, p. 847; am. 1973, ch. 285, § 3, p. 256; am. 2001, ch. 61, § 1, p. 112; § 6, p. 601; am. 1990, ch. 273, § 4, p. 766; am.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq. General fund, § 67-1205.

Prior Laws.

Former § 48-606 was repealed. See Prior Laws, § 48-601.

JUDICIAL DECISIONS

Notice of Proceedings.

Where the trial court testimony indicated that the manufacturer of water conditioning

units was kept informed about the complaints raised by the attorney general's office and the proceedings leading up to the execution of the

assurance of voluntary compliance by the distributor of these units, and that the manufacturer approved changes made in the sales presentation script pursuant to the assurance, the attorney general's written notice to the distributor of the water conditioning units was adequate notice, under subsection (2) of

48-607. Additional relief by court authorized. — In any action brought by the attorney general, wherein the state prevails, the court shall, in addition to the relief granted pursuant to section 48-606, Idaho Code, award reasonable costs, investigative expenses and attorney's fees to the attorney general. These costs and fees shall be remitted to the consumer protection account [consumer protection fund] created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under this chapter. In addition, the court may:

(1) Make such orders or judgments as may be necessary to prevent the use or employment by a person of any method, act or practice declared to be a violation of the provisions of this chapter;

(2) Make such orders or judgments as may be necessary to compensate any consumers for actual damages sustained or to provide for restitution to any consumers of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;

(3) Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;

(4) Appoint a master, receiver or escrow agent to oversee assets or order liquidation of assets whenever it shall appear that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this subsection and assess the expenses of a master, receiver or escrow agent against the defendant;

(5) Revoke any license or certificate authorizing that person to engage in business in this state;

(6) Enjoin any person from engaging in business in this state; and/or

(7) Grant other appropriate relief.

History.

1971, ch. 181, § 8, p. 847; am. 1973, ch. 285, § 4, p. 601; am. 1990, ch. 273, § 5, p. 766.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

The bracketed insertion in the last sentence

in the introductory paragraph was added by the compiler to correct the name of the referenced fund.

JUDICIAL DECISIONS

ANALYSIS

Interested consumers.
Restitution.

Burden of Proof.

The state need not prove in a consumer protection action that consumers in fact relied upon deceptions or misrepresentations made by the defendant and that the defendant's acts were a proximate cause of the defendant's acquisition of moneys from consumers in order for the state to obtain restitutionary relief for Idaho consumers. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

Discretion of Court.

Restitution is not an automatic or mandatory remedy for violations of this chapter; the district court's discretion to award restitutionary relief should be exercised with a view toward the purposes of the chapter. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

Interested Consumers.

An order granting consumers restitu-

tionary relief or permitting them to rescind their purchase agreements with a water conditioner distributor may be applied to all consumers affected by the same trade practices found by the court to be unfair or deceptive under this chapter, since equitable relief need not be limited to the consumer witness who testified at trial. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

Restitution.

Restitutionary relief is appropriate in an action brought by the attorney general under this chapter, where such relief would be required to reestablish the status quo which existed prior to the defendant's deceptive or unfair acts. State ex rel. Kidwell v. Master Distrib., Inc., 101 Idaho 447, 615 P.2d 116 (1980).

Cited in: Yellow Pine Water Users Ass'n v. Imel, 105 Idaho 349, 670 P.2d 64 (1983).

48-608. Loss from purchase or lease — Actual and punitive damages.

— (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal as a result of the use or employment by another person of a method, act or practice declared unlawful by this chapter, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars (\$1,000), whichever is the greater; provided, however, that in the case of a class action, the class may bring an action for actual damages or a total for the class that may not exceed one thousand dollars (\$1,000), whichever is the greater. Any such person or class may also seek restitution, an order enjoining the use of employment of methods, acts or practices declared unlawful under this chapter and any other appropriate relief which the court in its discretion may deem just and necessary. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations.

(2) An elderly person or a disabled person who brings an action under subsection (1) of this section shall, in addition to the remedies available under subsection (1) of this section, recover from the offending party an enhanced penalty of fifteen thousand dollars (\$15,000) or treble the actual damages, whichever is greater.

(a) In order to recover the enhanced penalty, the court must find that the offending party knew or should have known that his conduct was perpetrated against an elderly or disabled person and that his conduct caused one (1) of the following:

- (i) Loss or encumbrance of the elderly or disabled person's primary residence;

(ii) Loss of more than twenty-five percent (25%) of the elderly or disabled person's principal monthly income;

(iii) Loss of more than twenty-five percent (25%) of the funds belonging to the elderly or disabled person set aside by the elderly or disabled person for retirement or for personal or family care or maintenance;

(iv) Loss of more than twenty-five percent (25%) of the monthly payments that the elderly or disabled person receives under a pension or retirement plan; or

(v) Loss of assets essential to the health or welfare of the elderly or disabled person.

(b) If the court orders restitution under subsection (1) of this section for a pecuniary or monetary loss suffered by an elderly or disabled person, the court shall require that the restitution be paid by the offending party before he pays the enhanced penalty imposed by this subsection.

(c) In this subsection:

(i) "Disabled person" means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one (1) major life activity.

(ii) "Elderly person" means a person who is at least sixty-two (62) years of age.

(iii) "Major life activity" means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(3) An action brought under subsection (1) of this section may be brought in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

(4) Upon commencement of any action brought under this section, the clerk of the court shall, for informational purposes only, mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general.

(5) Costs shall be allowed to the prevailing party unless the court otherwise directs. In any action brought by a person under this section, the court shall award, in addition to the relief provided in this section, reasonable attorney's fees to the plaintiff if he prevails. The court in its discretion may award attorney's fees to a prevailing defendant if it finds that the plaintiff's action is spurious or brought for harassment purposes only.

(6) Any permanent injunction, judgment or order of the court made under section 48-606(1) through (3) or section 48-607, Idaho Code, shall be admissible as evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by this chapter.

History.

§ 8, p. 601; am. 1990, ch. 273, § 6, p. 766; am. 1971, ch. 181, § 9, p. 647; am. 1973, ch. 285, 2008, ch. 287, § 1, p. 749.

STATUTORY NOTES

Cross References. Attorney general, § 67-1401 et seq. Amendments. The 2008 amendment, by ch. 257, in sub-

section (1), substituted "chapter" for "section" and added subsection (2) and redesignated the remaining subsections accordingly.

Goods.

Although "goods" defined under the act includes intangible property which could encompass money, it would take a strained construction of the act to be able to hold that the signing of a personal guarantee for a loan to a corporation was "purchase of goods." Idaho First Nat'l Bank v. Wells, 100 Idaho 256, 596 P.2d 429 (1979).

Payment of Legal Obligation.

When a consumer merely pays an existing legal obligation, he does not suffer damages although there may be involved deceptive acts practices. Yellow Pine Water User's Ass'n v. Deal, 105 Idaho 349, 670 P.2d 54 (1983).

Where consumers had paid no amount exceeding their admitted legal obligation to warranty authority, they had not suffered "ascertainable loss" such as would entitle them to recovery damages under this section. Yellow Pine Water User's Ass'n v. Irel, 105 Idaho 349, 670 P.2d 54 (1983).

Prevailing Party.

