

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, March 21, 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 2:00 p.m.
- MOTION:** **Senator Durst** moved to approve the minutes of March 7, 2013 as written. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Vice Chairman Patrick** moved to approve the minutes of March 12, 2013 as written. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Cameron** moved to approve the minutes of March 14, 2013 as written. **Senator Martin** seconded the motion. The motion carried by **voice vote**.
- S 1158** **Senator Winder** began the presentation of this bill and said the controller's office discovered a problem with social security issues related to firemen and policemen. He explained the process they had gone through during the past year of having votes in various fire and police districts to deal with social security issues. He said this bill was a timing issue. If this bill doesn't get done, the firemen and policemen run the risk of having to do their elections over again because there is a deadline for social security to approve their plans.
- He introduced **Dan Goicoechea**, Chief Deputy State Controller, who presented this bill relating to social security benefits. He gave a history of the law, citing Public Law 92-603 that was effective October 30, 1972 and section 218 of the Social Security Act of 1935. He went over Social Security definitions. He defined an absolute coverage group, and said it includes all positions not under the retirement system either on September 1, 1954 or on the applicable date of the agreement or modification. A retirement system coverage group consists of positions under a retirement system. Coverage can be extended to a retirement system coverage group only after a referendum has been held among the members of the retirement system. He said this proposed law would amend the exiting law to revise terminology and extend benefits to police officers and firefighters. He said this legislation amends Idaho Code to ratify federal authority by adding a provision establishing state authority to cover police officers and firefighters under a retirement system. This legislation further clarifies the acceptance of benefits of the Federal Social Security Act to encompass all of its agencies, counties and cities, and all of its municipal corporations, political subdivisions, governmental entities, and independent bodies. This list is not meant to be exhaustive and is meant to include all legal entities providing governmental functions. This legislation also simplifies the federal mandatory exception to such coverage by referring to the exceptions in the Act.
- Mr. Goicoechea** said this problem has existed for over 42 years. This problem was brought to their attention about three years ago by a fireman from Coeur d'Alene,

who had a question about social security coverage. Under the 218 Agreement and the Social Security Act, entities and positions within those entities that wish to be covered under social security could do so. A vote was to have taken place 42 years ago (and it did not) at all of these entities, with the positions that were covered to codify their wishes to be part of social security. The basis for that was, the Firefighters' Retirement Fund was insolvent and through legislative action, as well as federal authority, Idaho allowed that to occur. The General Accounting Office of the federal government and social security took a look at this issue and worked with them through this process. **Mr. Goicoechea** said no one would be required to be a part of social security. This is corrective legislation that gives Idaho the language approved by the federal government. The referendum was held last July and we have two years to have those certified by the Social Security Administration. When the referendums are submitted, it will take a minimum of six months for approval. The Firefighters support this legislation and they have heard no opposition. Finally, this legislation is needed to meet the time requirement to modify the State's section 218 Original Agreement. There is no fiscal impact to the general fund.

MOTION: **Senator Cameron** moved that **S 1158** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Winder will carry this bill on the floor of the Senate.

H 196

Woody Richards, representing Guaranty Associations, namely the Property/Casualty Guaranty Association and the Life and Health Guaranty Association (Associations), was unable to attend the meeting, so his daughter, **Angela Richards**, representing the Idaho Insurance Guaranty Association and the Idaho Life and Health Guarantee Association, presented this bill relating to credits for assessments paid and the premium tax. She said this legislation clarifies the Idaho Life and Health Insurance Guaranty Association Act and the Idaho Insurance Guaranty Association Act concerning the timing of permitted premium tax offset rights of member insurers for certain assessments periodically imposed by these Associations on their respective members to fund each association's obligations, with regard to covered insurance products of impaired or insolvent life, health, property, and casualty insurers.

