

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Tuesday, February 26, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Tippetts, 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 Tippetts** called the meeting to order at 1:30 p.m.
- MOTION:** **Senator Cameron** moved to approve the minutes of February 12, 2013. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Goedde** moved to approve the minutes of February 14, 2013. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Guthrie** moved to approve the minutes of February 19, 2013. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.
- Vice Chairman Patrick** asked for unanimous consent to print Concurrent Resolution **RS 22086**, to reject **Docket No. 24-2501-1201**, Bureau of Occupational Licenses, relating to rules governing licensing of the Idaho Driving Business Licensure Board. **Chairman Tippetts** stated to the committee that since they were not a "privileged committee" they did not have the ability to print a new Routing Slip (RS), and that was why a "privileged committee" was asked to print the resolution. The RS will then go directly to the Tenth order of business on the floor of the Senate. There were no objections.
- Vice Chairman Patrick** asked for unanimous consent to print Concurrent Resolution **RS 22091** to reject **Docket No. 24-0101-1201**, Bureau of Occupational Licenses, relating to rules of the Board of Architectural Examiners, section 550, subsection 02, Relating to Professional Standards; section 550, subsection 03, Relating to Contracts, only adopted as pending rules; and final rule section 550, subsection 04, relating to direct supervision only. There were no objections.
- The RSs were referred to the State Affairs Committee for introduction and printing with the recommendation they be referred to the Tenth order of business on the floor of the Senate.
- Chairman Tippetts** said **H 9** would be heard first on the agenda, followed by the other bills listed on the agenda.

H 9

Mary Hughes, Financial Institutions Bureau Chief, Department of Finance (Department) presented **H 9** relating to banks and banking and the ability to engage in basic risk mitigating derivative transactions. This is a proposed amendment to the Idaho Bank Act. The amendment specifically states the provisions which regulate the amount of a loan that a bank may make to one person or related groups of persons. **Ms. Hughes** said a change in federal law has made this amendment necessary. The Dodd-Frank Wall Street Reform and Consumer Protection Act requires state law to take into consideration a state-chartered bank's credit exposure to derivative transactions. Many banks engage in non-complex derivatives transactions for the purpose of mitigating interest rate fluctuation and other types of risk, and to facilitate extensions of credit. Idaho Code § 26-705 is amended to ensure that Idaho state-chartered banks continue to have the ability to engage in basic risk mitigating derivative transactions.

Idaho state-chartered banks, which are smaller community banks, do not engage, to any significant degree, in activities that would be considered derivative transactions. To the extent they do, it is in order to serve their customers and protect the bank. Typically, these are mortgage rate locks or interest rate swaps to facilitate mortgage lending.

Ms. Hughes said to meet the federal mandate, the Department has (1) included a reference to "derivative transactions" in the Act's lending limits; (2) specified that any credit exposure in the transactions shall be considered the same as a traditional extension of credit for the purposes of the limits; and (3) directed that banks can evaluate the credit exposure in the same manner as national banks, by referencing rules implemented by the federal government. The fundamental idea, she said, is that credit exposure created by derivative transactions should be subject to the same limits that apply to traditional credit transactions. **Ms. Hughes** said it was important to remember that state banks have always had the authority to engage in these transactions. This legislation will allow state banks to continue to engage in these transactions but will limit the transactions by capping the credit exposure a bank can have. The failure to allow Idaho state-chartered banks to do this will limit their ability to manage risk, limit the types of credit they can make available to consumers, and place them at a competitive disadvantage with national banks and those banks chartered by other states.

Vice Chairman Patrick stated he had a conflict of interest pursuant to Senate Rule 39 because he is on the board of a small bank. **Senator Cameron** and **Ms. Hughes** had a conversation relating to the Dodd-Frank mandated changes for banks. They discussed the reasons an extension of credit would fall under the same guidelines as a loan. **Ms. Hughes** said the majority of other states in the country had addressed the federal mandate by amending their laws, were in the process of amending them, or had determined that verbiage in their laws contained the required language. She said the Department had worked with the Idaho Bankers Association (Association) on this bill and the Association supported the bill. The Department was not aware of any opposition.