In an action by homeowners against seller of automatic heating systems, trial court did not exercise its discretion in determining that homeowners were the prevailing parties despite the fact that majority of homeowners' claims were dismissed, that jury awarded damages amounting to only 3% of the recovery sought, and that seller prevailed on counterclaim against builder. Decker v. Homeguard Sys., 105 Idaho 58, 666 P.2d 319 (Ct. App. 1983).

The amount to be awarded as attorney's fees was properly identified as a matter of discretion; however, the trial court improperly exercised its discretion in calculating the amount of fees on the basis of prevailing "attorney's" and the concomitant fractionating of the contingent fee. Nalen v. Jenkins, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987).

The intent of this section is to compensate a prevailing plaintiff for the costs of bringing an action under this chapter, and to further that intent, attorney fees should be allowed on appeal for the prevailing plaintiff. Nalen v. Jenkins, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987).

The fact that an award is made to a party does not necessarily require that amount to be limited to the party-attorney agreement; the statute provides for the award of an objective "reasonable" fee, and such a fee may be higher or lower than what the party must pay the attorney under their agreement. Nalen

JUDICIAL DECISIONS

ANALYSIS

Application.

Attorney's fees.

Basis for cause of actions.

Choice of remedies.

Damages.

Discretion of court.

Goods.

Payment of legal obligation.

Prevailing party.

Repeated or flagrant violations.

Standard of proof.

Standing.

Application.

In the 1990 Session Laws the legislature modified subsection (1) of this section in part by deleting the reference to the rules of civil procedure. No reason is indicated for the change. The Supreme Court of Idaho concluded that the rules still apply and that the modification was not intended to be removed from the rules sections pursued under subsection (1) of this section. Shurtliff v. Northwest Pools, Inc., 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

Landowners did not treat their agreement with a well driller as void; they sought their alternative remedy for actual damages, which the court granted, and the district court did not treat the remedies as cumulative, but simply pointed out that the landowners would have been entitled to consider the agreement void had they so chosen. Duspiva v. Fillmore, 154 Idaho 27, 293 P.3d 651 (2013).

Attorney's Fees.

In an action brought by a musician to recover royalties on music, attorney's fees recoverable where a default judgment was entered were limited to the amount stated in a complaint. Holladay v. Lindsay, 143 Idaho 767, 152 P.3d 633 (Ct. App. 2006).

Attorney fees were properly awarded by the trial court under against a creditor who brought a frivolous suit against his debtors' attorneys, and fees on appeal also were warranted because the appeal was brought spontaneously and without foundation for the purpose of harassment. Taylor v. McNichols, 149 Idaho 826, 243 P.3d 642 (2010).

Basis for Cause of Actions.

The language of subsection (1) of this section

v. Jenkins, 114 Idaho 973, 763 P.2d 1081 (Ct. App. 1988).

The trial court did not err in determining that the plaintiffs had to suffer "ascertainable damages" under subsection (1) of this section before they could be considered prevailing parties and awarded attorney fees. Shurtliff v. Northwest Pools, Inc., 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

In denying attorney fees to both parties, the trial court did not venture outside the boundaries of its discretion, nor did it act inconsistently with the legal standards applicable to the award of attorney fees; the trial court's decision to require each party to bear its own fees appeared to have been reached through the exercise of reason. Israel v. Leachman, 139 Idaho 24, 72 P.3d 864 (2003).

In a property sale dispute in which one ruling in favor of the sellers was overturned on appeal, while several other rulings in favor of the sellers were affirmed, the buyer was not entitled to attorney fees on appeal because he was not the prevailing party. White v. Mock, 140 Idaho 882, 104 P.3d 856 (2004).

Dealership was not entitled to attorney's fees where it did not prevail on appeal. Dan Wisbold Ford, Inc. v. Universal Computer Consulting Holding, Inc., 142 Idaho 235, 127 P.3d 138 (2005).

Repeated or Flagrant Violations.

In a suit by distributor against manufacturer, testimony of four ex-distributors from the same time frame and geographical area was relevant to show repeated or flagrant violations of this chapter. Mac Tools, Inc. v. Griffin, 126 Idaho 193, 879 P.2d 1126 (1994).

Standard of Proof.

This section is remedial in nature; when a party brings an action for violation of this chapter, that party does not have to show an extreme deviation from reasonable standards of conduct in order to be awarded punitive damages, but rather must show repeated or flagrant violations of this chapter. This section contains its own remedies; the only standard the jury must follow is that prescribed in the chapter itself, i.e., repeated or flagrant violations. Mac Tools, Inc. v. Griffin, 126 Idaho 193, 879 P.2d 1126 (1994).

Standing.

Because a creditor who sued his debtors' attorneys did not allege that he entered into a contractual relationship with the attorneys, he lacked standing under this section; moreover, he failed to identify specific prohibited actions deemed to be unfair or deceptive, as set forth in §§ 48-603 to 48-603E. Taylor v. McNichols, 149 Idaho 826, 243 P.3d 642 (2010).

Cited in: Idaho Power Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 744, 639 P.2d 442

(1961); *Wiggins v. Peachtree Settlement Funding*, 273 B.R. 689 (Bankr. D. Idaho Idaho 4/77, III P.3d 162 (Ct. App. 2006)).

48-609. Contract for sale or lease — Evidence of indebtedness — Assignment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised S.L. 1971, ch. 181, § 10, p. 847, was repealed by S.L. 1980, ch. 112, § 1.

48-610. Voluntary compliance — District court approval. — (1) In the administration of this chapter, the attorney general may accept the assurance of voluntary compliance with respect to any method, act, or practice deemed to be violative of the provisions of this chapter from any person who has engaged or was about to engage in such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or of the district court of Ada County and shall be deemed an order of the court enforceable in contempt proceedings.

(2) Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose.

(3) The assurance of voluntary compliance shall provide for the discontinuance by the person entering into the same of any method, act or practice alleged to be a violation of this chapter, and it may include a stipulation that the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The recovered expenses, costs and fees shall be remitted to the consumer protection account [consumer protection fund] created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under this chapter. The assurance may also include: a stipulation of payment to consumers of actual damages or for restitution of money, property, or other things received from consumers in connection with violation of the provisions of this chapter; and a stipulation for specific performance.

(4) A violation of such assurance of voluntary compliance shall prima facie establish that the person subject thereto knows, or in the exercise of due care should know, that he has in the past violated or is violating the provisions of this chapter.

(5) Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest, pursuant to section 48-606, Idaho Code.

History.
1971, ch. 181, § 11, p. 847; am. 1973, ch. 285, § 9, p. 601; am. 1990, ch. 273, § 7, p. 766.

STATUTORY NOTES

ence in subsection (3) was added by the compiler to correct the name of the referenced fund.

Cross References.
Attorney general, § 67-1401 et seq.
Contempt proceedings, § 7-601 et seq.
Compiler's Notes.
The bracketed insertion in the second sen-

tion.

JUDICIAL DECISIONS

Arbitration.
Supreme court of Idaho had jurisdiction to hear an appeal from an order dismissing a writ alleging violations of this chapter on the grounds that the parties had entered into a contract that included a provision requiring arbitration. *Wisehold Ford, Inc. v. Universal Computer Consulting Holding, Inc.*, 142 Idaho 235, 127 P.3d 138 (2006).

