

## MINUTES

# SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

**DATE:** Thursday, March 22, 2012

**TIME:** 1:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Andreason, Vice Chairman McKague, Senators Cameron, Goedde, Smyser, Tippets, Johnson, Stennett, and Schmidt

**ABSENT/  
EXCUSED:**

**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.

**Chairman Andreason** called the meeting to order at 1:01 p.m.

**PAGE** Page Presentation and Thank You. **Chairman Andreason** graduated the Committee's page **Elisabeth Manor** from the page program and thanked her for her service to the Committee.

**MINUTES APPROVAL** March 20, 2012

**MOTION:** **Senator Schmidt** moved, seconded by **Senator Goedde**, to approve the minutes of March 20, 2012. The motion carried by **Voice Vote**.

**H649** Relating to Insurance. **Colby Cameron, Attorney, Sullivan, Reberger and Eiguren, representing Asurion**, explained the bill established portable electronic device insurance as a limited line of insurance and regulates its provision. The main features of this bill are: 1) It requires vendors of portable electronics insurance to be licensed; 2) It specifies that employees and authorized representatives of vendors are not required to hold separate licenses; 3) It establishes certain disclosures that must be made to consumers; 4) It sets forth termination and electronic notice provisions; 5) It requires training of vendor employees and authorized representatives; 6) It provides that the performance of clerical activities associated with adjuster activities for portable electronic devices does not require an adjuster's license; and 7) It adds provisions governing the licensure of a resident of Canada as an adjuster.

**Senator Goedde** stated that portable electronic insurance deals with physical damage to the device. **Mr. Cameron** replied that it deals with the damage to the device and other things as well. The device is covered for damage in situations where something happens to the cell phone in the course of use by dropping, immersion in water, etc. **Senator Goedde** asked for clarification of Section 8, "responsibility of action of others." Typically, if you are selling insurance you protect yourself by buying an errors and omissions policy that would extend from the licensed agent to employees of authorized vendors? **Mr. Cameron** explained that he could not answer this question.

**Senator Tippets** said on page 11, line 18, Section 41-1103 deals with licensure of residents of Canada, is there a reason they are specifically listed in this legislation? **Mr. Cameron** stated their client has a call center located in Canada. The call center is used as a central adjusting area. **Senator Tippets** asked for further clarification on line 18. of Section 41-1103, "stating no resident of Canada may be licensed as a resident adjuster or may designate Idaho as his home state." If that individual has passed the adjuster examination then they can be designated as resident

adjuster for the State of Idaho. Is this correct? **Mr. Cameron** responded that this was correct. **Mr. Tippetts** stated that this specific provision is beneficial to the company that they represent; what about another company that might have a center in Mexico that is adjusting claims? Why does the legislation not make provision for other countries as well as Canada? **Mr. Cameron** clarified that it was not the intent of the legislation to preclude any other companies call center that might exist in another country. Canada was placed in the legislation to make it clear that the call center in Canada, as an adjuster, could choose Idaho as their home state.

**Senator Tippetts** said their firm thought it was necessary specifically to grant this provision to Canada then the Committee could infer that this provision would not apply to other countries. **Mr. Cameron** explained this was a specific provision for the company they represent who has the call center in Canada.

**Jason Kreizenbeck, representing AT&T**, spoke in support of the **H649**. AT&T believes that this legislation is a good state based solution that will lower regulatory burdens on portable electronic insurance and it streamlines the logistics of licensing our employees and sales staff.

In response to questions from **Senators Stennett** and **Tippetts** concerning the specific provisions concerning Canada in this bill and whether the Department has taken a position on the legislation, **Tom Donovan, Deputy Director, Department of Insurance**, stated that the Department has not taken any official position on the legislation. The sponsor of the bill has met and consulted with the Department as the legislation progressed and the Department has no objections to this legislation. The Department's interpretation of the language is that the entity is subjecting themselves to the jurisdiction of the Department by virtue of coming in and applying for the license, if Idaho were their home state.

**Senator Tippetts** explained that placing the provision of "Canada language" for the unique circumstances of a specific company within this legislation seems to imply preferential treatment to a specific business circumstance and he is unable to support the bill as written. In response to requests from **Senators Tippetts, Stennett and Goedde, Roy Eiguren, Attorney, Sullivan, Reberger and Eiguren**, stated that they would amend the legislation by deleting the Canadian provision in Section 41-1103.

**Senators Smyser and Cameron** stated pursuant to rules of Senate 39 (H), they have a conflict but still wish to vote on **H649**.

**MOTION:**

**Senator Goedde** moved, seconded by **Senator Schmidt**, to send **H649** to the floor with a do pass recommendation. The motion carried by **Voice Vote**.

**H624**

Relating to Trust Deeds. **Jeremy Pisca, Attorney, Risch, Pisca Law Firm, representing Newspaper Association of Idaho (NAI)**, advised NAI represents 47 newspapers from every part of the state and in each of your communities, 36 weekly newspapers and 11 daily newspapers. The majority of the smaller newspapers are "mom and pop" operations.

The issue this legislation addresses is residential home foreclosures under a deed of trust. In the past, the State of Idaho foreclosed on mortgages, but moved to the deed of trust system for its ease of foreclosure. It required less time than a judicial process, but because it is an easier method to foreclose upon a house in which an individual is unable to pay their obligation there are a number of safe guards and checks and balances that were put into place.

When a bank loans money, it is the beneficiary. It loans money to a homeowner, that homeowner then grants a trust deed to a trustee who holds that deed. The trustee holds the power of sale upon a deficiency. Part of the checks and balances

are the homeowner, upon an event of deficiency, gets personal notice from the trustee; and notice must be published in a newspaper in four consecutive weeks for two reasons. The reasons why they require that those notices be published in a newspaper of general circulation within the county: 1) To attract more bidders; and 2) Impose a level of transparency upon the process of foreclosure. Why would they want to attract more bidders to these foreclosure sales? The debtor who owns the home is still obligated to pay the underlying debt. If there isn't enough proceeds that come in from the sale of the property, that homeowner can still be liable for the deficiency. Line 26 of the bill, states that the homeowner still is liable for the debt, outstanding taxes, assessments, insurance premiums, any subordinate liens, costs and expenses of the actual sale, trustee's fee and any attorney's fees expended in the sale. Upon the sale of the property the proceeds pay in order: 1) The trustee and attorney fees; 2) Obligation; 3) Recorded liens; and 4) Surplus would go to the homeowner.

Why do you need transparency in this process and what does publication in the newspaper offer by way of transparency? It offers an independent verification that the notice of sale has been published. It creates a record of proof that notice was adequately served. The publication notifies any interested bidder and attempts to notify anyone who may have an interest in the property, such as subordinate lien holders and leasehold interests. If the goal is for broad distribution to attract the maximum amount of bidders, then it goes against the public policy in the State of Idaho for the trustee to have a financial interest in the newspaper that is publishing the notice. If the choice of the trustee is to publish in a newspaper that has a circulation of 22,000 people versus a newspaper that the trustee owns that has a circulation of only 1,000 people, clearly there is no other reason to publish in that smaller publication unless there is a financial interest. The legislation before has been triggered by a disturbing trend. This trend is occurring throughout the Northwest and began in the State of Washington, onto Oregon, Hawaii and Alaska.

This process is a threat to smaller weekly community newspapers in the State of Idaho. It serves to damage larger newspapers (See Attachment 1 and 2 - Newspaper Articles). In terms of revenue, this is a far bigger issue for the smaller newspapers because these rates that are charged to publish these notices are set in statute. On average, one of these notices costs \$400 total, to publish four times, if you are only required to publish that notice 1,000 times versus 75,000 times it becomes more profitable to do so.

**H624** removes the financial incentive to "self deal" and to bury those notices in newspapers that are smaller, cheaper to operate, and obscure. There has been an allegation that this law cannot sustain judicial review. Rejecting ownership interests in other business type facilities is not something that is little. In the medical profession you have the Stark Laws. Physicians cannot have an ownership in, for example, an MRI where they would be referring a patient to the MRI for their profit. Secondly, in the alcohol laws there is a three year system in which breweries cannot have an interest in a retail establishment in that regard they cannot "self deal." On page 2, line 23, of the legislation states that it is unlawful for a trustee for the trustee's sale to have a financial interest in a newspaper publishing such notice or to profit, directly or indirectly, based on the publications of such notice of sale and such conduct shall constitute a misdemeanor, punishable by imprisonment in the county jail for a term not to exceed one year, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment.

**Mr. Pisca** spoke to the definition of a trustee defined in Blacks Law Dictionary. (Attachment 3 - Definitions). Trustee is a person who is holding an interest in property in trust. A trustee owes a fiduciary duty to the beneficiary. A fiduciary duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law. In this case, the trustee is not subordinating their personal interests to that of the other person. They are "self dealing" and directing the notices to newspapers to which they own.

**Senator Tippetts** asked, in the bill he reads, that merely having a financial interest in the newspaper publishing that notice, is unlawful. **Mr. Pisca** said on page 2, line 23, is all one sentence. It reads that it would be unlawful to have a financial interest in the newspaper or to profit directly or indirectly based on the publication of such notice. **Senator Tippetts** asked why the need for the word or in line 24? **Mr. Pisca** clarified that language was put in there to deal with the allegations that a trustee was charging its clients more than the statutory rate (see Attachment 2). There have been allegations that those prices have been inflated and passed on to unsuspecting customers and that they have been profiting directly or indirectly based upon publication of such notice.

**Stephen Routh, CEO, Realty In Motion (RIM)**, stated that RIM is a group of companies offering a foundation including newspapers, law firm components, posted publication companies, and websites. The Idaho company presence has 35 employees with an annual payroll of \$9M. The publication arm is RIM Publications operating papers in four western states, Idaho, Washington, Oregon and Hawaii. The typical RIM newspaper is community owned, none of them profitable prior to their purchase. The Kuna Melba News locally is one of the newspapers their company acquired. They have made a difference in this communities newspaper with new equipment, benefits and raises paid to the employees, and new office space. This is typical of what takes place when RIM acquires these smaller newspapers.

**Mr. Routh** spoke in opposition to **H624** advising this statute is aimed at one company RIM. The goal of the legislation is to protect borrowers, banks and potential third party bidders. No one has brought in facts of wrong doing only vague threats of what will happen. The bill before you does not prevent foreclosures. Does not reduce the cost of foreclosures. Does not increase newspaper accountability for legal advertisers, lenders or trustees. Does not increase the accuracy or quality of newspaper legal ads. Does not reduce the harm of foreclosure process to the borrower or correct any real problem that exists in the process today.

**Matt Davison, Publisher of Idaho Press Tribune**, spoke in support of **H624** advising that as a newspaper of record in the Canyon County Community they follow the letter of the law and act as an independent third party to verify all the notification to the community they serve. Currently in Canyon County, 1 out of every 268 homes is in the foreclosure process.

**Larry Benton, Lobbyist, Benton, Ellis Associates, speaking on behalf of RIM Newspaper Publisher in Kuna**, spoke in opposition to **H624** stating you have in your packet a letter from Mr. McIntosh, Editor, of the Kuna Melba News, (Attachment 4 - E-mail Letter from Scott McIntosh), addressing all the positive aspects of their newspaper's purchase by RIM. **Mr. Benton** requested an ad hoc committee, over the summer, review the entire legislation of this trustee and foreclosure process. It was 1957 when the rules were last put forth and should be reviewed. **Senator Stennett** asked for clarification if RIM was a partner or the owners of the Kuna Melba News? **Mr. Benton** stated that RIM is the owner of the Kuna Melba News. **Senator Stennett** asked through the purchase of the Kuna Melba News, RIM is able to move the trust notices from other newspapers in the area, that they do not own, to their newspaper that they do own? **Mr. Benton** stated RIM can put

