

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Tuesday, March 05, 2013

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Brackett, Vice Chairman Johnson, Senators Keough, Winder, Rice, Hagedorn, Bock and Buckner-Webb

ABSENT/ EXCUSED: Senator Nonini

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the Senate Transportation Committee (Committee) office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Brackett** called the meeting to order at 1:35 p.m. and asked the secretary to take a silent roll. With a quorum present, the **Chairman** moved down the agenda to **H 168**.

H 168 **Chairman Brackett** welcomed Jason Kreizenbeck, representing the Idaho Trucking Association, to the Committee and asked him to present **H 168**. **Mr. Kreizenbeck** said that **H 168** voids contractual requirements limited to transportation contracts. It prevent provisions in motor carrier transportation contracts that indemnifies a shipper from liability for loss and damages resulting from negligence. He said that under current law, a trailer could be loaded in such a way that would damage the load. Some shipments are pre-loaded and the carrier merely ships the pre-loaded trailer. Further, such motor carrier transportation contract provisions are against the public policy of the state and are, therefore, void and unenforceable. Similar legislation has been passed in thirty-seven other states. **Mr. Kreizenbeck** requested the remainder of his time be given to Jason Andrus of Doug Andrus Distributing in Idaho Falls. **Chairman Brackett** welcomed Mr. Andrus to the Committee.

TESTIMONY: **Mr. Andrus** said that his family business, Doug Andrus Distributing, has been around for seventy-five years. He also serves as the Chairman of the Board of the Idaho Trucking Association and supports **H 168** for two reasons: (1) It is unfair that liability clauses are required to be put in their contracts because they are not responsible, nor do they supervise, the loading of shipments. They drop empty trailers at a sight and pick up loaded trailers for shipping, making it impossible to examine the load and assume liability for the load. And, (2) it is difficult to negotiate removing a clause from a contract. **Mr. Andrus** stood for questions.

Senator Bock asked about the types of shipper contracts and the products being shipped. **Mr. Andrus** said it affects any shipper shipping any type of product. **Senator Bock** asked if the contract clause was part of a pre-written contract form. **Mr. Andrus** said he did not know where the language originated, but many different sized shippers use this language in their contracts. **Mr. Kreizenbeck** said this is a nation wide concern.

Senator Buckner-Webb commented that having been a purchasing manager, some of these contracts have been in practice for a long time.

MOTION: With no further questions or comments, **Senator Buckner-Webb** moved that **H 168** be sent to the Senate floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by unanimous **voice vote**. **Senator Buckner-Webb** will carry the bill on the Senate floor.

Chairman Brackett welcomed Trent Wright, Executive Vice President of the Idaho Automobile Dealers Association, to the Committee and asked him to present **H 167**. **Mr. Wright** said this legislation is shared with the Idaho State Independent Automobile Dealers Association and actually began in this Committee with a call to raise industry standards. **H 167** provides for an Idaho Consumer Asset Recovery Fund that will increase the level of consumer protection for the buyer by 250 percent. It replaces the current dealer surety bond of \$20,000 with coverage for a consumer of up to \$50,000 when a dealer commits a fraud (e.g., not providing a title, fails to disclose prior salvage or incorrect odometer reading). Under current law there is a claim limit of \$20,000; under this legislation that cap per dealer is \$120,000 for multiple consumer claims. New dealers would be required to secure a \$20,000 bond, for a period of time, as well as participate in the new fund. The fund receives its funding from motor vehicle dealers and has no fiscal impact to taxpayers. Dealers will pay a predetermined fee until the fund reaches a limit of \$2 million. **H 167** needs an amendment to change lines 20 and 21 to delete the designee by the Attorney General because his office has a representative on the fund board. **Mr. Wright** asked the Committee to send **H 167** to the 14th Order for amendment, presented the Committee with a copy of the proposed amendment and stood for questions.

Senator Bock asked if the bill increases the amount of the surety bond, and if so, how is the money distributed. **Mr. Wright** said that all existing surety bonds will drop off entirely. Starting in the fall of 2013, an estimated \$400 will be added to their dealers' license that will be placed in the fund. This is a more effective way to keep costs lower.

Vice Chairman Johnson asked about language on page 5, lines 11 through 14, dealing with prorated claims. He wanted to know if it referred to the bonds that the fund replaces. **Mr. Wright** said there are lots of moving parts and that new dealers will be required to contribute to the fund and also maintain a \$20,000 bond for the first 36 months they're in business. **Vice Chairman Johnson** asked where the money originates for the fund. **Mr. Wright** said that as licenses are renewed portions of those dollars will accumulate into the fund beginning on July 1, 2013. **Vice Chairman Johnson** asked what the total would be at the end of the first year. **Mr. Wright** said it would be between \$265,000 and \$275,000 based on the historic number of dealer licenses in Idaho. **Vice Chairman Johnson** asked what the logic was of keeping a new dealer out if they pay for their license. **Mr. Wright** said that all licensed dealers contribute to the fund, but new dealers also have to carry a \$20,000 bond for their first three years. **Vice Chairman Johnson** asked if the first three years was an initiation. **Mr. Wright** said this requirement helps automobile dealer associations to uphold better standards for the industry. There are many used car dealers coming into the industry and this ensures they meet all the requirements to be successful. This is another tool to help police their industry. **Vice Chairman Johnson** asked when the legislation would take effect. **Mr. Wright** said there are two phases. The first phase begins on July 1, 2013. The second phase begins on July 1, 2014 when the legislation is fully implemented and consumers can file claims against the fund.

Senator Keough referred to page 2, line 36, and asked if the money goes through the legislative appropriations process. **Mr. Wright** said going through that process was never discussed. He said there is a one-time dedicated \$16,000 from the Idaho Transportation Department (ITD) for set up.

Senator Hagedorn asked what is the cost of a \$20,000 surety bond. **Mr. Wright** said it was different for different dealers. For new car dealers it usually ranges between \$250 and \$350; it can be more for used car dealers. **Senator Hagedorn** asked if this cost was part of a dealers annual budget. **Mr. Wright** said it is in their annual budget. There were no further questions for Mr. Wright.

TESTIMONY: **Rex Green** of the Idaho State Independent Automobile Dealers Association spoke in support of the bill. He said there is no fiscal impact to taxpayers and that when the fund reaches the \$2 million mark, the fund board could reexamine the contribution amount. **Mr. Green** stood for questions.

Vice Chairman Johnson referred to page 4, section 6 under "Payment and Claims," and asked if a claim amount was annual; the bill didn't specify. **Mr. Green** said the intent is that there is a lifetime maximum amount of \$50,000 per claimant, and a maximum amount of \$120,000 per dealer.

Senator Bock asked where the word "lifetime" appears in the bill. **Mr. Green** deferred to Bob Petersen who represents the advisory board. There were no further questions for Mr. Green.

Bob Petersen, appointed by the Governor to the Motor Vehicle Dealer Advisory Board, testified that this bill has been a long time in the making. A dealer's surety bond can put small dealers out of business. His dealership has been in business for thirty-eight years, but starting out in today's world, his father would never have been successful. This bill fixes the surety bond issue and is a consumer-oriented bill; dealers cannot bring claims against other dealers. **Mr. Petersen** stood for questions.

Senator Bock asked where the \$20,000 surety bond was referenced in the bill. **Mr. Petersen** said it was in section 49-1608d, Idaho Code, on page 3, line 41. There were no further questions for Mr. Petersen.

Grant Petersen of Bronco Motors testified that as a long time member of the Motor Vehicle Dealer Advisory Board he has dealt with the challenges of providing coverage for consumers. Dealers have talked about raising the bond amount, but that puts small dealerships out of business. This bill creates something similar to the State Insurance Fund; it allows dealers to take care of their own industry. In this bill, both small and large dealerships are served, and it keeps money in Idaho by taking care of defrauded consumers. There were no questions for Mr. Petersen.

Mr. Wright delivered closing remarks by stating that **H 167** is a strong piece of legislation and requests a "yes" vote. He said that if a claim goes through and there is a payout against the surety bond or the fund, the dealer has to repay the amount of the claim before their license is renewed. Mr. Wright stood for questions.

Vice Chairman Johnson offered a question about claims after a dealer is in business for only six months. **Mr. Wright** said that they follow the letter-of-the-law and if a claim is upheld in court then the dealer is back to ground zero.

Senator Bock said that section 49-1608, Idaho Code, only protects against fraud and wanted to know what type of fraud warrants a claim. **Mr. Wright** said it could be as simple as an odometer reading or a dealer could be selling extended warranties and pocketing the money. There were no further questions for Mr. Wright.

MOTION: **Senator Hagedorn** moved to send **H 167** to the 14th Order for amendment. **Senator Bock** seconded the motion. With no further discussion, the motion carried by unanimous **voice vote**. **Senator Hagedorn** will carry the bill on the Senate floor.

HCR 7 **Chairman Brackett** welcomed Representative Hixon to the Committee and asked him to present **HCR 7**. **Representative Hixon** said that the House, as well as the Senate, had rejected an ITD Administrative Rule, Docket No. 39-0260-1201 Rules Governing License Plate Provisions, because committee members did not like the language and agreed it needed a legislative fix. As required, this concurrent resolution acknowledges that the Administrative Rule was rejected. There were no questions for Representative Hixon.

MOTION: **Senator Rice** moved that **HCR 7** be sent to the Senate floor with a **do pass** recommendation. **Senator Keough** seconded the motion. The motion carried by unanimous **voice vote**. **Senator Rice** will carry the resolution on the Senate floor.

H 169 **Representative Hixon** said that **H 169** is the fix to the problem found in Administrative Rule, Docket No. 39-0260-1201 Rules Governing License Plate Provisions. It amends Idaho Code to reflect that requests for specialty license plates are not subject to approval or rejection by ITD. Under the rule, ITD had the power to veto specialty license plate requests. **H 169** states that those bringing forth a plate still have to follow the process, but the legislature can circumvent the process and approve specialty license plates. He and Representative Wood worked on this legislation. Page 2, lines 19 through 22, discusses how to handle denials. There were no questions for Representative Hixon.

MOTION: **Vice Chairman Johnson** moved that **H 169** be sent to the Senate floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by unanimous **voice vote**. **Senator Rice** will carry the bill on the Senate floor.

MINUTES: **Chairman Brackett** called for a motion on the minutes of the January 29 meeting. **Senator Buckner-Webb** moved that the minutes of the January 29 meeting be approved. **Senator Keough** seconded the motion. The motion carried by unanimous **voice vote**.

Chairman Brackett called for a motion on the minutes of the February 14 meeting. **Senator Hagedorn** moved that the minutes of the February 14 meeting be approved. **Senator Buckner-Webb** seconded the motion. The motion carried by unanimous **voice vote**.

ADJOURNED: With no further business before the Committee, **Chairman Brackett** adjourned the meeting at 2:45 p.m.

Senator Brackett
Chairman

Gaye Bennett
Secretary