

MINUTES

**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Thursday, February 09, 2017

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Anthon, 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 Anthon** moved to approve the Minutes of January 26, 2017. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**Chairman Patrick** announced he was moving RS 25229 to the beginning of the agenda as Senator Den Hartog had to testify at another meeting.

**RS 25229** **Relating to Procurement by Political Subdivisions. Senator Den Hartog** said this bill modifies and updates the procurement statutes related to political subdivisions. Modifications include changes to dollar threshold amounts for both informal and formal bid processes, a change in the delegation of procurement authority for County Commissioners, and exemption and bonding changes related to some types of public works projects.

**Senator Den Hartog** explained there is no impact to the General Fund. It is anticipated that the changes will not have a direct financial impact on political subdivisions, but will provide for a more streamlined and efficient procurement process.

**DISCUSSION:** **Vice Chairman Guthrie** asked for clarification as to whether the change in the delegation of procurement authority for County Commissioners was clear enough. **Senator Den Hartog** said the change was clear enough to be delegated to elected officials at the county.

**MOTION:** **Senator Anthon** moved to print **RS 25229**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**RS 25140** **Concurrent Resolution Directing the Department of Administration to Provide State Officers or Employees With A Health Transparency Tool or a Medical Diversion Program. Senator Thayn** stated the resolution directs the Department of Administration (DOA) to either provide a transparency tool for State employees on a State website or work with a vendor to establish a medical diversion program. A key to reducing medical costs is for consumers to have price information.

**Senator Thayn** said a website transparency tool would cost approximately \$100,000. A medical diversion program would cost approximately \$1.8 million annually, which would be offset by up to a 15 percent reduction in the State employee health insurance product. The total 2018 cost is estimated to be \$241 million. A 15 percent reduction would be a savings of \$36 million.

**DISCUSSION:** **Senator Burgoyne** wanted to know if the fiscal note was only a suggestion or if the note was a \$100,000 transparency note. **Senator Thayn** explained if the transparency tool was chosen, the cost would be \$100,000. A medical diversion program would cost approximately \$8 per member with a total of \$1.8 million. **Senator Burgoyne** wanted to know if the DOA was obligated to institute this program. **Senator Thayn** said this was an opinion. **Senator Burgoyne** remarked he liked the transparency tool and asked if the tool would be available for everyone in Idaho or for employees of the State only. **Senator Thayn** explained the tool was for State employees.

**MOTION:** **Senator Souza** moved to print **RS 25140**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**RS 25114C1** **Relating to Insurance Dividends and Other Distributions.** **John Mackey**, representing United Heritage Financial Group, said this legislation is intended to clarify the term "realized capital gains" as used in the calculation under Idaho Code § 41-3812(1)(b) in determining whether a dividend or distribution is extraordinary or non-extraordinary. The notice and approval requirements vary. While the current statute is silent as to how capital losses are factored into the calculation, the language in Idaho Code § 41-3812(1)(b) has been interpreted by the Department of Insurance (DOI) to mean net realized capital gains or losses. Insurance companies strategically manage their investment portfolios on a net basis as a sound business practice. This legislation will clarify the language to ensure that the calculation appropriately takes into account realized capital gains or losses and uses the net amount in the calculation to determine whether a dividend or distribution is extraordinary or non-extraordinary. **Mr. Mackey** said there was no opposition to this proposed legislation and the DOI supported the amendments.

**Mr. Mackey** explained there is no fiscal impact to the General Fund or any other State fund or expenditure. This legislation merely clarifies the calculation of a formula which has no fiscal impact.

**Mr. Mackey** explained a determination is based on a lesser of two measure, one of which is 10 percent of surplus. There is no issue with the surplus measure. The other is net gain from operations. It is the net gain from operations or net income measures that require clarification. Insurance companies strategically manage their investment portfolios on a net basis as a sound business practice.

**Mr. Mackey** stated that while the current statute is silent as to how capital losses are factored into the calculation, the language in Idaho Code § 41-3812(1)(b) has been interpreted by the DOI to mean net realized capital gains or losses. The statute does not specifically include the term "net" and does not reference losses.

**Mr. Mackey** noted this housekeeping measure involves adding the words "net" and "or losses."

**MOTION:** **Senator Burgoyne** moved to print **RS25114C1**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**Relating to Protection of Public Employees.** **Senator Lakey** said the proposed amendment would make the subsection consistent with the title and other subsections by adding the same language regarding protections for employees who report the violation of government waste or a violation of law, rule or regulation under the Whistleblower Protection Act, Idaho Code § 6-2104. The language is included in Idaho Code § 6-2104(1), (3), and (4) and the amendment would add it to subsection (2). The clarifying language will specify that an employee is protected from employer retaliation when participating or revealing information in an investigation, hearing, court proceeding, legislative or other inquiry.

