

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Monday, February 11, 2013

**TIME:** 3:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock 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.

**CONVENED:** **Chairman Heider** called the Health and Welfare Committee to order at 3:03 p.m., and a silent roll was taken.

**MINUTES:** **Chairman Heider** asked for the approval of the January 10, 2013 meeting minutes.

**MOTION:** **Senator Martin** moved to approve the January 10, 2013 minutes as written. The motion was seconded by **Senator Lakey**. The motion carried by **voice vote**.

**MINUTES:** **Chairman Heider** asked for the approval of the January 29, 2013 minutes.

**MOTION:** **Senator Lakey** moved to approve the January 29, 2013 minutes as written. The motion was seconded by **Senator Martin**. The motion carried by **voice vote**.

**RS 21969** **Relating to Health Care Sharing Ministries.** **Lee Barron** informed the committee that this legislation will be a new section of the code defining Health Care Sharing Ministries as exempt from being defined by the state as insurance companies. These entities are of a volunteer and ministerial nature and are not insurance companies. A health care sharing ministry (HCSM) is a health-care cost-sharing arrangement among persons of similar and sincerely-held beliefs, administered by a not-for-profit religious organization. Those sharing through HCSMs are called participants. **Mr. Barron** informed the committee that the problem has been that overzealous insurance regulators sometimes attempt to subject HCSMs to equivalent requirements as insurance companies. Fighting the regulators in court is highly expensive and puts burden on the finances of the HCSM participant who is financially stressed, and jeopardizes the functioning of the ministry as well. **Mr. Barron** indicated that this bill is modeled after laws in several other states.

**Senator Schmidt** inquired that in the Statement of Purpose, there is a description of overzealous insurance regulators, and asked who that might be. **Mr. Barron** replied the people who are administrating the departments of insurance.

**Senator Lakey** asked how these kind of organizations work: do people kick in and may or may not get payment back; how does it work?

**Mr. Barron** answered that a charity or that sort of thing know of people who do not have a lot of money, and the preachers or priests and those churches are aware of who those people are. People in those organizations will donate to those in need. He asked Senator Nuxoll to aid him in explaining. **Vice Chairman Nuxoll** then explained to Senator Lakey that there is a type of central place where people can send their money to be used for other people who have need. These people send in monthly donations. A participant fills out paperwork to get on a registry in order to receive the donations. The needed money is assessed to pay for a medical bill, for instance, and the money is doled out to the person or family in need.

**Senator Bock** indicated that 501(c)(3) organizations confer a personal benefit are really not qualified under 501(c)(3). He stated he was concerned that this system may be subverting in some way the organizational requirements for 501(c)(3) organizations. **Mr. Barron** indicated that the gentleman who was the executive director of this organization wants to come and testify to this committee; the executive director had explained to Mr. Barron that these health care organizations have been in existence since 1999 and there are three that are specifically exempted from the Affordable Care Act. **Senator Bock** asked for some evidence that this kind of set up is legal in case there is a full hearing on this matter and that it is not in violation of federal law or state law.

**Chairman Heider** asked Mr. Barron who would be coming to testify or sponsor this bill should it be printed? **Mr. Barron** replied that Joel Guarino would be. **Chairman Heider** then asked if this is similar to a health savings account system designed for multiple people rather than one individual family. **Vice Chairman Nuxoll** answered that it probably would be, since people would put their money in to be kept for an occasion when it is needed, and that there are families in the United States that participate in this. **Mr. Barron** then stated that he had spoken to Mr. Guarino about this, and was informed that his family participates by donating a fixed amount every month. People who are donated to are not under any obligation to pay it back.

**Senator Lakey** asked what expectation there is of the individual; is it their expectation that their medical expenses would be covered, like as with an insurance company? **Senator Lodge** asked why this was brought to Health and Welfare rather than Commerce, who deals with insurance. **Vice Chairman Nuxoll** answered the reason it was brought here is because the Commerce and Human Resources Committee was not meeting. **Senator Lodge** stated that this is an insurance issue and should, if printed, be sent back to back to the Commerce and Human Resources Committee because they work with insurance issues.

**Senator Bock** mentioned that this has so many ramifications to it that are very complicated, and added that in reference to the health and savings account, these plans have to be compliant with the Employee Retirement Income Security Act (ERISA). He indicated that he would be talking to his colleagues on the Commerce Committee. He stressed that he not will vote for print, since he had serious objections. **Mr. Barron** stated that the criticisms have been well-taken and that Mr. Guarino will be informed. **Vice Chairman Nuxoll** advised the committee that this bill has already been passed in 22 states, and that Washington State has already passed it. There is a section in the Affordable Care Act which exempted these, so it is a valid case that is here before us. She furthered that Mr. Guarino is in Montana, and he is an expert on this.