TESTIMONY:

Curt Hecker, President and Chief Executive Officer (CEO) of Intermountain Community Bank of Idaho (IMCB), testified in support of **H 9**. He said he thought some day rates would go up again. He stated the current demand for loans from their customer base was for long-term real estate loans. In order to manage interest rate risk appropriately, he said banks should keep the duration of their portfolios to three years or less.

MOTION:

Senator Lakey moved that **H 9** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 11

John Mackey, National Association of Insurance and Financial Advisors (NAIFA) presented **H 11** relating to casualty insurance contracts. He stated he was there on behalf of the United Heritage Property and Casualty Insurance Company. He said the bill would amend Idaho Code § 41-2507 by adding language which would allow automobile insurance companies to non-renew insurance coverage on automobiles that are registered in states other than Idaho. Each individual state regulates all automobile insurance activity within its borders. In order for an automobile insurance company to do business in a particular state, it must acquire a license from that state. **Mr. Mackey** said that not all automobile insurance companies licensed to do business in Idaho were licensed to do business in all the other states and were faced with a dilemma when an insured auto became registered in another state. Without a license, the insurer is prohibited from continuing the insurance coverage, yet unable to discontinue the insurance coverage because Idaho Code § 41-2507 does not provide for other state automobile registration as a reason for non-renewal of coverage. This leaves the insurer with a choice of either renewing the coverage, and most likely violate the law in the state where they are not licensed or non-renew the coverage and violate Idaho law.

Mr. Mackey and **Senator Durst** had a conversation regarding the dilemma of moving from Idaho to another state and current regulations for automobile insurance coverage. **Mr. Mackey** said **H 11** would alleviate the dilemma and align Idaho more closely with many of its neighboring states, which only require an automobile insurance company to provide notice, generally 30 days, for non-renewal of insurance coverage. He said he was not aware of any opposition and there was no fiscal impact. **Senator Guthrie** and **Mr. Mackey** discussed the carrier cancelling the insurance of someone who moved out-of-state, licensing, and the issuance of policies.

MOTION:

Vice Chairman Patrick moved that **H 11** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 28

Jack Lyman, Idaho Housing Alliance, presented **H 28** relating to manufactured home dealer and installer licensing. He gave the background and history of the bill. He said this bill would eliminate the licensing requirement for companies that provide remodeling services for manufactured homes. He said a service company was defined as one that provided service, repair or tear down of manufactured or mobile homes. Three of the twelve service companies in the state are non-profit organizations who do low-income weatherization on these homes. He explained that a homeowner could have difficulty in finding qualified service companies in their area, as required under current law. The companies would be subject to the same local requirements that were applied to alterations on site-built homes. The current licensing requirements assumed that manufactured homes were subject to United States Housing and Urban Development (HUD) standards after their original installation. HUD had clarified the licensing was not needed because it did not exercise any jurisdiction once a home had been properly installed. Because there was no requirement that these homes continue to meet HUD standards, there was no need to require a separate manufactured home service company license.

Mr. Lyman said the bill also amends the provisions related to background checks required for the other license categories (retailer, resale broker, installer) to make them consistent with current Idaho State Police procedures. The bill would reduce the reach of state government, while continuing to protect homeowners. He said the repeal of this licensing requirement offered a unique opportunity for the committee to vote for a bill that would actually shrink the size of the Idaho Code.

Senator Durst and **Mr. Lyman** discussed obtaining input from the current owners of manufactured homes and the impact this bill would have on inspections. They talked about the requirement that a company cannot make any improvements to a manufactured home unless they are licensed as a service company under current Idaho law .

MOTION: **Senator Lakey** moved that **H 28** be sent to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

H 7 **Michael Larsen**, Consumer Finance Bureau Chief, presented **H 8** relating to the Department of Finance multi-state licensing program. He said the bill was a proposal to amend the general powers provision of the Idaho Department of Finance (Department). If adopted, the bill would allow license applicants and licensees the option of utilizing an online nationwide licensing system for initializing and maintaining license records. The purpose of the proposed amendment was to provide licensees and license applicants the choice of utilizing the benefits of maintaining their licenses online. The benefits included being able to establish a single licensing record for use among various state jurisdictions and to utilize an online technology platform for submitting required licensing information.

Mr. Larsen said during the past year, the Department conducted a survey of its licensees and learned that there was significant interest among the Department's Collection Agency and consumer lender licensees for an online system for license management.

MOTION: **Senator Guthrie** moved that **H 7** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor of the Senate.

H 8 **Senator Heider** presented **H 8** relating to commercial transactions clarifying what constitutes engaging in business for which a certain license is required for consumer loans. He said the bill would amend the Territorial Application provision of the Idaho Credit Code that would benefit Idaho consumers, as well as Idaho businesses that have complied with license requirements, by adopting a "level-the-playing-field" provision clarifying that persons who advertise or offer to make consumer purpose loans in Idaho be licensed in the same manner as their competitors who have complied with license requirements. By adoption of this bill, other regulatory statutes would be consistent and would provide an exemption for state and federal agencies that are already subject to government oversight.

Senator Heider said the bill would establish that a license application be abandoned or withdrawn after a 60-day period during which an applicant had been unable to clear license application deficiencies. The Department is seeking to help license applicants avoid administrative denial orders resulting from a failure to submit a complete license application within a 60-day window. Such orders, when issued, are unnecessarily punitive because they must be reported in future license applications, not only in Idaho, but in all states where the applicant conducts business.

Senator Heider said, in addition, the bill would create license reinstatement provisions to allow licensees who fail to renew on time or who cannot clear renewal deficiencies by the renewal deadline, to reinstate a license within 60 days after the renewal deadline. This change would reduce the amount of documentation required to reestablish licensure. The total cost of \$200 per person for reinstatement would be no greater than the overall cost of applying for a new license, and would be less cumbersome for the applicant as well as for the Department. The benefit of a reinstatement period to the licensed business would be to not have to submit a new

license application package after missing a license renewal deadline, which would expedite the re-approval and issuance of a license.

Approval of the bill would extend prohibited acts that now apply to payday and title lender licensees and to individuals and businesses that are not licensed, but by law should be. For instance, current law prohibits payday lender licensees from engaging in unfair or deceptive acts. This proposal would extend the same prohibition to those who engage in unlicensed payday lending in Idaho. **Senator Heider** said he and Michael Larsen would be happy to stand for questions.

A discussion ensued between **Chairman Tippetts** and **Michael Larsen**, Consumer Finance Bureau Chief, Department of Finance (Department) regarding the explanation of "a loan for a consumer purpose." **Mr. Larsen** defined the term in the Idaho Credit Code as a loan for personal, family, or household purposes with the exclusion of any commercial purpose for the loan. They talked about the fact that a person who offered to make a loan must be licensed. They had a discussion about a person loaning money to a family member for consumer purposes and whether or not that person had to be licensed. **Mr. Larsen** said the bill does not change any of the exemptions currently in the Idaho Credit Code. The lender has to be in the business of making consumer-purpose loans and the Department would not look at the licensing requirement to make a loan to a family member. **Mr. Larsen** said that until a contract had actually been entered into, the Department could not issue a cease and desist order. **Mr. Larsen** explained that the Department was only interested in requiring a license from a person who actually was in the business of making that type of loan. They discussed where to locate the language in the Idaho Credit Code for exemptions. **Mike Brassey**, representing the Idaho Financial Services Association, directed **Chairman Tippetts** to page 9 of the bill, line 23 and line 30 relating to the license requirement and allowable exemptions.

Senator Durst and **Mr. Larsen** had a discussion about the validity of payday loans by out-of-state unlicensed lenders and that the loans were void and uncollectible. **Mr. Larsen** said the proliferation of on-line solicitation from around the globe prompted the drafting of this bill. **Mr. Larsen** said the Department wanted to take action before borrowers became involved in these types of loans. Principal and interest must be returned by law. **Senator Lakey** and **Mr. Larsen** had a conversation about the consistency with other agencies of the licensing exemption that was already subject to government oversight.

Senator Guthrie and **Mr. Larsen** discussed the additional annual revenue of \$5,000 to the state for reinstatement fees for re-licensure in Idaho, which was based upon an estimate of those businesses who may reapply to reinstate a license. Additional enforcement efforts by current employees would be undertaken for cease and desist orders. **Senator Martin** asked if the state regulated the percentage and structure of payday loans. **Mr. Larsen** said the state did not regulate the fees associated with payday loans, but did regulate the structure. He explained that an individual could have more than one payday loan with the same lender, as long as the cumulative amount did not exceed \$1,000. Individuals have the right to cancel the transaction the next business day, disclosures are required and the loan can only be renewed three times.

Chairman Tippetts and **Mr. Larsen** had a conversation about the reinstatement time and the \$200 fee, the conditions for an expired license and the cost of \$150 for renewal fees. **Mr. Larsen** explained there was a tremendous amount of work by the individual and the Department to reinstate an expired license. Industry favored keeping the fees at \$350, whether someone applied for a current license or reinstated their license. Renewal fees are \$150 if paid on time. **Senator Guthrie** asked **Mr. Larsen** if someone was caught doing business without a license beyond a cease and desist letter, what would the punitive components be? **Mr. Larsen** replied there were civil penalties and administrative hearings. The Department tries to partner and work with those who are unlicensed on how to conduct business in Idaho in accordance with the law, he said.

MOTION: **Senator Durst** moved to send **H 8** to the floor with a **do pass** recommendation. **Senator Cameron** seconded the motion.

TESTIMONY: **Mike Brassey**, representing the Idaho Services Association, said he worked with the Department to draft the legislation and they support the legislation.

The motion carried by **voice vote**. Senator Heider will carry the bill on the floor of the Senate.

H 10 **Michael Larsen**, Consumer Finance Bureau Chief, Department of Finance (Department), presented **H 10** relating to amending the licensing provisions of the Residential Mortgage Practices Act. **Mr. Larsen** indicated that in connection with this bill, members of the committee should have received letters of support from the Idaho Mortgage Lenders Association (IMLA), the Idaho Association of Mortgage Professionals (IAMP), and the Idaho mortgage industry leaders who serve on the Idaho Mortgage Advisory Board (IMAB), with whom the Department regularly meets to stay abreast of mortgage industry issues. He said that **H 10** included some significant regulatory reduction measures that the Department and the Idaho mortgage industry had worked on during the past year.

By adopting the bill, licensing renewal provisions for mortgage brokers, lenders, and loan originators would be amended to provide a license reinstatement period for licensees who fail to renew on time. A license reinstatement period would benefit licensees because if they failed to renew their licenses on time, the Department would be able to reinstate a license more quickly, with less interruption to their business, because the business wouldn't have to submit a completely new license application package. There would be no financial penalty for license reinstatement because the total cost for reinstatement would be the same as if the business or individual were applying for a new license.

The bill creates a provision allowing the Department to consider a license application to be withdrawn after a 60-day time period, during which a license applicant has failed to clear all license application deficiencies. This would help the Department, as well as licensed businesses, because this would avoid the necessity of issuing administrative denial orders that stem from a mere failure to submit a complete application within a 60-day window. Such orders, when issued, are reportable actions that must be disclosed in future license applications in every state.

License processes for inactive licenses would be clarified and inactive licenses could be renewed. This benefits loan originators by allowing a process whereby they can more readily change employment from one company to another without having to reapply for a new license each time.

The Department's investigative authority would be clarified, including administrative subpoena authority of persons engaging in mortgage brokering or mortgage lending in Idaho without a required license. The manufactured housing exception to the

definition of "mortgage loan originator" would be eliminated as required by the United States Department of Housing and Urban Development (HUD) as being inconsistent with the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act (S.A.F.E.). The bill provides an exemption from licensing of individuals employed by federal, state or local government agencies or housing finance agencies while acting in their official duties. In the commentary to its final S.A.F.E. Act rules, the United States Department of HUD stated that individuals who act as loan originators as employees of government or of housing finance agencies, are not subject to the licensing or registration requirements of the S.A.F.E. Act.

Chairman Tippetts had a conversation with **Mr. Larsen** regarding a similar situation where the renewal fee and the reinstatement fee were equivalent to the fee for an original license. They also discussed part of section 10 of the bill that referred to section 26-31-211 that said no mortgage broker or mortgage lender licensee shall "employ or otherwise appoint as a qualified person in charge any person who the director has found to have violated standards of conduct adopted by the Nationwide Mortgage Licensing System and Registry (NMLSR) applicable to a person taking a written test administered pursuant to section 26-31-308, Idaho Code, or who has obtained or attempted to obtain credit for education required pursuant to section 26-31-307 or section 26-31-310, Idaho Code, by means of false pretenses or representations". **Chairman Tippetts** said he thought the penalty for these violations for being convicted of or found to engage in one of the activities outlined, was a lifetime sentence. **Mr. Larsen** explained that with the passage of the Federal S.A.F.E. Act, pre-licensed testing and education is required, along with continuing education, to maintain a license. Some states violate the standards of testing. The "qualified person in charge", designated by a mortgage company, would be responsible for the conduct of the mortgage business in any particular location, but they don't have to be on-site. This part of the bill prohibits a company from employing as a "qualified person in charge", a person who has been found by the Director to have violated or cheated on the test or on the continuing education requirements. The person can still be licensed as a mortgage loan originator, however.

Chairman Tippetts discussed with **Mr. Larsen** the definition of expungement and the restriction on access to information regarding a criminal conviction. **Mr. Larsen** provided the background for this language in the bill. He said anyone who was convicted of a felony could not be in the mortgage business for seven years. If the felony was related to financial services in any way, the ban would be for life. An exemption was included in the final rules issued by HUD in 2011 for those who had a felony expunged. The Idaho Code did not have a definition of expungement. They discussed an expungement by court order. **Chairman Tippetts** asked **Mr. Larsen** if the director had the option of denying or disapproving a license if a conviction had been expunged. **Mr. Larsen** said the language in the bill was the model language the states have been encouraged to adopt. The Director is allowed to consider the underlying facts. All decisions are subject to due process and appeal.

Vice Chairman Patrick asked how a director or someone from law enforcement would find out if someone had a conviction, and **Mr. Larsen** said the person would have to self-disclose. **Senator Lakey** said there seemed to be some discretion if an individual committed some type of egregious felony. There could be leniency if the crime was expunged. He pointed out that on page 13, if someone had falsified their continuing education requirement or something to do with testing, they would be banned forever for being the "qualified person in charge", which seemed to be inconsistent with prior language. **Mr. Larsen** said they have had very few violators, but the person would be banned forever.

Senator Durst asked if the Department had some rationale for making the bill as long as it was. He wanted to know if the bill could have been put into smaller bills, so as to not confuse the issue. **Mr. Larsen** said the approach from the Department came about when working with the members of their Mortgage Advisory Board and with industry, because there were many things they wanted to work out and bring together.

TESTIMONY: **Teri Ottens**, Executive Director of the Idaho Association of Mortgage Professionals, testified her association was in support of the bill. They spent the last year-and-a-half with the Department of Finance going over the S.A.F.E. Act and changes that had to be made to the bill. She said she felt the Department had worked closely with industry to mitigate a negative impact of the S.A.F.E. Act by including the expungement, reinstatement and inactive status of licensees in this bill.

MOTION: **Senator Cameron** moved that **H 10** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 2:52 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary