

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, February 29, 2012

TIME: 1:30 PM or Upon Adjournment

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin

**ABSENT/
EXCUSED:** Reps. Henderson, Patrick and Cronin

GUESTS: Jeff Harvey, Secretary of State's Office; Max Greenlee, Risch Pisca; Joie McGarvin, America's Health Insurance Plans; Tony Smith, Benton Ellis; George Gersema, Employers Resource; Wayne Hoffman, Idaho Freedom Foundation

Chairman Black called the meeting to order at 2:46 p.m.

H 549: **Jeff Harvey**, Office of the Secretary of State, presented **H 549**, which addresses some issues with liens. Mr. Harvey explained that in 1998 the filing of liens transitioned from the Recorder's Office to the Secretary of State's Office. In some cases the County Recorder's liens are abandoned. Then, when customers attempt to make a major purchase that requires a credit check, old liens may surface. When an inquiry is made, the County Recorder confirms that the lien exists but cannot provide any further information. If further checking takes place with the Tax Commission, the Tax Commission may confirm that the records have been destroyed since under statute the liens lapsed after a period of five years. Therefore, there is nothing documented at either the Recorder's Office or the State Tax Commission. At this point a consumer has to hire legal help to prove the lien is no longer valid. Mr. Harvey explained this bill will stipulate that any lien filed before July 1, 1998 is null and void and is no longer a valid filing with the Recorder. He said this will allow people to provide a copy of this stipulation and request that the lien be removed from their credit report. Mr. Harvey said he had checked with the three major credit reporting firms, Experion, Equifax and Transunion, to confirm that a person providing a copy of this amendment should have no problem getting the disputed lien removed from his or her credit report.

Responding to committee questions, Mr. Harvey said the Secretary of State is subject to the same five-year statute of limitations on liens. He said if the Tax Commission has not filed a continuation of the lien, it is no longer in effect. The Secretary of State allows the lien to lapse or fall off the record. This legislation, however, will not require the County Recorder to delete any information from their records; if necessary, the records will still be available through the Recorder's office. Mr. Harvey said the Secretary of State's office wants to put something in place that clearly states these liens are no longer valid.

MOTION: **Rep. Thompson** made a motion to send **H 549** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Thompson** will sponsor the bill on the floor.

H 550: **Jeff Harvey**, Office of the Secretary of State, presented **H 550**. He explained that when the business entity laws were changed and updated in 2007, language was omitted which caused an inconsistency regarding business entities. Mr. Harvey said H 550 will reinstate that language, which prohibits using a business name that falsely states or implies a business is affiliated with a government entity. Mr. Harvey said the omission of this language was a simple oversight.

Answering questions from the committee, **Mr. Harvey** gave examples of names that would imply a government affiliation, such as a name containing "City of Boise" or "eagleidaho.com". He said that in general the use of the name "Idaho" does not imply a government affiliation, but something like "Idaho Department of Carpet Cleaning" may imply an affiliation. Mr. Harvey said decisions on allowable business names are made on an individual basis by a naming committee. If there is some concern about whether or not a name is appropriate, the naming committee usually sides with the filer. He said all appeals to their decisions are judicial and are written into statute for each business entity type. He also noted that naming conventions are fairly consistent from state to state.

MOTION:

Rep. DeMordaunt made a motion to send **H 550** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. DeMordaunt will sponsor the bill on the floor.**

H 587:

Rep. Julie Ellsworth presented **H 587**, the Idaho Free Market Insurance Act. She stated this bill intends to remove some roadblocks that stand in the way of attracting out-of-state health insurance companies to serve Idaho citizens. Rep. Ellsworth said she is aware that some amendment is needed to clarify Section 3 and said she will work with the Department of Insurance to develop amendments. She distributed copies of Idaho Code Title 41, which is the insurance code.