**MOTION:**

**Senator Martin** moved to print **RS 21969**. **Vice Chairman Nuxoll** seconded the motion. **Chairman Heider** called for a roll call vote. **Vice Chairman Nuxoll** and **Senators Hagedorn, Guthrie, Martin, Lakey** and **Schmidt** voted aye. **Chairman Heider** and **Senators Lodge** and **Bock** voted nay. The motion carried.

**RS 21999**

**Relating to the Immunization Registry.** **Vice Chairman Nuxoll** informed the committee that since the department came back with a new RS, the citizens are concerned and want an "opt-in" system rather than an "opt-out" system. At some point, there was an opt-in system, but in 2010, there was a word changed that made it an "opt-out" system. The citizens themselves are concerned that they are not given any papers to show that they have opted out. They also are not wanting the word "individual," they want it to be kept as "children." Their concerns are databases. The **Vice Chairman** indicated that she has received over 300 emails from people, including doctors and nurses, who want an "opt-in" system. She stressed that the citizens want this, as opposed to the department.

**Chairman Heider** added that Dr. Hahn had reprinted a combination of **S 1011** and **S 1012**, and it became **RS 21948**, which was sent to print, and will probably come back to us. It changed "child" to "individual." On the second page, it listed on line 27: "Cause all information relating to the individual to be removed from the registry." In attempt to acquiesce to the public's wishes, the department had us print **RS 21948**. Over the weekend, some people who had testified got together and printed this **RS 21999**, that essentially says that on line 24 of the first page: "The name of a child and information relating to the immunization status of that child shall not be collected and included in a registry unless a parent, guardian or other person legally responsible for the care of the child chooses to have the child included in the registry upon a specified written notice." **Chairman Heider** advised the committee that if we decide to print this bill, it would be in conflict with **RS 21948**, but because this is the last day, he allowed them to print it and for it to be heard at this time.

**Senator Hagedorn** asked how this will affect those that are currently in the registry, will they then have to be required to opt back in to determine if they are in the registry and then opt-out? **Vice Chairman Nuxoll** stated that she assumed that would be the case, that they would have to ask to be opted-out to get out of the registry. **Senator Schmidt** asked, given what was just described as an obligation to the department to deal with the registry, do you think that is reflected in the fiscal note? **Vice Chairman Nuxoll** responded that it is, although she had not checked with the department.

**Chairman Heider** stated that he met only with the bill drafter, and did not meet with anyone from the department. **Senator Bock** stated that he is concerned that two conflicting RSs are being sent to print, and he advised that he will be voting against printing this bill. He furthered that these two should be heard at the same time if we have these two conflicting bills. He found it inconceivable that both of the bills could make it onto the floor of the Senate, and the Senate would be faced with the same problem. He stated that the most recent bill could be creating many problems by generating multiple pieces of conflicting legislation, with a possibility that the Senate would have to sort it out on the floor.

**MOTION:**

**Senator Bock** moved that **RS 21999** be returned to the sponsor. **Senator Lodge** seconded the motion. The majority voted aye; however, **Senators Lakey, Nuxoll** and **Martin** voted nay, and wished to be recorded. The motion carried.

**RS 21876**

**Relating to the Public Health, Safety and Welfare and to Firearm Suppressors.** **Senator Hagedorn** informed the committee that this RS focuses on the hearing protection of Idaho citizens. He stated that we have an inconclusive evidence and data that we will provide, should we print this bill, that clearly shows that Idaho citizens are suffering hearing loss through firearm fire without proper protection. We have evidence that shows that in 2012, the state has actually spent more than \$330,000 in mitigation for hearing loss. There are capable items available to help mitigate that. Idaho is a big gun state, as we all know; there are a lot of hunters that are out all the time, and typically, when you hunt, you don't wear hearing protection because you have to be able to hear your prey.

**Senator Hagedorn** continued that in many countries in the world, a suppressor is required. Once a person goes through the proper documentation to buy a firearm, that person is also required to purchase a suppressor. He stressed that there is no such thing as a "silencer." He stated that SWAT teams and military personnel are now even training with suppressors, not because they want to be silent, but because they can communicate and they can hear what is going on around them. A typical suppressor reduces the noise of a firearm by about 30 decibels (db). The average noise of a firearm is about 145 db. A suppressor will reduce that down to about the sound of a siren going by. **Senator Hagedorn** informed the committee that the only way currently to get a suppressor in the state of Idaho is to go to Cabella's or to go to a manufacturer and purchase one, and then fill out a \$200 tax stamp form that goes back to Washington, D.C. where nine people are employed to approve this tax stamp. There is no background check; it is basically processing the tax stamp. There is currently about a nine month waiting period in order to get that tax stamp processed and paid, and then the suppressor can be picked up by the purchaser.

**Senator Hagedorn** furthered that it is currently legal in Idaho to use a suppressor in hunting and is written so in regulations for Fish and Game. He stated that the only place it is illegal to use a suppressor in the state of Idaho, per our regulations, is concealed carry. For the rest of Idaho, it is very acceptable. He stressed that this is not a firearm. Many people are very concerned and **Senator Hagedorn** suggested that a suppressor be thought of like a muffler on a car.

He furthered that this RS basically outlines the process that would be available to Idahoans for suppressors that are manufactured in Idaho, not to be subject to that tax stamp. They can be purchased over the counter and can be immediately used and utilized by firearm owners in different shooting sports and activities to protect their hearing. He stood for questions.

**Senator Schmidt** indicated that while looking at the fiscal note and Section 7 page 2, "the attorney general shall defend," he wanted to understand the way in which we are going to be in conflict with federal law and the extent to which they are going to be taxing out attorney general's budget.

**Senator Hagedorn** replied that there is a potential that the federal government, because of their consideration that the Interstate Commerce Clause allows them to tax items manufactured and utilized in Idaho, could sue for an injunction. He stated that we did the Firearms Freedom Act in 2010 and we used this exact same language. To date, there has been minimal – there is an injunction there – but there has been a minimal amount of money spent by the attorney general in working that case. Montana currently has a case before the district courts and we should hear what the results are on March 4th.

**Senator Schmidt** then commented that the Interstate Commerce Clause that had to do with a gun being manufactured and sold within the state of Idaho, and then there is this plan of the suppressor. To him, **Senator Schmidt** indicated, it made more sense that suppressors could be much more easily made in the state of Idaho than a gun. He thought the likelihood of this being prosecuted is much greater from the federal government.

**Senator Hagedorn** agreed that it is possible; however, a firearm has many more regulations and is classified as a firearm. He again stressed that a suppressor is not a firearm and is the equivalent of a muffler on a car; the worst thing a person can do to himself with a suppressor is drop it on his toe. He stated this truly is a public safety issue where we have a device that is available to protect the public hearing. Because of this tax stamp issue, we are keeping those that can't afford a \$200 tax stamp from obtaining a suppressor, or wait on hearing protection while the tax stamp is being approved. He continued that if the federal government so chooses to sue for injunction to stop this public safety device from being utilized and purchased in Idaho, that is their choosing. He stated the intention is not to go to court with the federal government, but to provide protection for the citizens.

**Senator Guthrie** asked that in the second paragraph of the Statement of Purpose (SOP), if he understood correctly, it says the registration, tax or stamp fee would be waived as long as it is manufactured in Idaho and remains in Idaho. He asked if suppressors have serial numbers so that can be tracked – in other words, if one showed up in Nevada, will it be tracked somehow to know that it was made in Idaho and therefore, crossed state lines in illegal entry, and so what is the penalty component for that?

**Senator Hagedorn** replied that suppressors will be required to have a stamp on them that says "made in Idaho" and if a suppressor does make it to the state of Nevada or anywhere else outside of our borders, that is an Interstate Commerce issue that would be managed by the federal government and not by the state of Idaho.

**Senator Lakey** stated that he supported the concept, but wanted to know if the attorney general's office thought there was a reasonable chance should the federal government decide to pursue something under the Commerce and the Supremacy Clause?

**Senator Hagedorn** replied that he did not have an attorney general's opinion on that subject, and therefore, could not answer that question.

**Senator Bock** stated the tax would actually be an obligation to the Internal Revenue Service (IRS), since that is how these taxes are paid. He suggested that any violation of this will result in someone being required to pay a notice of deficiency from the IRS that taxes are due, and inquired if that had been thought through.

**Senator Hagedorn** replied that he didn't know where the nine people that approve the tax stamp and do that paperwork sit. He stated he knew that there are over 100,000 pending to be approved currently, and that there is a nine-month wait. The law that puts the suppressors under this \$200 tax stamp was created back in the late 1930's. **Senator Hagedorn** commented that whether it would be an IRS issue or a Department of Homeland Security issue, he was unable to answer that; but he stated that he knew that if we produce a muffler for a car in the state of Idaho and it is utilized in the state of Idaho, the federal government should have no business in getting amongst the transaction of that device. He gave the example that if he had a pistol with a suppressor and then wanted to give that pistol to his son who lives in the state of Idaho, should the government be in the transaction of his providing that hearing protection device to his son? He thinks that is the question that is before us here. Currently, he cannot do that because we have no statute that allows him to provide that hearing protection to his son.

**Senator Schmidt** stated that he read the part about needing "Idaho" clearly stamped on it, and asked if that prohibited a suppressor maker in Nevada from putting "made in Idaho" on his suppressor.

**Senator Hagedorn** replied that we would have to watch to make sure that a trademark or stamp did not happen, and that is a good point. He stated that he did not know how we would watch for that.

**Senator Bock** commented there is a whole line of U.S. constitutional cases dealing with putting things in the stream of commerce and once put in the stream of commerce, they are subject to the commerce clause. He did not think putting these devices into the stream of commerce could be avoided and subjecting those people who might buy and sell them from the prohibition under federal law. He furthered that simply stamping it "made in Idaho" does not solve the problem.

**Senator Hagedorn** appreciated the concern, but stated that the Commerce Clause and the decisions based around the Commerce Clause clearly indicate that those items that are transferred across borders is where the Commerce Clause comes in, from state to state and across border. He stated that the issue that we have is we are focused on the inside of Idaho. If this device goes outside of Idaho, that is a federal issue, that is not an Idaho issue. If the feds decide they want to chase that and prosecute that, it certainly is their prerogative.

**Senator Guthrie** inquired if a silencer is specific to a firearm or are they interchangeable, and why is there a nine-month waiting period – is there some sort of background check associated with it?

**Senator Hagedorn** clarified that there is no such thing as a silencer. These will not silence a gun, but rather reduce the amount of gas noise that comes out of the barrel of the gun by about 30 db. He stated that there still would be a bullet that comes out of the gun that breaks the sound barrier. There is about a nine month wait currently due strictly to processes. There are nine people processing over 100,000 and the wait is due to lack of staffing. As for the suppressor being able to be moved from gun to gun, **Senator Hagedorn** indicated that certainly is a capability of suppressors that are built today. A person could buy a suppressor for a 223, which is a caliber, and that suppressor could be moved from a rifle to a pistol and work just as capably. A suppressor can be used on a multiple caliber of guns as long as the caliber of the suppressor is large enough and matches the caliber of the gun.

**Chairman Heider** asked Senator Hagedorn to read line 27 on page 1. He said that Senator Hagedorn mentioned that there is no such thing as a firearm silencer, and yet it says "silencer" on line 27.

**Senator Hagedorn** replied that the reason that term is there is because under federal code, that is the exact set of terms that they have in federal code is fabricating a firearm suppressor, firearm silencer, or firearm muffler, so that we can ensure that we are talking about the exact same thing that they talk about and that they tax at the federal level.

**MOTION:**

**Senator Lakey** moved to print **RS 21876**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**Senator Bock** stated that he thought a discussion would be appropriate. He furthered that he took an oath in office to uphold the U.S. Constitution. He regarded this RS as being violative of the U.S. Constitution in that it presumes to be able to overwrite federal law. He indicated that he would not be able to vote for it because of that oath of office.

**Chairman Heider** stated that Senator Bock expressed an opinion, and asked if the motion should move forward by voice vote again. **RS 21876** was carried by **voice vote** with **Senator Bock** voting nay.

**Chairman Heider** indicated that we were out of time, and that the balance of today's agenda will be heard tomorrow. **Chairman Heider** asked Mr. Hales if **H 34** was still being postponed, and **Mr. Hales** replied that it was.

**Senator Bock** asked if **RS 21876** is not a bill that would be appropriately sent to Health and Welfare; is there another committee that it should go through? **Chairman Heider** replied that he suspected it would not be coming back; it may be determined by the Judiciary and Rules Committee.

**ADJOURNED:** **Chairman Heider** adjourned the meeting at 4:42 p.m.

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Senator Heider  
Chairman

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Linda Hamlet  
Secretary