**Senator Lakey** cited a recent court case where an individual prevailed at the district court level because the validation regarding the employee did not pertain to government waste or violation of the law. The individual appealed to the Supreme Court. The Supreme Court took a literal view and said that despite the apparent intent of the Whistleblower Protection Act, the literal language did not require that the Act relate to government waste or a violation of the law. Participation in any investigation or administrative review is protected. **Senator Lakey** explained that this proposed legislation does is to insert language that is similar to Section 1 and the other sections that tie the investigation to the existence of any waste of public funds, property or manpower or a suspected violation of the law, rules, or regulation.

**Senator Lakey** stated there is no quantifiable fiscal impact to the General Fund or to other political subdivisions because the numbers and types of claims that may be asserted are unknown. There may be a savings in limited exposure to liability by all levels of government.

**DISCUSSION:**

**Senator Burgoyne** said he thought the amendment included substantial changes. **Senator Lakey** said the amendment added language that makes the subsection consistent with the title. **Senator Burgoyne** remarked public employees would no longer have any protection from testifying. **Senator Lakey** explained the intent of the language was not to take action against those subject to a subpoena. He offered to explore the effect on an employee and possibly amend the Routing Slip (RS).

**Vice Chairman Guthrie** asked if an employee was trying to cause trouble without any merit, what recourse did the employer have to stop this type of activity. **Senator Lakey** said that an employer could not take adverse action if the employee communicated in good faith regarding the existence of waste of public funds, violation or suspected violation of the law, or a rule or regulation in the State of Idaho.

**Senator Souza** asked about if an employee was part of uncovering waste or fraud speaks up, but a year or two later the employee's performance is not up to standards, the employee is asked to leave or given a demotion, does the agency have any recourse in terms of performance of the employee, not based on any protections in the future. **Senator Lakey** remarked the matter of the burden of proof is on the employer. The employer would have to provide documentation as to why the employee was terminated or given a demotion.

**MOTION:** **Senator Anthon** moved to print **RS 25168**. **Vice Chairman Guthrie** seconded the motion.

**Senator Burgoyne** said he was going to vote no. He explained that he did not think the change was small. He explained that today an employee who is involuntarily called into a hearing or an investigation and is subpoenaed to testify and tells the truth against the interest of his or her bosses, has protection under this statute, no matter what the nature of the investigation or testimony. What this change will do is limit protection. The language in this RS is going to remove all protection unless it has to do with waste of public funds, property or manpower, or a violation or suspected violation of law, rule or regulation. Employees could hold out in fear of retaliation. He remarked this was a huge and potentially dangerous change.

**Senator Anthon** remarked all of the questions were good and he could see that what is being advanced in the RS is to provide protection for State employees and not to punish them for reporting. There will be a bigger question when this RS becomes a bill. Retaliation is a number one issue.

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

**RS 25195**

**Relating to Insurance - Motor Vehicle Service Contracts**. **Lance Giles**, representing the Motor Vehicle Protection Products Association (MVPPA), stated this proposed legislation would amend the Idaho Motor Vehicle Service Contract Act in four significant ways. First, it would move the authority to enforce the Act from the Idaho Attorney General to the Idaho Department of Insurance (DOI). Second, it would clarify the definition of a service contract to expressly authorize the following types of contracts: contracts to repair or replace tires or wheels damaged by road hazards; contracts to repair or replace windshield damage by road hazards; contracts to remove dents and dings in a vehicle without sanding, bonding, or repainting; and contracts to repair or replace lost, stolen, or damaged vehicle key-fobs. Third, it would give the Director of the DOI the power to approve other similar service contracts not enumerated in the Act. Fourth, it would add a new chapter to regulate the warranties associated with theft protection products installed on vehicles, such as steering column locks, tracking devices, and vehicle etching.

**Mr. Giles** pointed out consumers are seeking the coverage provided by these products and neither insurance coverage, warranty coverage, nor traditional vehicle service contracts offer the range and specificity of coverage provided by the products that are expressly enumerated in the proposed legislation. Many consumers discover the lack of coverage only when a repair becomes necessary. The industry is seeking uniform treatment of these products across the country for business consistency and predictability.

**Mr. Giles** stated that consultation occurred with the DOI, the Idaho Attorney General's Office, the Idaho Automobile Dealers' Association, and their recommendations were incorporated into this legislation. There were no objections to the proposed legislation.

**DISCUSSION:** **Senator Martin** asked why this proposed legislation would move the authority to enforce the coverage from the Idaho Attorney General to the DOI. **Mr. Giles** said that in a majority of the States regulation is done by the DOI. The change is for consistency and predictability.

**Senator Burgoyne** wanted to know if these warranties and vehicle service contracts were insurance. **Mr. Giles** said no. **Senator Burgoyne** said by transferring contracts and warranties to the DOI, is the Insurance Guarantee Association at risk to stand behind any vehicle service contract or were warranty companies at the risk of not being able to pay claims. **Mr. Giles** stated he was not sure and he would have to find out.

**Senator Souza** asked if there had been a problem that prompted this change. **Mr. Giles** said there was not a specific problem, but his office was contacted by the MVPPA to address consistency throughout the country, which was the impetus for this legislation.

**MOTION:** **Senator Martin** moved to print **RS 25195**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

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

**RS 25225**

**Relating to Casualty Insurance Contracts.** **Chairman Patrick** said this bill eliminates the problem of phantom insurance and reduced payments for benefits paid by others. It provides that when a citizen purchases motor vehicle underinsurance coverage, the purchaser receives the stated benefit provided on the declarations page. This prevents an insurance company that receives a premium for underinsured coverage from taking credit for benefits paid by other insurance companies. It further limits the benefits recoverable to the purchaser's actual losses or the amount of coverage purchased, whichever is less.

**Chairman Patrick** said this bill makes a change to Idaho Code § 41-2503. Currently if a person has underinsured motorist coverage, the insurance company may reduce benefits dollar-to-dollar to the amount of coverage. If the person who caused the accident has \$25,000 in liability coverage and there is \$25,000 in underinsured motorist coverage, the total coverage between the two policies is \$25,000, not \$50,000. **Chairman Patrick** explained that what this bill does is make certain that an insurance policy covers the first \$25,000 in liability and if uninsured motorist coverage was purchased, that is considered additional insurance. This change would eliminate the ability of an insurance company to offset coverage and have the policyholder pay premiums on phantom insurance.

**Mr. Giles** explained there is no fiscal impact to the General Fund as this applies to insurance companies who provide motor vehicle insurance policies. Some motor vehicle insurance companies already voluntarily provide this type of coverage and their premium rates are competitive with companies who do not currently adhere to this policy.

**MOTION:** **Senator Thayn** moved to print **RS 25225**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

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

**Relating to the Limited Lines Travel Insurance Act. Sarah Bettwieser**, representing the United States Travel Insurance Association, stated this legislation would authorize the Department of Insurance (DOI) to issue limited lines travel insurance producer licenses to qualified applicants who provide travel insurance through travel retailers. The legislation requires the licensed limited lines travel insurance producer and the travel retailer to meet administrative and disclosure requirements, such as including the producer's identification information and making certain disclosures to the consumer in the marketing materials and fulfillment packages, and requiring the producer to establish and maintain a transaction record.

**Ms. Bettwieser** said this legislation has no fiscal impact on local government or to the General Fund. There will be a small incremental increase in cost to the DOI for issuing licenses and the general regulation of licensees. As with the regulatory cost for all DOI licensees, the cost associated with the issuance of licenses will be offset by the fees for licensure.

**Ms. Bettwieser** stated travel insurance includes coverage for cancelled or interrupted trips, medical and dental emergencies, lost or damaged baggage, damaged or stolen rental cars, and travel supplier bankruptcies. The need for this legislation stems from regulatory inconsistencies among the states which are driven by a number of underlying factors, reflecting both the realities of the market and the regulatory approaches of the states.

**Ms. Bettwieser** explained that travel agents who distribute travel insurance are not in the business of insurance or are they perceived to be by consumers. Travel insurance products are rarely, if ever, offered by insurance agents who sell major lines of insurance, such as property and casualty or health coverage. In the modern market, travel agents may do business in one state or many states and can often not reasonably predict the state or states in which they might do business as they could receive a call from anywhere for travel services. **Ms. Bettwieser** pointed out that the National Association of Insurance Commissioners (NAIC), as well as the National Conference of Insurance Legislators (NCOIL) have recognized the issues with limited lines licensing and have both taken steps to provide a workable solution to resolve the problems and regulatory inconsistencies for travel insurance through travel retailers. The NAIC standards and the NCOIL Model Act are the framework for this proposed legislation.

**Ms. Bettwieser** said this legislation will allow a travel retailer to offer and disseminate travel insurance under a licensed insurance provider, but only if certain consumer protections are met. The legislation requires the licensed limited lines travel insurance producer and the travel retailer to meet administrative and disclosure requirements. Certain disclosures to the consumer are required in the marketing materials and fulfillment packages, and requires the producer to establish and maintain a transaction record.

**Ms. Bettwieser** explained the DOI is supportive of this legislation and she is not aware of any opposition. This legislation is in place in 44 other states, including surrounding states.

**DISCUSSION:** **Senator Lakey** asked if this legislation would allow travel agents to do something they cannot currently do. **Ms. Bettwieser** said that everyone who sells insurance in Idaho has to be a limited lines producer.

**MOTION:** **Senator Martin** moved to print **RS 25198**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:14 p.m.

---

Senator Patrick  
Chair

---

Linda Kambeitz  
Secretary