48-611. Investigative demand by attorney general — Report required. — (1) When the attorney general has reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation. The return date in said investigative demand shall be not less than twenty (20) days after serving of the demand.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business or in the district court in Ada County.

History.
1971, ch. 181, § 12, p. 847; am. 1993, ch. 102, § 4, p. 256.

STATUTORY NOTES

Cross References.
Attorney general, § 67-1401 et seq.
Compiler's Notes.
The term "this act" near the beginning of subsection (1) refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

History.
1971, ch. 181, § 12, p. 847; am. 1993, ch. 102, § 4, p. 256.

JUDICIAL DECISIONS

ANALYSIS

Extent of attorney general's power.
Signature of deputy acceptable.
Waiver of right to object.

Extent of Attorney General's Power.
An investigative demand does not constitute an unqualified power of the attorney general to require the presentation of the information sought. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

Signature of Deputy Acceptable.
The attorney general is not required personally to sign an investigative demand issued by his office pursuant to this section, as

it may be signed by a deputy attorney general. *Western Acceptance Corp. v. Jones*, 117 Idaho 399, 788 P.2d 214 (1990).

Waiver of Right to Object.

Failure to respond or file a petition pursuant to the procedures and within the time period set forth in this section constitutes a waiver of the right to object to the investigative demand. *State ex rel. Lance v. Hobby Horse Ranch Tractor & Equip. Co.*, 129 Idaho 565, 929 P.2d 741 (1996).

48-612. Additional powers of attorney general. — To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry; provided that information obtained pursuant to the powers conferred in this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

History.
1971, ch. 181, § 13, p. 847; am. 1990, ch. 213, § 67, p. 535; am. 1990, ch. 273, § 83, p. 766; am. 1991, ch. 243, § 2.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

This section was also amended by S.L. 1990, ch. 213, § 67 to become effective July 1, 1993. However, § 3 of S.L. 1991, ch. 243 repealed § 67, S.L. 1990, ch. 213, effective July 1, 1993.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

48-613. Service of notice. — Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

- (1) Personal service thereof without this state; or
- (2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without this state or to the person for whom the same is intended; or
- (3) As to any person other than a natural person, in the manner provided in the Idaho rules of civil procedure as if a complainant which institutes a civil proceeding had been filed.

STATUTORY NOTES

is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-613.

Compiler's Notes.
The term "this act" in the introductory paragraph refers to S.L. 1971, ch. 181, which

48-614. Failure to obey attorney general — Application to district court. — (1) If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the attorney general, the attorney general may, after notice, apply to a district court of the county in which the person resides or has a principal place of business, (2) if the person does not reside in or have a principal place of business in this state, the attorney general may apply to any district court in this state and, after hearing thereon, request an order:

- (a) Ordering such person to file such statement or report, or to comply with the subpoena or investigative demand issued by the attorney general;
- (b) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation; and
- (c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) The court shall award the prevailing party reasonable expenses and attorney fees incurred in obtaining an order under the provisions of this section if the court finds that the attorney general's request for an order under this section or a person's resistance to filing any statement or report, or obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Any disobedience of any final order entered under the provisions of this section by any court shall be punished as a contempt thereof. Contempt penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account [consumer protection fund] created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

History.

1971, ch. 181, § 15, p. 847; am. 1990, ch. 273, § 9, p. 766; am. 1991, ch. 243, § 4, p. 592; am. 1993, ch. 102, § 5, p. 256.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.
Contempt proceedings, § 7-601 et seq.

Effective Dates.

Section 5 of S.L. 1991, ch. 243 read: "An emergency existing thereto, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval. Section 3 of this act shall be in full force and effect on and after July 1, 1993. Sections 1 and 4 of this act

shall be in full force and effect on and after July 1, 1991." Approved April 4, 1991.

JUDICIAL DECISIONS

Failure to Object or Respond.

Because this chapter sets forth a clear procedure and time limit for objecting to an investigative demand, the defendant's failure to object or respond to the investigative demand within the statutory time period was

without a reasonable basis in fact on July 1, 1991. Since the state clearly prevailed on appeal, the state was awarded costs and attorney fees. State ex rel. Lance v. Hobby Hobbies, Inc., 129 Idaho 535, 929 P.2d 741 (1996).

48-615. Violation of injunction — Civil penalty. — Any person who violates the terms of an injunction issued or consent order entered into pursuant to section 48-606, Idaho Code, or an order entered into pursuant to section 48-614, Idaho Code, shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation, in addition to the amount of the penalty to be determined by the district court issuing the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and the injunction shall remain in effect until the cause is resolved. Any person who, in such cases the attorney general acting in the name of the state may petition for recovery of civil penalties. Said civil penalties shall be recovered by the attorney general and shall be remitted to the consumer protection account [consumer protection fund] created in section 48-606, Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

History. 1971, ch. 181, § 16, p. 847; am. 1990, ch. 273, § 10, p. 766; am. 1993, ch. 102, § 6, p. 256.

STATUTORY NOTES

Cross References. Attorney general, § 67-1401 et seq.

Compiler's Notes. The bracketed insertion in the last sentence

48-616. Forfeiture of corporate franchise. — Upon petition by the attorney general, the district court of the county in which the principal place of business of the corporation is located may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 48-606, Idaho Code.

History. 1971, ch. 181, § 17, p. 847; am. 1993, ch. 102, § 7, p. 256.

STATUTORY NOTES

Cross References. Attorney general, § 67-1401 et seq.

48-617. Local law enforcement officials — Duties. — It shall be the duty of local law enforcement officials to provide the attorney general such assistance as the attorney general may request in the investigation, commencement and prosecution of actions pursuant to this chapter.

History. 1971, ch. 181, § 18, p. 847; am. 1990, ch. 273, § 11, p. 766.

STATUTORY NOTES

Cross References. Attorney general, § 67-1401 et seq.

48-618. Construction of chapter. — This act is to be construed uniformly with federal law and regulations. In any action instituted under this act it shall be an absolute defense to show the challenged practices are subject to and comply with statutes administered by the federal trade commission, or any duties, regulations or decisions interpreting such statutes.

History. 1971, ch. 181, § 18, p. 847.

STATUTORY NOTES

Compiler's Notes. For further information on the federal trade commission, see <http://www.ftc.gov/>.

History. 1971, ch. 181, § 18, p. 847; am. 1993, ch. 102, § 6, p. 256.

48-619. Limitation of action. — No private action may be brought under this act more than two (2) years after the cause of action accrues.

History. 1971, ch. 181, § 20, p. 847; am. 1997, ch. 277, § 1, p. 380.

STATUTORY NOTES

Compiler's Notes. The term "this act" near the middle of this section refers to S.L. 1971, ch. 181, which is compiled as §§ 48-601 to 48-603, 48-604 to 48-608 and 48-610 to 48-619.

Section 21 of S.L. 1971, ch. 181 provided: "The provisions of this act are hereby declared severable and if any provision of this act is held invalid, the remainder of this act shall remain in full force and effect." This application of such provision to any provision or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

STATUTORY NOTES

Section 22 of S.L. 1971, ch. 181 declared an emergency. Approved March 24, 1971. Section 2 of S.L. 1997, ch. 127 declared an emergency. Approved March 15, 1997.

JUDICIAL DECISIONS

To determine whether debtors have a timely Disclosure Statement ICFA claim, the court must first determine when their alleged

cause of action "accrued." In Idaho, a cause of action accrues when one party may sue another. Before an "accrued" claim arises under the ICPA, a person must purchase or lease goods or services, and thereby suffer an ascertainable loss. In addition, the ascertainable loss must be the result of a practice declared unlawful by the ICPA. *Beach v. Bank of America* (In re Beach), 447 B.R. 313 (Bankr. D.Mt. 2011).

CHAPTER 7

SHOPLIFTING

SECTION:

- 48-701. Liability for removing or concealing merchandise — Retail theft.
- 48-702. Liability for acts of minors.

- 48-703. Definitions.
- 48-704. Authorized actions of merchants.
- 48-705. Notice of right of detention.

48-701. Liability for removing or concealing merchandise — Retail theft. — Any person who knowingly removes merchandise from merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$100) nor more than one hundred fifty dollars (\$250), costs of suit and reasonable attorneys' fees.

History.

I.C., § 48-701, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 1, p. 562.

STATUTORY NOTES

Cross References.

Detention of shoplifting suspects, defense to civil and criminal liability, § 18-4626.

RESEARCH REFERENCES

- C.J.S. — 52A C.J.S., Larceny, § 1.
- A.L.R. — Actionability of accusation or imputation of shoplifting, 29 A.L.R.3d 961.
- Changing the price tags by patron in self-service store as criminal offense, 60 A.L.R.3d 1293.

48-702. Liability for acts of minors. — The parent having legal custody of a minor who knowingly removes merchandise from a merchant's premises without paying therefor, or knowingly conceals merchandise to avoid paying therefor, or knowingly commits retail theft, shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$250), costs of suit and reasonable attorneys' fees. Recovery under this section is not limited by any other provision of law which limits the liability of a parent for the tortious conduct of a minor. The liability of parents and of the minor under this chapter is joint and several. A parent not having legal custody of a minor shall not be liable for the conduct of the minor proscribed by this act.

History.

I.C., § 48-702, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 2, p. 562; am. 2012, ch. 257, § 12, p. 709.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 257, deleted the legal guardian or "or guardian" following parent or parents in four places.

Compiler's Notes.

The term "this act" at the end of the section refers to S.L. 1974, ch. 245, which is codified as §§ 48-701 to 48-705.

48-703. Definitions. — As used in this chapter:

- (a) "Merchandise" means any personal property displayed, held or offered for sale by a merchant.
- (b) "Merchant" means an owner or operator, and the agent, consignee, employee, lessee, or officer of an owner or operator, of any merchant's premises.
- (c) "Premises" means any establishment or part thereof wherein merchandise is displayed, held or offered for sale.
- (d) "Minor" means any person less than eighteen (18) years of age.
- (e) "Retail theft" means the alteration, transfer, or removal of any label, price tag, marking, indicia of value or any other markings which aid in the determination of value of any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment, for the purpose of attempting to purchase such merchandise either personally or in consort with another, at less than the retail value with the intention of depriving the merchant of the value of such merchandise.

History.

I.C., § 48-703, as added by 1974, ch. 245, § 1, p. 1620; am. 1980, ch. 243, § 3, p. 562.

48-704. Authorized actions of merchants. — (a) Any merchant may request a person on his premises to place or keep in full view any merchandise such person may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase or for any other purpose. No merchant shall be criminally or civilly liable on account of having made such request.

(b) Any merchant who has reason to believe that merchandise has been taken by a person in violation of this act and that he can recover such merchandise by taking such a person into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the person into custody and detain him, in a reasonable manner and for a reasonable length of time.

History.

I.C., § 48-704, as added by 1974, ch. 245, § 1, p. 1620.

IDAHO RETAILERS ASSOCIATION



February 26, 2018

RE: Please Support H405 – Unfair Sales Act Repeal

Honorable Members of the Senate Commerce & Human Resources Committee,

On behalf of the membership of the Idaho Retailers Association, I ask that you support House Bill 405 repealing the Unfair Sales Act.

*The Act was passed in 1939 and has not been touched since 1963. The circumstances that motivated the law no longer exist.

*The language in the law is antiquated, convoluted and virtually unenforceable.

*Many of the “concepts” of this Act are covered in other areas of current law. For example, deceptive advertising is also in Idaho Code 48-603(17) of the Consumer Protection Act. In addition, to protect against the practice of one business trying to drive out another business through “dumping”, there’s legal recourse in Idaho Code 48-105 of the Idaho Competition Act.

*Several parts of the Act, if followed, would actually harm consumers and the marketplace by creating even more “black markets” for products. For example, if a retailer was prohibited from quantity limits (like this Act states), then the first person to the store could purchase every new game systems or hottest toy that’s out each Christmas and turn around and sell it for tenfold, leaving most customers unable to find or purchase the product.

*If followed, this Act would also harm consumers by driving up prices since loss leaders and many other “deals” and “sales” that retailers regularly engage in would be prohibited.

*Some say this Act protects the small retailers, but the large retailers will always be able to purchase more product and at lower prices. This Act actually prohibits the smaller retailers from finding ways to compete and bring people into their stores.

The Idaho Retailers Association represents retailers of ALL types and ALL sizes ALL across Idaho, and the repeal of this act has unanimously and repeatedly been supported over the years. The membership feels there are enough protections in other parts of the law that they are more concerned about someone coming along in the future and trying to enforce this Act (that no one follows) than whatever protections this act could possibly still have (which we’re unsure what any of those are).

To protect retailers and consumers alike, please vote yes on H405. Thank you for your consideration on this matter. As always, please contact me if you have any questions (208.870.8312 or pameaton@idahoretailers.org)

Sincerely,

Pam Eaton

President/CEO

816 W Bannock St., Suite 60 * Boise, ID 83702 * 208-342-0010

Tab 5

AGENDA
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE
1:00 P.M.
Room WW54
Tuesday, March 13, 2018

SUBJECT	DESCRIPTION	PRESENTER
HONORING OF PAGE	Micah Mensing	Chairman Patrick
H 466	Relating to Minimum Wage Exemption	Representative Nate
H 547	Relating to Building Codes	Representative Palmer

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Patrick
Vice Chairman Guthrie
Sen Martin
Sen Lakey
Sen Thayn

Sen Souza
Sen Potts
Sen Ward-Engelking
Sen Burgoyne

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW46
Phone: 332-1333
email: scom@senate.idaho.gov

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 13, 2018

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, Ward-Engelking, and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:00 p.m.

HONORING OF PAGE: **Chairman Patrick** honored page Micah Mensing. **Micah Mensing** shared what he learned while being a Senate page. He found it interesting the Senate did not use Robert's Rules of Order as he does with the Parliamentary Procedure Team at Declo High School. **Mr. Mensing** talked about his future. He stated he was considering attending George Fox University or Stanford University. **Chairman Patrick** thanked him for his testimony. He stated the Committee appreciated his service.

Chairman Patrick announced as the first presenter was not present, **H 466** would be placed at the end of the agenda.

H 547

Relating to Building Codes. Ken Burgess, Idaho Building Contractors Association (BCA), stated the intent of this proposed legislation is to amend the Idaho Building Code Act, Idaho Code Chapter 41, Title 39, to clarify local jurisdictions are limited in their authority to adopt residential building codes that differ from building codes reviewed, amended, and adopted by the Idaho Building Code Board (BCB). **Mr. Burgess** remarked the legislative intent of the BCA is to provide uniformity and consistency for residential building codes across jurisdictions of the State. This legislation would clearly define the role of local jurisdictions in maintaining this intent.

Mr. Burgess referred to the Idaho Attorney General's opinions (Attachments 1 and 2). He pointed out some of the issues opponents may have with this bill. He referred to a letter (Attachment 3) from the Idaho Division of Building Safety (DBS) regarding local issues relating to snow and wind load, seismic design, and flood hazards. He emphasized uniformity and consistency in applying the Idaho Building Codes (Codes) [International Building Code (IBD), International Residential Code (IRC), International Energy Conservation Code (IEEC), and the International Existing Building Code (IBC)], across jurisdictions. The plain language of the code allows jurisdictions to amend the code, but does not allow replacement of the code in a wholesale manner. He noted there were parts of the bill that needed to be amended.

Mr. Burgess reported there is no impact to the General Fund. He commented the Idaho BCB meets quarterly to review building code matters. The members of the BCB are paid a per diem stipend for meetings from the Building Program

Fund within the DBS budget. This legislation would not impact the frequency of meetings or the per diem stipend.

TESTIMONY: **Seth Grigg**, Idaho Association of Counties (IAC), testified in opposition to the bill. He emphasized counties needed to have the flexibility to adopt local building codes for the protection of life and property. He remarked **H 547** would prohibit counties from amending State building codes to proactively protect the general welfare, health, and safety of citizens. **Mr. Grigg** expressed a concern on behalf of the IAC if the codes is amended, the Idaho Administrative Code (IDAPA) rules that allow for local adoption would be amended, which would affect the ability of local jurisdictions to adopt local building codes.

DISCUSSION: **Senator Potts** stated he agreed local jurisdictions should have flexibility. He queried if there was something in the bill where each region could fill in the blanks. **Mr. Grigg** stated he was concerned with the language on page 4 of the bill that states, "the local jurisdiction that an immediate threat to human life or safety exists," and "makes amendment to codes as reasonably necessary." **Chairman Patrick** commented there was a forthcoming amendment.

Senator Souza queried if the language on page 4 of the bill was amended, was that something IAC could move forward with. **Mr. Grigg** remarked he would have to see the language.

Senator Burgoyne queried if the IAC had been asked for input before the legislation was drafted. **Mr. Grigg** replied in the negative. **Senator Burgoyne** and **Mr. Grigg** discussed the wording of "immediate threats to human life or safety" and how problems could possibly be solved through litigation.

TESTIMONY: **Steve Martinez**, Tradewinds Building Company, testified in support of this bill. He gave a brief history of the three-year cycle of building codes. He remarked there were significant changes in the new book. Contractors have to learn the changes. He stated the Code Collaborative has eroded and special interests have become involved. He reported his company works with two different counties and several cities in the Treasure Valley. He has to know all of the changes for each city. He pointed out there is a residential code and an energy code. The IECC brings with it the largest expense, which makes it difficult for small businesses to be successful.

DISCUSSION: **Senator Lakey** and **Mr. Martinez** discussed special interests and how over time there has been an increase in representatives selling energy-efficient products from out-of-state.

Senator Souza and **Mr. Martinez** discussed the problems associated with the energy portion in the bill.

TESTIMONY: **Teresa Harper**, Idaho Chapter of the American Institute of Architects (AIA), spoke in opposition to the bill. She referred to two letters from the AIA (Attachments 4 and 4A). She noted this proposed bill puts Idaho in jeopardy. Every time building codes require structures to be more secure and resilient, the life and property of the public becomes endangered. **Ms. Harper** referred to a letter of opposition from the AIA Mountain Section of the Idaho Chapter (Attachment 4A).

Pat Minegar, A-1 Heating, testified in support of the proposed legislation. He remarked it was physically impossible to teach all of the building codes to everyone. He expressed his frustration in not making any headway when working with all involved entities. He commented there has always been an issue of consistency and uniformity in the building codes. He discussed the difficulty of training 150 employees and apprentices on all of the different codes

in varying jurisdictions. He stated he supported the ability to have building code uniformity across the State.

Mr. Minegar reported he is also a Director for the BCA. The mission is affordable housing. He stated a study was recently conducted by an independent firm noting that updating from the 2009 Energy Code to the 2018 Energy Code would cost from \$5,000 to \$7,000 to save \$276 annually. Many will not be able to afford a home because of the price increase. He expressed his frustration in not making any progress in amending the codes. He urged the Committee to think about the codes and to separate the residential and commercial part of the code.

TESTIMONY: **Andrew Erstad**, representing himself, testified in opposition to the proposed legislation. He reported research has not been conducted and there are unintended consequences from these changes. He urged the Committee to reevaluate the legislation. He noted, as an architect, he has all kinds of codes which have to be adjusted depending on the agency. He noted when jurisdiction ability is eliminated to amend the codes, the opportunity is lost for administrative actions to help develop business. He urged the stakeholders to go back to the table and to separate residential from commercial.

TESTIMONY: **Roy Ellis**, builder, Idaho Falls, testified in support of the proposed legislation. He stated he was involved in building speculative, customer-built, and pre-built homes. He reported he was supportive of uniformity in code. He was opposed to the energy section in the codes due to cost. He asserted the consumer should decide how much to spend on a light bulb.

TESTIMONY: **Jason Blais**, City of Boise, Building Official, testified in opposition to the proposed legislation. He mentioned he serves on the BCB and has been involved in this process for several years. He reported there were several attorneys who looked at the bill and stated it is a legal conundrum as written. He pointed out an error on page 1, where parts of the codes are accepted, whereas and in another section, the same parts are not accepted. He remarked cities and counties should have the ability to make amendments to suit their locale. He urged the commercial section be separated from this bill.

DISCUSSION: **Senator Potts** and **Mr. Blais** discussed the proposed legislation specifically related to the customization of the codes to meet city and county needs and the immediate threat to human life.

TESTIMONY: **Mr. Burgess** concluded his presentation. He stated the issues discussed would be addressed through the amending order process. **Chairman Patrick** stated the amendment must be in writing today. **Mr. Burgess** directed stakeholders to the BCA website, which makes members aware of all codes changes with a notation of what codes have not been changed. He noted jurisdictions are allowed to amend codes with good cause.

MOTION: **Vice Chairman Guthrie** moved to send **H 547** to the **14th Order**. **Senator Thayne** seconded the motion.

DISCUSSION: **Senator Ward-Engelking** commented this bill has caused a firestorm. She asserted this bill is not ready and needs to be amended. **Senator Burgoyne** agreed with Senator Ward-Engelking. He stated this is a critical issue that needs work.

Senator Lakey disclosed for the record under Senate Rule 39(H), his law firm represents contractors and local government entities. He expressed support for the legislation. He remarked it was worth the effort to amend the bill and find common ground.

Senator Souza expressed concern about the IECC, which is the crux of the problem. She wondered if the amending process would be easier if that section was removed. **Mr. Burgess** stated that was a much broader question. Part 4 of the bill is the energy portion of the Idaho Residential Code (RC).

Senator Potts stated he supported the motion. He remarked it was time to pass a bill so the various stakeholders would find common ground.

SUBSTITUTE MOTION:

Senator Burgoyne moved to hold **H 547** in Committee. **Senator Ward-Engelking** seconded the motion. The motion failed by **voice vote**.

VOTE ON ORIGINAL MOTION:

The motion carried by **voice vote**. **Senator Burgoyne** voted **nay**.

H 466

Relating to Minimum Wage Exemption. **Representative Ron Nate** reported this legislation would add a new section to Idaho Code § 44-1504. The new section would provide an exception to Idaho's minimum wage law. **Representative Nate** remarked children and family members currently working on a family farm are exempted from minimum wage regulations. This legislation would provide a similar exemption for children and family members working in a family business.

Representative Nate acknowledged there is little or no fiscal impact to the General Fund because this is an exception to a regulation and would require no additional administrative or enforcement costs. He added this exemption may lead to both a decrease in wages for some workers and an increase in hiring and could, therefore, result in somewhat higher or lower tax collections from workers and employers.

DISCUSSION:

Senators Lakey and **Potts** commented they thought this was a good bill.

MOTION:

Senator Potts moved to send **H 466** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Patrick** adjourned the meeting at 2:02 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 13, 2018

The Honorable Jim Patrick
Idaho State Senator
Statehouse
VIA HAND DELIVERY

Re: House Bill 547 – Our File No. 18-60842

Dear Senator Patrick:

Your recent inquiry regarding House bill 547 has been referred to me for response. In addition to the request received initially, asking about the impact of the proposed amendment to section 2, your office forwarded correspondence from Brody Aston, a public affairs specialist with Westerberg and Associates. In his correspondence, Mr. Aston raises several additional questions for response by the Office of the Attorney General. My analysis follows:

Proposed Amendment. The existing legislation requires a local jurisdiction to make a finding of “good cause” prior to “adopting any provision of the International Building Code or the Idaho residential Code or appendices thereto.” Idaho Code § 39-4116. Instead of requiring a “good cause” finding, the proposed legislation requires a finding that “an immediate threat to human life or safety” exists. The proposed amendment replaces the “immediate threat to human life or safety” finding with a finding of “a community uniqueness in regard to building safety, fire, or life safety.” The question is how the language in the proposed legislation and proposed amendment would affect the bill.

The proposed legislation does not define “immediate threat to human life or safety.” The proposed amendment does not define “a community uniqueness in regard to building safety, fire, or life safety.” My research did not yield any clarification of either of these terms in the building code context that would be useful in further defining legislative intent. Regardless of the term selected, the proposed legislation should be clarified to define legislative intent for the selected criteria and detail the specific facts local jurisdictions must consider in arriving at their determinations.

Grandfathering. The question is whether current codes adopted by local jurisdictions would be “grandfathered” under the proposed legislation.

Proposed legislation typically applies prospectively. That said, the proposed legislation does not include any grandfathering provisions and, because of the way it is worded, leaves open the question of its intended impact on local jurisdictions' existing code enforcement programs. To avoid unintended consequences, the proposed legislation should be clarified to address the legislature's intent with regard to the legislation's impact on local jurisdictions' existing code enforcement programs.

Applicable Codes. The question is what codes are implicated in the proposed legislation. Idaho Code section 39-4109 adopts four building codes for the state of Idaho and establishes the criteria by which the Idaho Building Code Board can adopt or amend those codes. The codes are: the International Building Code (IBC), International Residential Code (IRC), International Energy Conservation Code (IECC), and the International Existing Building Code (IEBC).

Idaho Code section 39-4116 pertains to local government adoption and enforcement of building codes. Subpart (2) provides that local governments enforcing building codes must adopt current versions of the IBC (omitting other referenced codes within the IBC), parts I-IV and IX of the Idaho Residential Code (presumably this references the Idaho-adopted version of the IRC), and the Idaho Energy Conservation Code (again, presumably the Idaho-adopted version of the IECC). See Idaho Code § 39-4116.

The proposed legislation adds the following provision to subpart (2):

Local governments shall not adopt provisions, chapters, sections or parts of subsequent versions of the International Residential Code or International Energy Conservation Code, or subsequent versions in their entirety that have not been adopted by the Idaho building code board, except as provided in subsection (4) (b) of this section.

This new provision limits local jurisdictions in the scope of their enforcement programs. It authorizes adoption of the IRC and IECC only to the extent that the Idaho Building Code Board has done so. This is a substantial change from the broader language in the existing legislation, which contemplates that local governments may amend all adopted codes to reflect "local concerns." This broader language has been deleted from subpart (4) of the bill.

There are differing interpretations with regard to the impact of the proposed legislation's reference in subsection (2)(c) to subsection (4)(b). On one hand, it is argued that this reference permits local governments the latitude they are afforded under the existing legislation. On the other hand, it is argued that this reference does not grant that latitude. In my view, the reference to subsection (4)(b) does not communicate a broader grant of authority.

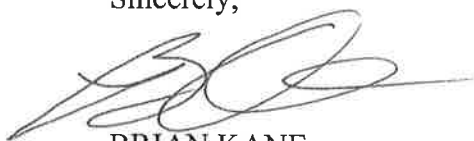
In contrast to subsection (2)(c), subsection (4)(b) of the bill limits local jurisdiction adoption of the IBC and the Idaho residential code to the extent that the Idaho Building Code Board has done so. Whether this difference was intended is not clear. However, without the broader language in subpart (4) of the existing legislation, which allows amendment of all adopted codes, the difference could create confusion for local jurisdictions and should be addressed.

Local Conditions. The question is whether the proposed legislation prevents local jurisdictions from adjusting the adopted codes for local conditions. I understand that the Idaho Division of Building Safety believes, pursuant to language in the IRC and adopted in rule, that the proposed legislation would not negatively impact the ability of local jurisdictions to adjust the adopted codes for local conditions. While the IRC does give building officials the authority to make certain determinations, where the proposed legislation removes local jurisdictions' ability to amend the adopted codes to reflect local concerns, it is difficult to comprehend how language in rule would enable local jurisdictions to adjust the adopted codes for local conditions. This may well be an unintended consequence of the proposed legislation, and, if so, should be addressed.

As indicated, there are serious questions with regard to the proposed legislation and its potential impact on local jurisdictions' building code enforcement programs. These questions are not resolved by reference to the language of the revision itself. To assure that the intent of the Legislature is fulfilled and to limit the potential impact on local jurisdictions' current and future code enforcement activities, I recommend that the proposed legislation be revised accordingly.

I hope you find this response helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'BK', with a long horizontal flourish extending to the right.

BRIAN KANE
Assistant Chief Deputy

BK/tjn

Email correspondence between Senator Winder and Office of Attorney General:

From: "Holm, Spencer" <spencer.holm@ag.idaho.gov>
Date: December 18, 2017 at 4:57:40 PM MST
To: "'cwinder@senate.idaho.gov'" <cwinder@senate.idaho.gov>
Cc: "Kane, Brian" <brian.kane@ag.idaho.gov>, "Christensen, Kay" <kay.christensen@ag.idaho.gov>
Subject: Boise City Adoption of 2015 Codes

Senator Winder,

You asked whether Boise City's adoption of the 2015 International Residential Code (IRC) and International Energy Conservation Code (IECC) would violate Idaho Code title 39, chapter 41. Boise City's adoption of the 2015 IRC and IECC likely would violate Idaho Code title 39, chapter 41 for two reasons.

First, the intent of title 39, chapter 41, is to create uniform building codes throughout the State of Idaho. See Idaho Code § 39-4101(1). The state has adopted the 2012 IRC and the residential provisions of the 2012 IECC pursuant to Idaho Code section 36-4109 and IDAPA 07.03.01.004. By adopting the 2015 IRC and IECC, Boise City's codes would differ from the state's codes, thus causing concerns the legislature sought to address by enacting title 39, chapter 41.

Second, the plain language of Idaho Code section 39-4116(4)(b) allows local jurisdictions to *amend* the state's adopted codes and adopt *provisions* of the IRC or IECC that differ from the state's adopted codes, not to replace the codes wholesale.

Please let me know if you have any additional questions or if I can help in any other way.

Thank you,
Spencer Holm
Deputy Attorney General
Contracts and Administrative Law Division
(208) 332-3098

H 547
attachment 2
3/13/18



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 2, 2018

The Honorable Chuck Winder
Idaho State Senator
Statehouse
VIA Email: cwinder@senate.idaho.gov

Re: Local Jurisdiction Adoption of Building Codes Other than Those Duly
Adopted by the Idaho Building Code Board

Dear Senator Winder:

You have inquired specifically as to enforcement mechanisms which might apply if a local jurisdiction adopted building codes other than those duly adopted by the Idaho Building Code Board. Earlier correspondence discussed the specific scenario in which a local jurisdiction adopts the 2015 version of certain building codes despite the fact that it is the 2012 version that has been adopted by the Building Code Board pursuant to its statutory mandate. The correspondence concluded that adoption of the new codes would be in violation of Idaho Code section 39-4116 and be contrary to the notion of uniformity which provides the underpinning for this chapter.

It is true that the plain language of Idaho Code section 39-4116(4)(b) allows local jurisdictions to amend the codes adopted by the Idaho Building Code Board. The statute permits local jurisdictions to adopt *provisions of the IRC or IECC* that differ from the codes adopted by the Idaho Building Code Board. The statute, however, does not permit the local jurisdictions to *replace* the adopted codes by adopting newer, revised versions.

The limited enforcement mechanisms within the Idaho Building Code Act are not of much utility as applied to this situation. They empower the Division of Building Safety to seek injunctive relief enjoining construction of a building, buildings, or modular buildings which do not conform to the requirements of the chapter. This mechanism, however, requires the filing of an affidavit of the Division that the building does not conform to the requirements of the chapter, and doing it on a building-by-building (or possibly development-by-development) basis. Idaho Code § 39-4125. This appears to place an onerous burden on the Division both in terms of time and expense.

The Honorable Chuck Winder
February 2, 2018
Page 2

The chapter also provides misdemeanor penalties for violations. Idaho Code § 39-4126. These penalties attach to those individuals found to have willfully violated the provisions of the chapter or the codes which are enumerated therein. Successful prosecution of such claims, however, is a matter for the county prosecutor, not the Division.

The current building codes have been lawfully enacted by the legislature. While there is some latitude given to the local jurisdictions to make changes within the parameters of the adopted codes, adoption of entirely different codes violates both the letter and the spirit of the law. Individuals or jurisdictions desiring adoption of entirely new codes should do so by seeking changes to Idaho Code section 39-4116(4)(b) through the legislative process. Those individuals negatively impacted by actions which are taken in violation of the law may find it appropriate to pursue claims for injunctive relief or damages through the court system.

If you have any additional questions or concerns, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Kay Christensen", written over a circular stamp or seal.

S. KAY CHRISTENSEN
Deputy Attorney General
Contracts and Administrative Law Division

SKC/blm

E-mail Correspondence to Rep. Demordaunt from Ron Whitney, Idaho
Division of Building Safety, February 28, 2018

Representative DeMordaunt,

Following up on your concerns expressed yesterday relative to H 547 and the restrictions placed on local jurisdictions.

The attached language is taken directly from the "Idaho Residential Code", 2017 edition as published by the International Code Council. It is a blend of the 2012 International Residential Code and all applicable IDAPA rules through the 2017 legislative session.

I have highlighted the specific sections that address the authority given to local jurisdiction building officials for the purpose of addressing local concerns. The language in H 547 does not remove any of this authority. Included are the following:

- * Render interpretations of the code and adopt policies to clarify the application.
- * Approve alternative material, design or method of construction
- * Set building permit fees
- * Set climatic and geographical design criteria to include
 - * Snow load
 - * Wind load
 - * Seismic design category
 - * Flood hazards

I believe there was contrary testimony in committee.

Please do not hesitate to contact me if you would like to discuss.

Ron Whitney

Deputy Administrator
Idaho Division of Building Safety
1090 E Watertower St. Suite 150
Meridian, ID 83642
208-332-7150
208-318-4987 cell

H547
attachment 3
3/13/18

PART 2—ADMINISTRATION AND ENFORCEMENT

SECTION R103 DEPARTMENT OF BUILDING SAFETY

R103.1 Creation of enforcement agency. The department of building safety is hereby created and the official in charge thereof shall be known as the *building official*.

R103.2 Appointment. The *building official* shall be appointed by the chief appointing authority of the *jurisdiction*.

R103.3 Deputies. In accordance with the prescribed procedures of this *jurisdiction* and with the concurrence of the appointing authority, the *building official* shall have the authority to appoint a deputy *building official*, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the *building official*.

SECTION R104

DUTIES AND POWERS OF THE BUILDING OFFICIAL

R104.1 General. The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in conformance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

R104.2 Applications and permits. The *building official* shall receive applications, review *construction documents* and issue permits for the erection and alteration of buildings and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

R104.3 Notices and orders. The *building official* shall issue all necessary notices or orders to ensure compliance with this code.

contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the *building official* or designee is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the *building official* shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the *building official* shall have recourse to the remedies provided by law to secure entry.

R104.7 Department records. The *building official* shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for the retention of public records.

R104.8 Liability. The *building official*, member of the board of appeals or employee charged with the enforcement of this code, while acting for the *jurisdiction* in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representatives of the *jurisdiction* until the final termination of the proceedings. The *building official* or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

R104.9 Approved materials and equipment. Materials, equipment and devices approved by the *building official* shall be constructed and installed in accordance with such approval.

R104.9.1 Used materials and equipment. Used materials, equipment and devices shall not be reused unless

R106.3.1 Approval of construction documents. When the *building official* issues a *permit*, the *construction documents* shall be approved in writing or by a stamp which states "REVIEWED FOR CODE COMPLIANCE." One set of *construction documents* so reviewed shall be retained by the *building official*. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the *building official* or his or her authorized representative.

R106.3.2 Previous approvals. This code shall not require changes in the *construction documents*, construction or designated occupancy of a structure for which a lawful *permit* has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

R106.3.3 Phased approval. The *building official* is authorized to issue a *permit* for the construction of foundations or any other part of a building or structure before the *construction documents* for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such *permit* for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a *permit* for the entire structure will be granted.

R106.4 Amended construction documents. Work shall be installed in accordance with the *approved construction documents*, and any changes made during construction that are not in compliance with the *approved construction documents* shall be resubmitted for approval as an amended set of *construction documents*.

R106.5 Retention of construction documents. One set of *approved construction documents* shall be retained by the *building official* for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws.

shall comply with the requirements specified for temporary lighting, heat or power in NFPA 70.

R107.4 Termination of approval. The *building official* is authorized to terminate such *permit* for a temporary structure or use and to order the temporary structure or use to be discontinued.

SECTION R108 FEES

R108.1 Payment of fees. A *permit* shall not be valid until the fees prescribed by law have been paid. Nor shall an amendment to a *permit* be released until the additional fee, if any, has been paid.

R108.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a *permit*, a fee for each *permit* shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

R108.3 Building permit valuations. Building *permit* valuation shall include total value of the work for which a *permit* is being issued, such as electrical, gas, mechanical, plumbing equipment and other permanent systems, including materials and labor.

R108.4 Related fees. The payment of the fee for the construction, alteration, removal or demolition for work done in connection with or concurrently with the work authorized by a building *permit* shall not relieve the applicant or holder of the *permit* from the payment of other fees that are prescribed by law.

R108.5 Refunds. The *building official* is authorized to establish a refund policy.

R108.6 Work commencing before permit issuance. Any person who commences work requiring a *permit* on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a fee established by the applicable governing authority that shall be in addition to the required *permit* fees.

**TABLE R301.2(1)
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA**

GROUND SNOW LOAD	WIND DESIGN		SEISMIC DESIGN CATEGORY ^a	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP ^b	ICE BARRIER UNDERLAYMENT REQUIRED ^c	FLOOD HAZARDS ^d	AIR FREEZING INDEX ^e	MEAN ANNUAL TEMP ^f
	Speed ^g (mph)	Topographic effects ^h		Weathering ^g	Frost line depth ^g	Termites ^g					

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

- Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The weathering column shall be filled in with the weathering index (i.e., "negligible," "moderate" or "severe") for concrete as determined from the Weathering Probability Map [Figure R301.2(3)]. The grade of masonry units shall be determined from ASTM C34, C55, C62, C73, C90, C129, C145, C216 or C652.
- The frost line depth may require deeper footings than indicated in Figure R403.1(1). The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.
- The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.
- The jurisdiction shall fill in this part of the table with the basic wind speed from the basic wind speed map [Figure R301.2(4)A]. Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.
- The outdoor design dry-bulb temperature shall be selected from the columns of 97½-percent values for winter from Appendix D of the *International Plumbing Code*. Deviations from the Appendix D temperatures shall be permitted to reflect local climates or local weather experience as determined by the building official.
- The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1.
- The jurisdiction shall fill in this part of the table with (a) the date of the jurisdiction's entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas), (b) the date(s) of the Flood Insurance Study and (c) the panel numbers and dates of all currently effective FIRMs and FIRMAs or other flood hazard map adopted by the authority having jurisdiction, as amended.
- In accordance with Sections R905.2.7.1, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall fill in this part of the table with "NO."
- The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (181-days) from Figure R403.3(2) or from the 100-year (99 percent) value on the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°F)" at www.ncdc.noaa.gov/ipsf.html.
- The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°F)" at www.ncdc.noaa.gov/ipsf.html.
- In accordance with Section R301.2.1.5, where there is local historical data documenting structural damage to buildings due to topographic wind speed-up effects, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall indicate "NO" in this part of the table.



AIA
Idaho

11351 West Trestlewood Street
Boise, ID 83709
aiaidaho@aiaidaho.com
www.aiaidaho.com

March 10, 2018

The Idaho Chapter of the American Institute of Architects (AIA Idaho) is writing this letter to officially set the record as strongly **opposed to House Bill 547**. The AIA Idaho governing board represents over 300 AIA members in Idaho whose main professional concern is welfare and health of public infrastructure and private building safety.

The AIA Idaho position is strongly backed by the AIA National Counsel, State and Local Policy office. American Institute of Architects is the national organization of design professionals whose mission is to ensure that the public's health, safety and welfare are protected through sound legislative and regulatory processes and building codes.

HB547 puts the Idaho economy at major risk by removing the ability for cities and counties to make local amendments to building codes. If passed, the State of Idaho will jeopardize the built environment's ability to withstand extreme weather events, devastating fires, and seismic and geologic events.

Every time we repeal building codes that require structures to be more secure and resilient, we endanger the life and property of the public. Both state and local building codes are the foundation of a resilient, safe infrastructure as the local public demands. Idaho is not a one-size-fits-all state. The infrastructure we design today must be reflective of the climate zone, local specifics, and municipal regulations which support and regulate the local economy and welfare of citizens. The local building codes have not been created in one day but have evolved based on state law plus many years of local building practice and best suit the needs of each region and locality in Idaho.

We must oppose efforts to create uniform legislation which undermines the local building codes in the quest for short-term profits. Attached is the statement of the AIA Idaho Mountain section which addresses our position in more detail.

Sincerely,

AIA Idaho Board
(Idaho Chapter of the American Institute of Architects)

*H 547
attachment 4
3/13/18*



American Institute of Architects
The Mountain Section of the Idaho Chapter

House Bill 547 Statement

Building codes are the foundation of resilient, safe infrastructure. Strong building codes that incorporate the most up-to-date technologies, materials, and design strategies are vital to ensuring the safety of the public. Codes establish the minimum requirements that our members rely upon to design and guide the construction of homes, hospitals, schools, and numerous other types of buildings.

Repealing the very building codes that require structures to be more secure and resilient endangers both life and property. Efforts like House Bill 547 jeopardize the building environment's ability to withstand extreme weather events, devastating fire, as well as seismic and geological events. Allowing local jurisdictions to adopt versions of the code above and beyond the state minimum enables cities to tailor the model building codes to the unique needs of each city, and allows them to be the best drivers of development they can be. It also ensures that architects and engineers design buildings with the latest safety advances in mind.

Rolling back the state minimum from its current version to an outdated model code is a step even further in the wrong direction. The negative impacts of such a rollback far outweigh any supposed benefit to both the economy, and the safety of our citizens. They would be a retraction of the commitment that our profession makes to our residents and businesses. The immediate impact (contrary to the Bill's stated purpose of providing uniformity and consistency) would be confusion as several jurisdictions have successfully implemented codes more relevant than the 2006 version proposed by the Bill, potentially exposing them to lawsuits from current project owners and developers.

Passage of the Bill would make Idaho the first state in the nation to scale back the code establishing its minimum energy requirements, leaving it at an economic disadvantage. Fifty percent of states in the US are currently under the 2012 IECC, including our immediate neighbors in Montana, Nevada, Utah, and Washington. This is because it is widely recognized that building energy codes are the most cost-effective method of reducing energy consumption, increasing life-cycle cost savings, increasing occupant comfort, improved health, and increased productivity.

The fiscal impact is most evident when considering the Energy Code. The energy code ensures reduced utility bills, which puts money back into individuals' and companies' pockets. According to the U.S. Department of Energy, energy cost savings for Idaho resulting from the State maintaining its commercial and residential building energy codes are estimated to be on the order of nearly **\$40 million annually** by 2030. Considering the uncertainty of long-term energy costs, a meaningful energy code better ensures the State is safeguarded against a potentially devastating economic hardship should utility costs rise.