Ms. Richards said that when national and local insurance companies become bankrupt or insolvent, the two insurance Associations step in and health insurance coverage is provided; life insurance benefits are paid; and damage to property is compensated according to the statutory provisions in Idaho law. The two Associations hire experts to resolve claims, and they come up with the money to pay for everything. This is all done under the supervision of the Idaho Department of Insurance (Department). The Associations raise the money to accomplish these jobs by assessing their insurance company members. Idaho law requires that all insurance companies that are licensed to sell life, health, property and casualty insurance be members of the Associations and pay the assessments, as money becomes necessary. Since the 1970s, the Property/Casualty Guaranty Association has assessed its members almost \$15 million and the Life and Health Guaranty Association has probably done more. In return for paying these assessments to the Associations, the insurance company members paying the assessments are allowed certain tax offsets to their premium taxes over a five-year period. In the past, the Department has interpreted the insurance laws, so that if the insurance companies paid an assessment in 2011, they could start taking part of the offset to the premium tax that is due for calendar year 2011 on March 1 of 2012. They may continue taking one-fifth of the premium tax offset for each of the following four years on March 1 of each of those years.

Ms. Richards said this legislation is being proposed because several states have the same or similar language as Idaho's laws, however, some of them are interpreting the language differently than Idaho has. Under the interpretation by those other states, if an assessment is made in 2011, then the offset could not start to be taken until March 1, 2013, which is a delay of an extra year. The Associations and the Department are willing to continue the practice that has existed in the past, but in order to do so, the Department has requested that we clarify the statutes, so that there are no doubts about how they are to be applied.

This legislation clarifies the language contained in section 41-4313 and section 41-3616 which has been subject to conflicting interpretations in other states. Idaho Code § 41-3616, page 1, applies to property/casualty insurers who are members of the Idaho Insurance Guaranty Association. To clarify the offset time period, the first nine words on line 20 have been stricken and replaced by the underscored words in lines 20 through 23. All this change does is allow the traditional interpretation regarding the year in which the offset can be taken. This legislation continues the historical interpretation in Idaho of these sections by the Idaho Department of Insurance prior to 2012. This legislation does not affect the existing coverage levels and other benefits provided by the Guaranty Associations to the public.

Additional words are being stricken in lines 16 through 18. They are being replaced by the words that are underscored in lines 25 through 28 on the same page. This is a further clarification, also requested by the Department, because not all property/casualty insurance companies pay premium taxes to the Department. Instead, some workers' compensation insurers pay premium taxes only to the Industrial Commission. The premium tax offset, following an assessment by the Associations, is intended to work the same for these workers' compensation insurers as it does for all of the other insurers. The offset is to the Industrial Commission premium tax rather than to the Department premium tax. The Associations and the Department believe that some minor word changes and relocation of the sentence to the end of the paragraph would make the intent more clear. All this change does is allow the traditional interpretation to continue.

Ms. Richards referred to age 2 of the legislation and section 41-4313 applies to life and health insurers who are members of the Idaho Life and Health Insurance Guaranty Association. In lines 4 and 5, the same words scratched on the prior page have also been eliminated and the same words added on the prior page have been added in lines 5 through 8. All this change does is allow the traditional interpretation regarding the year in which the offset can begin. The final change is the deletion of Idaho Code § 41-4313(3) in lines 18 through 24 on page two. At some point in time, the wording of subsection two was duplicated in subsection three and the duplication needs to be eliminated.

There is no change in the amount of tax or the tax offset as a result of these amendment. **Ms. Richards** said she was not aware of any opposition to this legislation.

MOTION:

Senator Guthrie moved that **H 196** be sent to the floor with a **do pass** recommendation. **Senator Goedde** seconded the motion. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

H 232

Michael Kane, Property and Casualty Insurers Association of America, presented this bill relating to the insurance contract. He said the purpose of this legislation is to allow electronic delivery of insurance-related documents to an insured, when the insured has affirmatively consented to such delivery. This legislation has no negative impact on the general fund or to the funds of any county or city.

With the advent of the Internet, more and more business is being conducted online. Goods and services are being bought online, and the documents associated with those transactions are increasingly being electronically delivered to consumers. Banks, credit card companies and many other types of businesses are already sending billing notices and related account information via e-mail, and posting that same information online so that consumers can access the information when they need it. Such easy online access to account documents benefits all involved. It spares companies mailing and printing costs and frees consumers from having to store paper copies that they may end up losing anyway. This bill simply says insurers can do what these companies are already doing with respect to insurance policies, notices and forms. This bill does not change anything for those who wish to continue to receive paper documents. Rather, it merely allows those policyholders who wish to receive their insurance documents electronically to elect to do so. If someone chooses this option and later changes his or her mind, this bill allows that too. Because this bill simply allows insurers to do whatever other businesses are already doing, and because the bill simply gives consumers the option of receiving documents electronically, he asked for support from the committee.

MOTION:

Senator Goedde moved that **H 232** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. **Senator Durst** said he supported the motion, and he said the corrections that were done on lines 7 through 9 were good. The motion carried by **voice vote**. Senator Goedde will carry the bill on the floor of the Senate.

HCR 23

Representative Cindy Agidius presented this concurrent resolution for Representative Jeff Thompson, which was rejecting a rule of the Division of Building Safety - Uniform Plumbing Code. She said the purpose of this concurrent resolution was to reject section 011, subsection 09, only, Division of Building Safety, Rules Concerning Uniform Plumbing Code, Docket No. 07-0206-1201, as the rules are not consistent with legislative intent. There is no impact to the general fund or the Division of Building Safety. She said this resolution related to the location of water heaters in crawl spaces. She said there was no problem with ventilation. The main concern was there was no definition of a crawl space.

Senator Durst and **Representative Agidius** had a conversation about the size, location, ventilation and access to a crawl space. **Representative Agidius** pointed out that inspectors were not concerned about the location of a water heater, as long as there was adequate ventilation. **Senator Cameron** and **Representative Agidius** talked about the previous rule and inspections of crawl spaces. **Senator Schmidt** and **Representative Agidius** discussed the installation of gas and electric water heaters and the consequences of rejecting this rule. **Representative Agidius** said by rejecting this rule, the rule would revert back to the previous rule.

MOTION:

Vice Chairman Patrick moved that **HCR 23** be sent to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. **Senator Durst** commented that he would like to look at the replacement for this rule, but he could not get on the website.

SUBSTITUTE MOTION:

Senator Durst made a substitute motion to hold **HCR 23** for a time certain. **Senator Schmidt** seconded the motion. **Vice Chairman Patrick** commented he could not see how holding this for definitions for another year would accomplish anything. **Senator Guthrie** said he favored the original motion because there is an inspection that takes place and the rule would revert back to the previous rule. **Senator Durst** asked if a vote could be delayed for ten minutes so the committee members could get on-line. **Chairman Tippetts** agreed. After hearing **HCR 24** and **H 91** and after accessing the website for the changes to **HCR 23**, **Senator Schmidt** said he withdrew his second on the substitute motion. The substitute motion failed due to the withdrawal of the second. **Senator Durst** withdrew his motion. The original motion to send **HCR 23** to the floor with a **do pass** recommendation carried by **voice vote**. Vice Chairman Patrick will carry the bill on the floor of the Senate.

HCR 24

Representative Jeff Thompson was unable to present this concurrent resolution because he was chairing another committee. **Chairman Tippetts** said the purpose of this concurrent resolution was to reject section 225, subsection 07.a, only, Bureau of Occupational Licenses, Rules of the Idaho Driving Board, Docket No. 24-2502, as the rules are not consistent with legislative intent. There is no impact to the general fund or the Bureau of Occupational Licenses. **Vice Chairman Patrick** said he had just appeared before the Business Committee in the House and that we rejected more of the rule than they did. He said he thought we should approve this House Concurrent Resolution (HCR). **Chairman Tippetts** said this was a moot issue since the House passed the Senate concurrent resolution rejecting the same rule. He asked Vice Chairman Patrick to communicate with Representatives Thompson and Barbieri and the committee would not take any action at this time.