those notices in the Kuna Melba News. **Senator Stennett** asked what was the circulation for the trust notices in the area newspapers versus the Kuna Melba News? **Mr. Benton** stated the circulation of the Idaho Business Review which was publishing these trust notices 2,500. The circulation notice that was published by the Idaho Kuna News was 2,200. **Senator Goedde** asked what is the circulation of the Idaho Statesman and do they publish these trust notices? **Mr. Benton** replied the circulation of the Idaho Statesman is approximately 70,000. **Senator Goedde** said if a homeowner is going to get whatever is left out of the trustee sale and the company that is processing the foreclosure is spending \$400 for an ad they would be better served by a publication with a circulation of 70,000 versus 2,200. **Mr. Benton's** response was that the Northwest Trustee Services, Inc.(NTI) operates a website that is right on the front page of the Kuna Melba News that is the finest website in the northwest. You can look on the website and pull up sales for states all around us. The websites are what really cover the sales and the circulation through the website is extremely high. **Senator Goedde** asked would their group be willing to set down in the interim and take a look at the broader perspective. **Mr. Benton** replied that the proper perspective is there needs to be a resolution to this process and believes this legislation is not the correct remedy. The bill benefits absolutely no one but the owner of the property who is subject to foreclosure.

**John Eaton, representing The Idaho Association of Realtors**, spoke in support of **H624** advising this was an issue that first came up to them when they were looking at another piece of legislation. The issue of a trustee being able to open or purchase a newspaper in order to publish the trust notices. Their Association deemed this process to be unfair taking the notices out of the bigger circulation newspapers and placing them in a newspaper that the trustee owns with a smaller circulation. The companies that process the trustee sales, First Title and NTI, do a vast majority of these trustee sales. RIM is taking all of their trust notices and placing them into the Kuna Melba News. Their Association who represents the sales in Boise, now has a lower circulation number, for these homeowners who are trying to get the best price for their properties. At the end of the day, when that sale is done, the person who owns the house is on the hook for the remainder of the money.

**Senator Schmidt** stated is there evidence that the website provides improved circulation and access to the trust notices? Wouldn't moving these notices to the Kuna Melba News decrease attention and lower the price of the properties? **Mr. Eaton** responded that they did not have evidence, but did say that this was the consensus of their Association members in regard to the circulation issue.

**Cameron McFadden, Title One Corporation**, testifying in opposition of **H624** explaining if the public policy in relation to this legislation questioned is basically to attract bidders on these foreclosed properties. Title One's policy behind foreclosure is to provide a speeder remedy for lenders to take back property that is in default. It is required that the trust publication be made in a paper of general circulation in the county where the property is located. Given the state of the economy at present, the depth of this problem is very miniscule. The value of homes right now are so much lower than the deeds of trust conservatively 100 trustee sales attracts a bidder because there is no value in the properties. The lenders are making credit bids for the amount they are owed. Title One's perspective is the investor community are not the individuals watching the newspapers they are watching the websites. They believe that this legislation is too vague to deal with the problem. **Senator Stennett** asked does a title company verify publication of these trustee notices? **Mr. McFadden** answered there is a statutory that requires verification of the trustee publication. They have to file an affidavit that states that they have published these notices in a paper of general circulation.

**Senator Smyser** inquired of **Mr. Pisca** would this legislation be better served by being looked at in an interim committee? **Mr. Pisca** stated this is a public policy issue concerning what is the roll of a trustee and what is their fiduciary duty. Does it make sense for them to have an ownership interest in the paper of publication. It is a clear case of "self dealing" and was not contemplated in the history of foreclosure and deed of trust notices. It is a phenomenon brought on by the economic recession and is a boom time for the foreclosure market and it does not look as if it will let up. It is expected to get worse, at least until 2015. The day the Kuna Melba News was purchased all of the legal notices came out of all of the other publications in the Treasure Valley, that's the problem, hence the emergency.

**Kris Ellis, Lobbyist, representing RIM**, spoke in opposition to **H624**. This bill does not say that you cannot publish in the Kuna Melba News. It doesn't say that First American, Title One, Pioneer Title, Bank of American or Wells Fargo cannot publish in the Kuna Melba News. The RIM website over the last six months has had over 200,000 hits on it from individuals all across the country looking to buy foreclosed homes in Idaho. That is more than any paper in the valley. The real solution to this problem is to get the message out to the greatest number of people. In this electronic age regulating the notices through newspaper ownership is not the way to solve the problem. **Senator Goedde** asked for clarification of the process by which a paper is chosen for the ads to be placed? **Ms. Ellis** stated that the banks choose the trustee who is taking back the property. **Senator Goedde** asked for explanation on the relationship between the trustee service and the banks that are taking possession of the foreclosed properties. **Ms. Ellis** replied that banks hire NTI to do the foreclosure process.

**Senator Cameron** stated the question that the Committee has to decide is this a public policy of the state that a trustee and the newspaper, whose services are used for the publication of the trust notice, allowed to be owned by the same entity. It has been a long standing public policy of the State of Idaho that in the medical field there is no self-referral. Why shouldn't this be the same public policy when it comes to foreclosure. Why should it be the public policy of the state for the trustee to also own the newspaper and I can give you a great deal on the ad in the Kuna Melba News. **Ms. Ellis** stated within health care, St. Lukes has integrated health care and the model of buying physicians and being able to do an efficient job of delivering health care because it is a streamline process. The banking industry such as Wells Fargo, Bank of America, etc. are hiring the companies that they represent because they have to do foreclosures in an efficient manner because they have the businesses to process the foreclosure. **Senator Cameron** stated that the system that RIM has set up is more efficient and streamlined. If these are the only two issues, should the trustee be able to profit by being a trustee and turnaround and profit by placing the ad with the company at the same time.

**Sean Evans, Publisher and Vice President, Idaho Business Review**, spoke in support of **H624** explaining there is an inherent conflict of interest for a trustee to pay himself to advertise and verify with himself due process of the notice. **H624** will restore independence of the foreclosure process, transparency, accountability to the foreclosure process. Allowing a trustee a monopoly over all facets of the foreclosure process corrupts the process, undermines public confidence in the legal system and courts scandal.

**Derrick O'Neill, Attorney, Routh, Crabtree, and Olsen**, spoke in opposition to **H624** advising that Idaho's deficiency statute limits as the difference between the amount that was due to the owner at time of sale and the fair market value of the property for the sale price. Sale price of the foreclosed property does not reduce the homeowners potential liability for deficiency. The homeowner still gets credit for the fair market value of the property. To suggest that this legislation will right some

wrongs and protect homeowner rights from the deficiency standpoint shows a lack of understanding of Idaho deficiency statutes work. This should answer **Senator Johnson's** concern about why this creates a monopoly.

**Mr. O'Neill** explained that the trustee is not the bank. The bank is the entity to which the homeowners make their payment. The prospects of the trustee interfering with the process and monopolizing the process ignores the fact that the underlying debt and obligation is owing to the bank. The bank authorizes the trustee sale, has the loan with homeowner and is the one who initiates the foreclosure process. The two clauses that are in statute itself: 1) The trustee cannot have any ownership interest in the newspaper; and 2) The trustee cannot profit from publication. These clauses will produce litigation. The suggestion that the trustee cannot profit by publishing the notice, irrespective of whether they own the paper or not, suggests that there is a possibility to interfere with the non-issue foreclosure process and to upset any foreclosure sale. Every trustee charges for their services whether they own the newspaper or not. If they are going to be held liable for making money from charging for their services by virtue of occupation, they are potentially criminally liable. **Senator Goedde** asked **Mr. O'Neill** if he has any business relationships with NTI or RIM? **Mr. O'Neill** stated he is an attorney with Routh, Crabtree and Olsen which is a related entity to RIM.

**Senator Goedde** advised that alleged statement was made that RIM is looking at purchasing as many as 50 more newspapers in the western United States. He believes that the problem is going to get worse if Idaho waits another year before taking action on this trustee process.

**MOTION:** **Senator Goedde** moved, seconded by **Senator Stennett**, to send **H624** to the floor with a do pass recommendation.

**ROLL CALL VOTE:** **Chairman Andreason** then called for a **Roll Call Vote** for **Senator Goedde's** motion. **Senators Cameron, Goedde, Smyser, Tippets, Johnson, Stennett, and Schmidt, Vice Chairman McKague and Chairman Andreason** voted aye. There were no nay votes. The motion carried.

There being no further business, the meeting was adjourned at 2:40 p.m.

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Senator Andreason  
Chairman

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Carol Deis  
Secretary