Rep. Ellsworth outlined the main portions of the legislation, noting that Section 2 is the "exceptions" area of Code. She said the legislation will create an exception to the requirement for out-of-state insurers to get a license. She pointed out the new section, beginning on page 2, line 11, which is being added to the Code. She is proposing an amendment to a portion of this, and said some of the stakeholders are comfortable with the proposed amendment. She pointed out that on page 3, beginning on line 10, "individual accident and sickness insurance" is defined. She also noted the bill includes a severability clause.

Speaking to the justification for allowing insurance companies to receive "endorsements" rather than licenses, she stated that Idaho already does this with other professions. For instance, doctors licensed in other states receive an endorsement to practice here. The same is true for dentists, chiropractors, nurses, psychologists, and many others. Idaho relies on successful examinations in other states, and then those practitioners can come here if they remain in good standing with their own states. The provision for this appears on page 2, line 23 of the bill.

Rep. Ellsworth clarified that insurance companies doing business in Idaho will need to remain licensed in another state, as stipulated on page 2, line 23, and will need to comply with the provisions outlined in Subsection (3) on page 2, beginning on line 31. She said if a company ceases to be licensed in another state, it will not be able to do business in Idaho.

Rep. Ellsworth testified that the Department of Insurance receives a great deal of funding through licensing fees. When an insurance company is licensed by the Department, the company is required to remit a fee and pay a renewal fee in succeeding years in order to keep the license in place. Rep. Ellsworth said it was not her intent to reduce the fees collected by the Department and she is willing to clarify in the legislation that the certificate of authority will need to be annually renewed. She said this legislation is intended to expedite people going across state borders to shop for insurance.

Rep. Ellsworth explained that the proposed amendment to **H 587** makes more clear the procedure to follow with regard to dispute resolution; it references the chapter in Code that lays out the procedure. The amendment supplants paragraph (3) on page 2 of the bill, making it clear that dispute resolution will be governed by Idaho law. She also stated that companies selling health insurance in Idaho will be

required to pay the premium tax and contribute to the catastrophic health care fund. The Department of Insurance is given authority to promulgate rules to carry out the provisions of the bill. Finally, there is a severability clause included in the legislation. Rep. Ellsworth asked that the committee vote to send H 587 to General Orders with the proposed amendment attached.

In response to questions from the committee, **Rep. Ellsworth** said she intended the legislation to apply to both small groups and individuals. It is also her intent to require out-of-state insurance companies to comply with provisions of Idaho law, in addition to the licensing laws in their respective states. She said her primary concern is to make a free market approach work in terms of health insurance, while still requiring companies to comply with Idaho Code Title 41. **Rep. Rusche** expressed concern over whether an out-of-state company could, in fact, comply with Title 41 but be regulated under a different regulatory scheme. He said he is particularly concerned about the any willing provider laws, the difference in underwriting standards, the assessment of insolvency, as well as the bill's reference to only individual standards.

George Gersema, Chief Executive Officer of Employers Resource, testified **in support of H 587**. Mr. Gersema testified about some of the problem he thinks this legislation will help solve. He said Boise has more back surgeries per capita than anywhere else in America. Colonoscopies here cost \$2,500 to \$3,500, whereas in Dallas the cost is \$1,200 to \$1,500. The first example is a case of overutilization, while the second example is a case of lack of competition. Mr. Gersema said the National Conference of State Legislators in 2009 ranked Idaho as having the fourth highest benefit costs for state employees of all 50 states; only Alabama, Alaska and Oregon pay more. Idaho's cost per employee was \$733.08; this is the cost of single employee coverage, not family or spousal coverage. Mr. Gersema pointed out the demographic issues Idaho faces, with 1.3 million people dispersed across the 13th largest state in the union and a density of only about 50 people per square mile. This inherent characteristic is one factor that Idaho can't change, and it represents a challenge to health care companies.

Mr. Gersema said some at the national level think one way to make insurance more accessible to individuals and groups is to have the federal government decree that insurance companies can sell across state lines. He said he is not sure they have the authority to do that, although Idaho can do that by allowing other insurance companies from outside the state to sell their products, as long as Idaho can maintain certain safeguards. Mr. Gersema offered three reasons why Idaho might want to do this: 1) to provide competition; 2) to lead the way for other states; and 3) to gain choice.

In terms of competition, **Mr. Gersema** testified that the largest provider in the state has 425,000 members out of a total insured population of 705,000 to 710,000. Blue Cross covers 60% of the insureds in the state, while Blue Shield covers 21% and Pacific Source covers 4%. Thus, the three largest carriers cover 85% of the insured population. Included in that 705,000 number, however, are about 100,000 people insured by Blue Cross of Oregon, Blue Cross of Montana, and other carriers outside of Idaho; these people are employees of out-of-state companies who live here in Idaho. If those people are taken out of the total, there are 605,000 insured in the state. Given that figure, Blue Cross covers 70%, Blue Shield 24%, and Pacific Source 5%. Therefore, the three major carriers cover 99% of the insureds in the state. Mr. Gersema said this amounts to an oligopoly. He questioned why Idaho consumers have a wide variety of choices when it comes to buying car insurance, but not in the matter of health insurance.

Mr. Gersema said Idaho could lead the way for other states who may have a similarly dispersed and low-density population. To overcome that obstacle, he said something needs to be done to make Idaho more attractive to insurance companies. He said H 587 is a beginning step in the right direction because it allows us to make it attractive for carriers to come into Idaho and provide services and products in the state.

Finally, in terms of gaining choices, **Mr. Gersema** testified about his experience in shopping for a health plan for his company and employees. He said he wanted two things: a \$20,000 deductible and a specific drug formulary. He could not find a policy available in Idaho with a \$20,000 deductible, nor any policy with a \$30,000, \$50,000 or even a \$15,000 deductible. He did locate a policy offered by Aetna with a \$10,000 deductible, and found that Aetna could cover his employees in Texas, California, Georgia and other parts of the country. But they could not cover anyone in Idaho, where most of his employees are, because they do not do business in Idaho. Mr. Gersema then went to Blue Cross, Regence Blue Shield and Pacific Source but found that none of them offer a \$10,000 deductible policy. Therefore, he could not buy the product he wanted; instead he purchased a \$5,000 deductible policy from Regence, at a cost of \$356,000 per year per 100 employees. Had he been able to purchase the same policy from Aetna the cost would have been \$144,000 - a difference of \$212,000.

Concluding his testimony, **Mr. Gersema** said he wants to see Idaho businesses prosper. He said his health insurance purchasing decision cost an additional \$212,000 that could have been used to create jobs and hire people, thus helping Idaho's economy. Because of the limited choices in the Idaho health insurance marketplace, he had to buy a product he did not want, at a cost two and a half times higher than the product he did want. He said Idaho needs to allow more choices to Idaho businesses.

Responding to committee questions, **Mr. Gersema** said the introduction of insurance products from out-of-state companies will give businesses, employers and individuals the tools to figure out how to fix problems of cost control and utilization in Idaho. Asked whether Aetna gave a reason for not doing business in Idaho, he said he was told there is not sufficient population base here to provide enough business. He said Idaho also is in the position of being a tough insurance market to break into, so a company like Aetna would have to work doubly hard to gain a foothold and create a presence. Mr. Gersema was asked how passing this bill would help open up the market in Idaho, given the admitted dominance of Blue Cross and Blue Shield. He said a new company would be wise to create a niche strategy by offering a product not currently provided by those companies. He said there are companies in neighboring states such as Utah or Washington who could be successful in providing services to Idaho companies in communities near those state borders.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in support of H 587**, saying his organization has for the past three years been discussing the restriction on buying and selling insurance across state lines. He said the law that is amended by H 587 has been in effect since 1961. Currently other states, including Georgia, Minnesota and Oklahoma, are lifting similar restrictions. Mr. Hoffman said the current public policy is not working for residents of Idaho since premium costs continue to escalate. Competition would allow for lower prices and would bring down premiums. The money saved could be spent on capital expenditures to grow the Idaho economy. Mr. Hoffman said Idaho consumers should not be prohibited from shopping for lower rates, particularly in the current environment of internet sales.

Bill Deal, Director of the Department of Insurance, testified on **H 579**. Mr. Deal asked that he be allowed to offer further amendments to the bill, stating that he and Rep. Ellsworth can work together on amendments that will address some additional concerns and will still be acceptable to both the bill's sponsor and the Department.

Mr. Deal testified there are currently 731 insurance companies that sell health insurance in Idaho. He said the Department's website maintains a list of those companies, showing the top 20 companies that operate in the state. Blue Cross and Blue Shield have the primary market share, as they do in other states. Mr. Deal stated the IRS distributed a statistic showing that Idaho's small group rates are the lowest in the country and individual rates are in the lowest 10%. He said multi-state health insurance companies are not required to have offices in Idaho, but domestic companies do have to have offices here.

Mr. Deal testified that two sections of the bill seem to be in conflict with one another, namely: page 1, lines 30-33 suggests that a certificate of authority is not required of out-of-state insurers, but page 2, lines 21-25 states that the Director shall issue a certificate of authority to an out-of-state insurer. He asked that this contradiction be clarified. He is also concerned about the status of fees that would be paid by out-of-state insurance companies. He explained the Department is a self-funded agency, deriving its funding from fees paid by companies and producers. If this legislation passes, the Department is no longer able to issue a license to an insurance company not domiciled in the state, but it would be required to give the company a certificate of authority. Mr. Deal said he wants to make sure the legislation will allow the Department to continue requiring annual renewal fees for certificates of authority, at a level sufficient to continue funding the Department's operations.

Answering questions from the committee, **Mr. Deal** said he does not know whether the legislation covers group products. He said a process will need to be outlined in rule to deal with non-compliant companies. Since out-of-state companies will not be licensed to do business in Idaho, the Department will not be privy to some information and will depend on the company's state of domicile to provide information on such things as insolvency. Mr. Deal said there are no obstacles to a company like Aetna that would prevent it from providing plans, filing rates and forms, and doing business in Idaho.

Mr. Deal reiterated that there are 731 insurance companies licensed to do business in Idaho for the sale of health insurance. He said on a practicing basis there are about 20 companies that are actively selling individual health insurance and another set that sells group insurance. He was asked whether it is the role of the Department to encourage more of the several hundred companies that are not actively selling in Idaho to do so, thus providing greater choice for consumers. He stated there was an effort by his Department, in conjunction with the Department of Commerce, to contact insurance companies and try to attract them to Idaho. He said the two Blue companies do a lot of business in the state and noted that their market conduct and their claims history are good.

Mr. Deal testified the Department receives about \$1.8 million annually from renewal fees from the 731 companies licensed in Idaho. He said Idaho residents who are covered by out-of-state insurance companies most often are part of either Blue Cross or Blue Shield. Their claims processing is handled here, but if there is a dispute the employee has to deal with his or her employer and the insurance company in the employer's respective state. Asked whether an out-of-state company like Microsoft is more or less compelled to buy Blue Cross coverage rather than Aetna coverage for its Idaho employees, Mr. Deal said the company may have employees who work in many different states, and the basis of their health plan is whatever they have chosen in those states.

Mr. Deal was asked what kind of loss the Department would experience if the 731 insurance companies no longer needed to be licensed in Idaho. He said these companies are licensed in Idaho for various reasons, and if the bill is amended the Department will still be able to collect fees. But with the change of rules represented in H 587, he thinks those companies may have a different outlook as to whether to remain licensed in Idaho, especially if they are not doing business here. He said it could be an expensive problem for the Department.

Asked whether the 731 figure includes brokers, life insurance companies, and others paying the licensing fee, **Mr. Deal** said that is not the case. He again said there are 731 insurance companies that are licensed and pay a certificate renewal fee in the state of Idaho; this is the number for individual and small group insurance. Of that, about 20 companies have a market share, some of them less than 1%. He said a good number of the 731 are not actively selling health insurance in Idaho. **Mr. Deal** was asked whether he thought he could arrive at amendments that would allow his Department to remain neutral on the bill. He said he wants to make sure he has clarity on what is being asked of the Department. He also needs to guarantee, insofar as possible, that the Department will not lose \$1.8 million of income. In order to assure that, he said the bill needs to carefully state the fees and when they will be required to be paid.

MOTION:

Rep. Smith made a motion to **HOLD H587** to a time certain, to allow the Department and the bill's sponsor to arrive at amendments that would be satisfactory to all.

Answering further questions from the committee, **Mr. Deal** said he is concerned with the possible loss of oversight if companies are not licensed in Idaho. His two areas of concern are regulating the insurance industry as outlined in Title 41, and making sure companies are sufficiently solvent to pay claims. Asked about whether this bill will open the market and provide greater competition, **Mr. Deal** said it could serve as a trial run. He said in his 46 years of experience in the insurance industry he has never seen cross-state insurance sales to be an advantage, but suggested the climate is different now, with internet sales, web pages and different means of communication. He said if this is what the state wants, his Department will do its best to carry out its regulatory function. **Mr. Deal** was asked what role his Department would play if an out-of-state company were to go bankrupt. He said if the company is not a domestic Idaho company, the responsibility of rehabilitating or dissolving the company would be up to the state in which the company is domiciled; Idaho would not have responsibility or authority to deal with it. He said he would need to study this issue more and he intends to take the matter to the Deputy Attorney General to get these questions answered and get a fuller understanding of how this bill will affect regulation. **Mr. Deal** said he will seek the best possible solution that will still provide the Department with sufficient income and adequate regulatory authority.

SUBSTITUTE MOTION:

Rep. Bayer made a substitute motion to send **H 587** to General Orders. **Rep. Crane** seconded the motion. In support of his substitute motion, **Rep. Bayer** stated his belief that the concerns expressed by the Director and others can be addressed in General Orders with amendments. He said he views General Orders as providing a constructive step in this process.

Rep. Rusche argued against the substitute motion, saying the legislation is not quite well enough developed yet. He pointed out that the issues brought up by the Department and others, including whether the bill applies to both group and individual insurance, are significant enough to hold the bill and have it reworked.

Rep. Smith argued in support of the original motion, noting that the Director stated his willingness to work with the bill's sponsor in developing amendments that will pass muster and that are legal.

Rep. Crane argued in support of the substitute motion, saying something needs to be done to increase competition and options for the citizens of Idaho. He said he found 11 companies on the Department of Insurance website listed as small group insurance providers and six listed for individual policies. There is considerable overlap among those two groups. Rep. Crane said his health insurance rates continue to escalate and yet there are no new ideas or fresh approaches to health care coverage. He said wherever there is a monopoly and little competition, prices will not be driven downward. Rep. Crane said the concerns over whether this bill applies to group and individual policies can be addressed on General Orders.

**ROLL CALL
VOTE:**

Chairman Black called for a vote on the substitute motion to send **H 587** to General Orders. **Substitute motion passed by a vote of 11 AYE and 3 NAY, with 3 absent and excused. Voting in favor of the motion: Reps. Collins, Bilbao, Chadderdon, Crane, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, and Batt. Voting in opposition to the motion: Reps. Smith (30), Rusche, and Black. Reps. Henderson, Patrick and Cronin were absent and excused. Rep. Bayer** will sponsor the bill on General Orders.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:20 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary