

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.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary