MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 24, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Durst

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.

CONVENED: **Chairman Tippets** called the meeting to order at 1:31 p.m.

RS 21589 **Relating to Commercial Transactions - Electronic Transfers of Funds** was presented by **Mike Brassey**, Uniform Law Commissioner, who explained the history of the Law Commission in the state of Idaho. He stated **RS 21589** related to the electronic transfers of funds and there are laws, both at the state and federal level, that govern the process for electronic transfers. The Idaho law is contained in Article 4A of the Uniform Commercial Code and by its terms the state law does not apply to transfers governed by the federal Electronic Funds Transfer Act. Recently Congress, as a part of Dodd-Frank Wall Street Reform and the Consumer Protection Act, amended the federal law to expand its coverage and to create a new type of wire transfer known as a "remittance transfer". The problem created by this amendment is that a remittance transfer does not always meet the definition of an electronic funds transfer and it is unclear what law applies to the transaction. This change in the federal law created uncertainty and makes it unclear whether transactions that are currently governed by state law will remain subject to state law unless this section of state law is amended. The relevant federal agencies have agreed to postpone implementation of their regulations until the end of February of this year in order to allow the states to have time to make this proposed amendment.

This legislation amends the Idaho law to maintain the existing state exemption for Electronic Fund Transfers (EFT) transactions and to provide that a remittance transfer is subject to Idaho law unless it is also an EFT. In Subsection 1, the existing law is retained except in the case of remittance transfers. New Subsection 2 deals with remittance transfers and provides that such transfers are subject to state law unless the transfer is also an EFT transfer. New Subsection 3 restates the existing law and says that in the event of an inconsistency between the state and federal law, the federal law governs. In addition to the Uniform Law Commission (ULC), this amendment has been approved by the membership of The American Law Institute, the American Bar Association and the American Bankers' Association.

In order to assure that the relationship between federal and state law remains as it was before the federal expansion, this legislation is proposed to preserve the scope of the state law. There is no fiscal impact to the state or to local government.

MOTION: **Vice Chairman Patrick** moved to print **RS 21589**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

Chairman Tippets announced that a few committee members would be leaving the meeting to have their pictures taken.

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

Vice Chairman Patrick said that due to the fact some Senators would be leaving momentarily, he wanted to move **Docket No. 24-0101-1201** to the end of the agenda.

DOCKET NO. 18-0109-1201 (CHAPTER REPEAL)

Tom Donovan, Deputy Director of the Department of Insurance, said the Idaho Administrative Procedures Act (IADAPA) Rule 18.01.09 located on pages 102-104, concerns suitability standards applicable to insurers and insurance producers in recommending annuities to consumers. The Department of Insurance (DOI) proposes to repeal the existing rule in this docket and replace it with the proposed **Docket rule 18-0109-1202**, "Suitability in Annuity Transactions". A public meeting was held on July 19, 2012 where both this docket and the chapter rewrite docket were heard.

A draft of the rule was made available to those expressing interest and it was published on the DOI website. There was a consensus among those attending that the rule was acceptable and necessary. Those attending and supporting rulemaking included the American Council of Life Insurers and the National Association of Fixed Annuities. **Mr. Donovan** said he received positive feedback and an endorsement from local agent, Hyatt Erstad, on behalf of the National Association of Insurance and Financial Advisors (NAIFA) and also a representative of Idaho's own United Heritage Life Insurance Company based in Meridian, who agreed that it was appropriate that Idaho adopt the revised model as set forth in the pending rule.

Two of the people attending the hearing submitted written feedback and comments (a representative of the American Council of Life Insurers and a representative of the National Association of Fixed Annuities), which were supportive of the DOI's efforts and intent. Specifically, comments focused on acceptance and agreement to the current recordkeeping requirement not set forth in the model, but in the current version of Idaho's rule, which addressed Section 021. **Mr. Donovan** said he received no objections to this rulemaking from the public. Similarly, he said, they were advised in September 2012, that the Legislative Services Office, the House and Senate subcommittees and all of the DOIs had reviewed this and no objections were noted.

DOCKET NO. 18-0109-1202 (CHAPTER REWRITE)

Department of Insurance Rules Review 18.01.09 - Rules Governing Consumer Protection in Annuity Transactions

Mr. Donovan said the rule sets forth requirements for both insurance producers (agents/brokers) and insurers or insurance companies (when no producer is involved), to have a reasonable basis to believe that any recommendation they make to purchase or exchange an annuity is suitable for the consumer, based on the particular facts and circumstances of that consumer and as disclosed by the consumer. This includes the consumer's "suitability information" as defined in Section 010.09 of the pending rule. The seller must also believe the consumer has been reasonably informed of various features of the annuity, which is a new requirement in the rule. Section 010, regarding suitability information, is newly expanded information and is defined in Section 010.09 on pages 109-110. **Mr. Donovan** said the specificity of the "suitability information" is a significant change from the current rule. While the current rule has the same general standard that a producer or insurer have reasonable grounds to believe that an annuity recommendation is suitable, that belief was to be based on the consumer's investments and other insurance products and after the producer or company had made reasonable efforts to obtain information. Information considered to be reasonable by the producer or insurer were the consumer's financial status, tax status and investment objectives.

Mr. Donovan said Transaction Exemptions, as set forth in Section 011, is the same as the current rule on page 110 and does not apply to transactions involving responses to direct solicitation where no recommendation is made based on information collected from the consumer or other specifically enumerated plans, such as employer-sponsored 401 (k) plans.

Duties of Insurers and Producers, located in Section 015.01 of the rule on page 111, sets forth requirements for both insurance producers (agents/brokers) and insurers or insurance companies, to have a reasonable basis to believe that any recommendation they make to purchase or exchange an annuity is suitable for the consumer.

A discussion ensued between **Senator Goedde** and **Mr. Donovan** as to whether a seller meant the same as producer or company and **Mr. Donovan** replied, "yes".

Chairman Tippets said there seems to be a contradiction in the language on page 113, Section 06, part v, that an insurer may not issue an annuity unless it is on a reasonable basis and is "suitable" based on the consumer's information, and the rule which says, "nothing in this subparagraph prevents an insurer from complying with this rule by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity". According to the rule, the suitability information can be confirmed after issuance, yet there is the provision previously referred to that says an annuity may not be issued unless there is a reasonable basis to believe the annuity is suitable based on the consumer's information. **Mr. Donovan** said the language was a requirement imposed on the insurer to supervise its agents. The producers involved should make the effort to obtain the suitability information in advance and determine if it is suitable before the sale. **Chairman Tippets** asked if this issue was going to be looked at by the Department of Insurance to make sure there was no contradiction or problem and **Mr. Donovan** said, "absolutely."

Mr. Donovan said that in Section 015.03, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information. No recommendation would be made if it was later found to have been prepared based on materially inaccurate information provided by the consumer, the consumer refuses to provide suitability information, or a consumer decides not to enter into an annuity transaction that is not based on a recommendation of the insurer or the producer.

Mr. Donovan said that in Section 015.05 relating to record keeping, "the producer or insurer, shall make a record of recommendation, obtain a signed statement documenting the consumer's refusal to provide suitability information, and obtain a customer signed statement that acknowledges that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's or insurer's recommendation".

Regarding Section 015.06 relating to Supervision of Compliance, the insurer must establish a supervision system (which was generally provided for in a prior or current rule).

Section 015.08 Compliance with Financial Industry Regulatory Authority (FINRA) sales, in compliance with FINRA Rule 2111, satisfies this rule. The former current rule referred to the National Association of Securities Dealers (NASD) Rule 2310. That older rule was replaced this past year on July 9, 2012, by the new FINRA 2111 Rule. This rule was very similar to the updated North American Industry Classification System (NAIC) model where in order to believe the annuity is

suitable, it must be based on "reasonable diligence" by the member to ascertain the customer's "investment profile".

Similar information is enumerated in the pending rule with a definition of suitability information, Producer Training, Section 016, page 114. This is a new requirement where the producer shall not recommend sale of an annuity product without adequate knowledge of the product and compliance with the insurer's training standards. Section .02 provides for a four credit continuing education one time requirement. Section 016.02.b phases in producers who hold a life insurance license on an effective date of the rule and have six months to complete this requirement. Recordkeeping Section .021 on page 116, provides that the insurers and producers maintain and be able to provide to the Director of Insurance (Director) records of all information collected from the consumer and other information used in making a recommendation on the basis for insurance transactions as long as they remain in force. The insurer can maintain information for the producer (provided for "x" number of years after the transaction was entered into) and if the producer's client terminates the agreement, the producer must remit copies of all records to the insurer.

Chairman Tippets said he had a question about page 116 where the provision requires maintenance of records by insurers and producers and to "be able to provide to the Director, records of all information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for as long as the insurance transaction remains in force". If he were to buy an annuity, the insurer and producer would maintain all of the information that he had given them for as long as that annuity was in force. **Chairman Tippets** said that made him uncomfortable that the insurer or producer who sold him the annuity would maintain his personal information with the list of items on page 110, including financial information. He wanted to know the reason for that and he asked if that was a provision in the rules that has been eliminated or if this was a new rule. **Mr. Donovan** said that it is a provision in their current rule and that was the subject of the two written comments they received. We require that it be maintained for as long as the contract is in force to protect the agent and the consumer and to maintain clarity that the information was appropriately obtained and the recommendation was documented. It is conceivable, **Mr. Donovan** said, that three to seven years after the transaction was first initiated that an issue upon surrender might arise later and there might be a disagreement between the consumer and the producer.

PASSED THE GAVEL: Vice Chairman Patrick passed the gavel to Senator Goedde in order for some of the senators to leave for pictures.

Senator Cameron said he had a conflict of interest under Senate Rule 39. He has had to comply with this rule and the new one. He said the information that was being retained was not that sensitive. Information that is going to be retained starts at the bottom of page 109 which includes age, annual income, financial situation, financial experience, objectives, intended use of annuity, etcetera, which are all tax statuses. This information is a "guesstimate" of the client's tax bracket. What was going on in the industry was agents were selling annuities to senior citizens that had a 15 or 20 year surrender period. There was no way they were going to be able to collect on the annuities, probably in their lifetime. Sometimes, in five years, the client decided they needed the money for their retirement or to augment a purchase. Documentation of bank accounts or sensitive information is not required.

Senator Goedde said they would hold back on voting until all of the senators came back.

DOCKET NO. 18-0119-1201

18.01.19 - Insurance Rates and Credit Rating. Mr. Donovan indicated that on page 118 this proposed amendment to IDAPA 18.01.19.100 clarifies when and how an insurer's use of consumer credit information will be deemed to be improper and in violation of Idaho Law Section 41-1843. This permits insurers to use a neutral credit factor or score against which to measure compliance with Section 41-1843, both at the initial rating and upon renewal. Negotiated rulemaking was published in the July 4, 2012 Idaho Administrative Bulletin, Volume 12-7, page 101. A public meeting was held on July 20, 2012 as provided for in the notice.

Idaho Code 41-1843 applies only to property or casualty insurance that is used primarily for personal, family, or household purposes, and provides that no insurer shall charge a higher premium than would otherwise be charged, cancel, non-renew or decline to issue coverage based primarily on an individuals credit rating or credit history. "Based primarily" means the weight given by the insurer to an individual's credit rating history and exceeds the weight given by the insurer to all other criteria considered. Negotiated rulemaking was held and a notice was published on July 4, 2012. A draft of the rule was circulated to those who inquired or were interested.

There was a public meeting held on July 20, 2012 and attended by six people, a representative of the Independent Insurance Agents of Idaho and company representatives. There was one suggestion to add language in the rule on page 3, Subsection 2, "Idaho Business" to make clear that a carrier's calculation of an average credit factor would be based on the Idaho business experience. The DOI agreed with this addition. There were no objections or concerns about the rule in general.

Mr. Donovan said the issue has been one of discussion and negotiation with insurers for at least three years. This rule was a codification of a revised bulletin the DOI issued last April as a result of difficulties in carriers to be able to follow the traditional application. It was a result of lengthy discussions with the carriers and use by the DOI of a consulting actuary. It is believed that the revised alternative method to show compliance will permit greater flexibility for insurers and allow them to modify rating methods, yet still provide consumers the protections of the statute.

Section 100 of the rule is being amended, which provides an express tie to the statute, Idaho Law Section 41-1843. This rule also clarifies that nothing is intended to modify or alter the provisions of Chapter 25 that set forth limited reasons where an insurer may cancel or non-renew personal auto insurance. The subsections set forth the current and historical interpretation of the DOI where compliance with the statute is measured by comparing the premium rate of a person with the highest credit factor and an otherwise similarly situated person with the worst credit factor. So long as the rate of the person with the highest credit factor (worst rate) is not more than twice the rate of the lowest credit factor (best rate), then compliance was satisfied. As an alternative method of showing compliance, the DOI is recommending in the pending rule that an insurance carrier may measure compliance against a "neutral credit score" comprised of the actual Idaho business. So long as an insurer's highest rate based on credit was not double the amount of the neutral rate, then the insurer would be in compliance with the statute. Additional language was stricken that would have prohibited an insurer from increasing a rate based solely on a change in credit factor, but the carrier would still need to maintain and be able to demonstrate that it was within the permissible range regardless of the method permitted.

Senator Goedde disclosed he was a licensed insurance agent and declared a conflict of interest under Senate Rule 39. He said the changes were a consumer protection issue and the changes made were a better explanation of what they had before. He stated they did not vote on the two previous dockets until everyone was there.

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

Senator Durst asked why the language in Subsection 02.e was removed entirely. **Mr. Donovan** said a carrier should not be allowed to increase a rate due to credit scores. He said if a carrier wanted to modify the weight assigned, some consumers might be impacted favorably and some negatively. If this language is retained and a consumer with a negative impact complained to the Department of Insurance, the carrier would be told they could not do that. In this way, the consumer is protected by the rule.

Senator Durst commented that people his age have had to deal with low credit scores due to the economy. People under 35 years of age have a lower credit score than older people. **Mr. Donovan** said that in a general sense, carriers explained they needed a certain amount of premium to cover their risk and it was a matter of proportion. Carriers are rating consumers with the realization of the impact of the recent economic times. The consumer can always shop to find better rates. **Senator Patrick** suggested the credit scoring method was fair.

MOTION: **Senator Goedde** moved to approve **Docket No. 18-0119-1201**.**Senator Tippets** seconded the motion. The motion carried by **voice vote**. **Senator Durst** voted no and asked that his vote be recorded.

Senator Durst said he has serious concerns about younger people who are starting families. He said he didn't think it was fair and he opposed the motion

Chairman Tippets asked **Mr. Donovan** to respond and said he assumed it was typical of states to rate partially on credit scores. **Mr. Donovan** said it was his understanding that an insurer cannot rate someone solely based on credit scores. **Chairman Tippets** said it was his understanding that Idaho was more protective of the consumer by requiring that the change in premium be based on other factors and not just the credit factor. **Mr. Donovan** said the language of the statute stated that no insurer shall charge a higher premium than what otherwise would be charged, based primarily on credit rating. **Senator Tippets** said he thought by using the component of the credit rating, it struck an appropriate balance and he supported the rules.

MOTION: **Senator Cameron** moved to adopt **Docket No. 18-0109-1201**.**Senator Goedde** seconded the motion. **Mr. Donovan** responded to a question from Senator Durst, saying the current rule does require that when a broker is recommending an annuity, they have to have a reasonable basis that the annuity sold or exchanged is suitable for the consumer. The motion carried by **voice vote**.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 18-0109-1202**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0156-1201 **18.01.56 - Rebates and Illegal Inducements to Obtaining Title Insurance Business**.

Mr. Donovan said this docket proposes an amendment to Rule 56. The background on Rule 56 is that it is designed to limit title agents or insurers from providing various things of value to producers of title insurance businesses that are not set forth in the written contract. It arises from statutes that prohibit illegal rebates and inducements.

There are some exceptions provided within Rule 56 for title companies applicable to producers which provides for "listing packages" or enumerated documents, including a cover letter to be provided without charge to a licensed agent or broker or the owner. The amendment would provide in a new Subsection 012.03 that a plat map and Covenants, Conditions and Restrictions (CCRs), along with a cover letter, could be provided to licensed attorneys and appraisers. This rulemaking arises from complaints received from attorneys and appraisers that this information, such as a plat map or CCRs, should be available to them if the title companies are willing to provide it without cost. One or more title insurance agents were providing this information without charge, which is not required, but the DOI had informed the title company to stop doing so because it was not expressly permitted.

Pursuant to a negotiated rulemaking notice, there was a public meeting held on July 18, 2012 and attended by two people. A representative of the Idaho Land Title Association expressed concerns that the provision that title insurance companies must provide pertinent information free to anyone interested in a property might result in severe financial strain on the industry. DOI officials noted that there is no requirement in the amendment that title companies provide this information at no cost; it is simply a benefit that a company could choose to provide that would not be prohibited. A letter was also submitted indicating that if the rulemaking went forward, the Idaho Land Title Association would not oppose the amendment, but stressed that the information has value.

Senator Lakey said he supported the change, and that the listing package was part of what a title company could provide. He asked why there was a limitation on these things to help support doing business with them. **Mr. Donovan** said this goes back to the 1980s but most rules show a date of 1993. His understanding was that title insurance companies were offering to send company "x" to Hawaii if that company gave them all of their business. Company "x" asked what are you going to do for me? Title agents were being played against one another. These are limits one would normally see in the marketplace. He noted there were specific limits on entertaining and food. Monitoring is done within the industry and the Department of Insurance (DOI) receives complaints about violations from competitors. **Senator Lakey** suggested this was something that should be investigated. He indicated he supported the list and could think of other things that should be on the list, such as easements, and he said the list could be broader. **Mr. Donovan** said this rule came to the attention of the DOI via complaints, and they have an employee who deals with the title insurance industry. This could be an issue for a future discussion. **Vice Chairman Patrick** said it seemed all information in these rules was a matter of public record and a service was being provided, and he wondered how much should be added as part of the discussion. **Mr. Donovan** said this was a concern of the Land Title Association, and they felt they should not be forced to provide the information and that was why they had some hesitancy.

Senator Guthrie asked if there was anything to prevent someone from offering something for pennies on the dollar. **Mr. Donovan** said the DOI wanted to see a fair charge if it was something that was not permitted to be given away. The DOI would not take an active role in questioning and not believing the title insurance company.

MOTION: **Senator Lakey** moved to adopt **Docket No. 18-0156-1201**. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0101-1201

Bureau of Occupational Licenses Rules Review 24.01.01, page 126 - Rules of the Board of Architectural Examiners was presented by **Roger Hales**, Administrative Attorney. He indicated this item had been pulled from a prior agenda. **Mr. Hales** stated this rule has been revised, and the Board of Architectural Examiners added definitions to clarify direct supervision of non-licensed employees and responsible control of architectural drawings to be sealed. The examination section, he said, was being updated to address changes to the nationally administered examination. Since registration of interns with the Board was no longer necessary, this requirement was being deleted. The use of an unlicensed individual's name in an architectural firm name and the use of an architect's seal were being clarified. Finally, the Board's rule regarding certain interpretations was being updated to eliminate language no longer applicable. **Mr. Hales** indicated that on page 129 there were some changes to the exam, called the "rolling clock". There are eight or nine modules and a candidate has ten years to complete the modules. The National Council of Architectural Registration Boards (NCARB) said all of the modules had to be passed within five years. This rule was adopted in 2006. The NCARB had not dealt with the scenario of someone taking an exam prior to 2006, initially receiving approval, but never starting the process.

Mr. Hales said that on page 130, the registration requirement was deleted through an internship. The Board felt it was not necessary for the intern to re-register. They were also trying to clarify when the firm name could be used when an individual was no longer licensed, which dealt primarily with architects who were retired or who died. The Board said the name could be used as long as the public knew they were no longer licensed. Additionally, on page 134, the Board was trying to clarify the use of the architect's seal, so that if the architect prepared the document, they could use the seal. If the architect did not prepare the documentation, then they would have to take responsible control. On page 131, Section 02, was deleted as it was confusing and no longer applicable or appropriate. The law clarifies the practice of architecture. The Engineering Association expressed some concerns about this section, but they have agreed to request that the committee, pursuant to the motion, reject not only the new language, but the old language.

Mr. Hales asked the committee to approve **Docket Number 24-0101-1201**, but to reject pending rule Subsection 550.03 and to also reject the codified final rule numbered 550.04, thereby eliminating that subsection in its entirety from the rules of the Board of Architectural Examiners.

Senator Schmidt asked how many architects would be affected by the change in the description of the module testing allowance. **Mr. Hales** said he did not have a number. **Senator Schmidt** said it sounded like we were changing the rules and if someone was in the middle of the process, it seemed unfair. **Mr. Hales** said they were giving them an additional one-and-a half years to get the tests done. He said very few fell through the loophole. **Senator Schmidt** said he would like assurance there had been appropriate outreach to the architectural community so no one was taken by surprise. **Mr. Hales** said the policy had to be made in an open meeting and the rules were discussed at a number of meetings. There were no comments or opposition to this rule.

TESTIMONY: **Tony Smith**, Idaho Chapter of the American Institute of Architects, said he has been involved in the process, and they were happy with the rules and they support the rules.

MOTION: **Senator Lakey** moved, to adopt **Docket No. 24-0101-1201**, with the exception of pending rule Subsection 550.03 which is rejected. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Lakey** moved to reject the codified final rule numbered 550.04, thereby eliminating that subsection in its entirety from the rules of the Board of Architectural Examiners. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business, **Chairman Tippets** adjourned the meeting at 2:45 p.m.

Senator Tippets
Chairman

Linda Kambeitz
Secretary