H 91

Shannon Hohl, Election Specialist, Ada County, testified in place of Phil McGrane, Chief Deputy, Ada County Clerk's Office. She presented this bill relating to the Employment Security Law. She said that during the past year, unemployment claims have been filed based upon temporary election work that occurs largely on election day. The purpose of this bill is to exempt temporary election workers, such as poll workers, from unemployment eligibility, based upon that work. There is no fiscal impact to the general fund or local government funds. She said there were unemployment claims from polling place workers, who worked only one day. Ada County asked for an appeal and an exemption from these claims and lost. This bill exempts workers from filing claims if they make less than \$1,000 and is in line with the federal law. This bill passed the House. **Senator Durst**, **Ms. Hohl** and **Kris Rich**, Ada County Clerk, had a conversation about the average wage of an election worker, which was \$125 and the chief judge's wage of \$150. Other temporary workers get paid \$12.25 an hour. They also talked about the eligibility of a temporary worker who typically would not make more than \$1,000 in a given week. The County Clerk's office views the pay as a stipend for volunteer work.

MOTION:

Senator Martin moved that **H 91** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. **Senator Schmidt** asked for a clarification on the motion and wanted to know if was "as amended." **Senator Durst** said he opposed the motion. **Senator Cameron** said our secretarial staff does not collect unemployment benefits because they know their jobs are temporary. The motion carried by **voice vote**. **Senator Durst** voted "nay" and wanted his vote recorded.

Tom Donovan, Deputy Director, Department of Insurance (Department), presented this bill relating to insurance holding company systems, repealing and replacing title 41, chapter 38. He introduced Department of Insurance Chief Examiner and Bureau Chief for the Company Activities Bureau, Georgia Siehl, who was available to assist with technical questions. **Mr. Donovan** said many of the provisions from the existing law will remain. The new proposed chapter 38 is an updated National Association of Insurance Commissioners (NAIC) model law of the Insurance Holding Company System Regulatory Act, that is designed to provide more detailed monitoring for system risk issues that might exist in non-insurance affiliates of an insurance company and could ultimately jeopardize the solvency of the insurer. This model law will also be required for accreditation of the Idaho Department of Insurance by the NAIC. Accreditation is important to maintain consistent, streamlined and fair regulation of insurers.

Mr. Donovan said the first 33 pages of the bill include both a repeal and rewrite of what is mostly already in existing law. The remaining 18 pages of the bill are technical changes, such as corrections to new code references, and conforming existing language to current legislative protocol in terms of capitalization and spelling. Earlier in the year, he said he submitted to the committee a three-page Summary of Changes document, dated March 1, 2013. He explained the first page provided an introduction, the second page described many of the key existing provisions in chapter 38 that are being retained in **H 197**. The third page set forth some of the general increased oversight of the holding company systems and particular changes in the bill, and stating why **H 197** is important. Also included with the summary and labeled Exhibit A was a 33 page, red-lined comparison showing the changes to the current chapter 38. This chapter applies to "insurance holding company systems", which are basically groups of affiliated persons or companies where one "person" is an insurance company.

Mr. Donovan said in answer to a previous question, **H 197** does not have anything to do with, nor does it in any way implement, the Affordable Care Act (ACA), and is completely unrelated to the ACA. The current chapter 38 applies, and the bill effecting a rewrite of the chapter will apply to insurance companies within an insurance holding company system regardless of whether they are authorized to transact disability (i.e., health) or life, or property and casualty insurance. Insurance companies are closely regulated and monitored, due to the nature of the product of insurance, or in essence, a promise of future performance by the insurer. Insurance companies are required to maintain specific capital and surplus requirements, are limited in the types and extent of permissible investments, follow a unique and conservative accounting system, file annual and quarterly financial statements with the Department and are subject to and undergo examinations by the Department. In addition, those in management are required to have appropriate skills and competence. This extent of regulation of insurance companies on page 2 and subsequent pages, maintain the financial solvency and integrity of an insurance company so it will be able to pay claims in the future and protect the public. The existing chapter 38 of the insurance code, is based on an NAIC model act and applies to insurance holding company systems. The NAIC is a national organization of the insurance regulators from all of the states.

The proposed rewrite of chapter 38 is based on the updated NAIC Model Holding Company Systems Act that was adopted by the NAIC in 2010. The origin of the main changes to this model act stem from concerns about the risk to insurance companies posed by affiliated companies of insurers, even when the insurance companies themselves are sound. Additional concerns addressed in the updated model act relate to increasing global and international interests and affiliations within insurance holding company systems.

It is important to enact the provisions in **H 197** to continue to help protect the solvency and integrity of insurance companies and the insurance buying public. It is also important because this 2010 NAIC Insurance Holding Company System Regulatory Act (Model Act 440) will become a new accreditation standard of the NAIC. The NAIC accredits the various state insurance regulators according to standards jointly agreed to. The standards include minimum legal protections in state law, and process and procedures in conducting review of company analysis and examinations of companies. It is important for the Department to maintain accreditation with the NAIC to provide complete and consistent regulation among states in key areas such as financial solvency. It is also important to our Idaho domestic companies that are licensed in other states for the Department to maintain accreditation, because if we maintain accreditation, other insurance regulators will defer to the Department's examination reports of those companies. If the Department were to lose accredited status, our Idaho domestic companies could be subject to duplicative examinations and oversight, costing them additional time and money. The Department has worked with insurance company representatives on this legislation and is not aware of any objections. **Mr. Donovan** said he understands that the American Council of Life Insurers (ACLI) supports the bill.

Mr. Donovan proceeded to review the bill with the committee. He said section 1 of the bill repeals existing pages 3 to 6, section 2, which provides for the rewrite of chapter 38. Page 2 through page 33 includes updates from the revised NAIC model, as well as some clean-up of existing language. sections 3 through 14 of the bill on pages 33 through 51, amend other sections of the insurance code and primarily address changes to references, as a result of renumbering current sections of chapter 38. Those changes correct code references, in addition to making some other technical corrections that are not substantive. He highlighted the primary requirements of the existing law being retained and focused on the key new provisions and changes from current law.

Insurance companies domiciled in another state other than Idaho are known as "foreign insurers." The definitions in section 41-3802, starting on page 2, line 18, primarily tracks existing law. He pointed out that on page 2, line 39, a new definition appears for "enterprise risk." That is basically an activity or circumstance involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole.

He said all of chapter 38 applies to insurance holding company systems, defined at the top of page 3, line 1 as, "two or more affiliated persons, one of whom is an insurer." Page 3, line 23, section 41-3803 is not substantially changed from current law and permits a domestic insurance company to own subsidiary companies for any kind of business, and also provides that the insurer may invest in its subsidiaries within certain limits. On page 4 starting on line 42, section 41-3804 provides for requirements where one party acquires control or a controlling interest in a domestic insurance company. **Mr. Donovan** said, again, this mainly tracks current law. When a person seeks to acquire a controlling interest or merge with a domestic insurance company, the identity and background information on the applicant and individuals in charge, as well as the details of the transaction, are to be reported and filed with the director prior to, or upon, entering into an agreement to accomplish the change in control. The information required to be provided is spelled out in what's called a "Form A" (Statement Regarding Acquisition of Control), the requirements of which are set forth in Department rule at Idaho Administrative Procedure Act (IDAPA) 18.01.23, as well as generally described at subsection 2, starting on page 5, line 39. A new requirement in this section is added on page 5, lines 11 through 23. He explained this provides that a person already in control of a domestic insurer who seeks to divest that controlling interest must file a notice of the proposed divestiture 30 days prior so that the director can determine whether any additional information is required.

Other new language or requirements for the Form A appear on page 4. On page 7, lines 18 through 26, are essentially an agreement and acknowledgment that the newly required Enterprise Risk Report and other needed information will be filed and supplied to the director. On page 8, line 22, section 41-3806 governs hearings, and also closely tracks the provisions in current law. There is a presumption that the director will approve the purchase or merger filing in Form A, and this section provides that a hearing must be provided prior to any disapproval by the director and spells out the required findings to support any disapproval. On page 9 there are some minor changes to the time periods applicable. Also on page 9, line 30, through page 10 line 4, new subsections are added, including that where a proposed acquisition or change of control will require approval by more than one commissioner (i.e., insurance regulator), the director may hold consolidated hearings. In subsection 4, if there is a change in control, the Department must promptly inform the new controlling parties of any requirement for a capital infusion into the company. At the bottom of page 10, line 47, section 41-3808 is largely unchanged from the current code section. This comes up when a foreign insurer (that is a company domesticated in a state other than Idaho) seeks to acquire an interest in another foreign insurer authorized to do business in Idaho. If the transaction is not exempted, the Department requires a "Form E"/Pre-Acquisition Notification filing. However, **Mr. Donovan** said this section does not come up often, as most of the time, the transaction is exempt under one of the exemptions in subsection 2. Page 15, line 24, section 41-3809 requires an insurer that is part of an insurance holding company system, to file an annual registration statement, referred to in Rule 23 as a "Form B." A general description of the requirements appears in subsection 2 on page 16, line 4. This section is very close to current statute. However, he said, the revised section has a few additions to it, including one very significant change that appears on page 18, line 6, where there is a new filing requirement for an Enterprise Risk Report to be known as a "Form F."

The Department will need to amend its Rule 23 to include the requirements for this new Form F filing. This new Enterprise Risk Report, to be filed with the Form B (Registration Statement), is to be filed by the ultimate controlling person, and the material risks should be identified within the insurance holding company system, i.e., various risks to affiliated companies, that could pose enterprise risk to the insurer. On page 18, line 18, section 41–3810 provides the general rule that transactions between affiliates that are within the holding company system are to be fair and reasonable and charges are to be reasonable with proper allocation on the books of each company, so that the transaction is clearly reflected. Additionally, there is a requirement that certain transactions (those above a minimum materiality threshold) to be entered into between affiliates, be done only after prior notice is filed with the director. This prior notice is referred to as a "Form D" (Prior Notice of a Transaction) filing, and the elements to be included are set forth in Department Rule 23. Most of these requirements in this section are similarly set forth in current code. However, there are a few changes including, for example, that amendments to previously filed agreements must also comply with the notice provisions. At the top of page 21, starting on line 7, section 41–3812 governs a domestic insurer within an insurance holding company system paying dividends and distributions. **Mr. Donovan** said this, too, is an existing code section but some slight changes have been made. The notice period is changing, and the threshold in determining what constitutes an extraordinary dividend or distribution requiring notice to the director is effectively lowered.

At the bottom of page 21, line 43, through page 22, line 39, a new section that does not exist in current law, section 41–3813, appears. This section institutes a requirement for one-third of the board members to be independent, that is, not officers or employees of the insurer. The board is also to establish at least one completely independent committee for the purpose of nominating directors and evaluating the principal officers of the company. Subsection 6 provides the opportunity for a company to obtain a waiver of the requirements in certain situations. At the bottom of page 22, line 40, section 41–3814 governs the examination of insurance companies and obtaining records and documents from an insurer and affiliates. This section basically tracks the current applicable section, but it provides a little more direct and expressive language regarding the duty of the insurer to obtain information from its affiliates.

At the bottom of page 23, line 44, section 41–3815 is a new section. It authorizes the director to participate in supervisory colleges which may be instituted for any domestic insurer where part of its insurance holding company system has international operations. The powers of the director are set forth on the top of page 24 and include the ability to initiate the establishment of a supervisory college, clarify the membership in the supervisory college, the functions and role of other regulators, and coordinate ongoing activities. The purpose of both the supervisory college and the director's participation are set forth on lines 21 through 32. They include assessing the business strategy, financial position, legal and regulatory position, risk exposure, and so on. The director is authorized to participate in a supervisory college with other state, federal or international regulatory agencies who have similar responsibility of supervising the insurer or its affiliates. Finally, there's nothing in this section that constitutes a delegation to the supervisory college of the authority of the director to regulate or supervise the insurer or its affiliates within the state of Idaho.

Mr. Donovan said another new section 41-816, providing confidential treatment, appears on page 24 starting on line 33 through page 26, line 29. This section provides heightened protection of all the reports submitted to the director pursuant to this chapter in that, not only is the information contained in those reports to be considered exempt from public records disclosure, as is provided by current law, but under this new section, the reports would not be subject to subpoena, not subject to discovery, and not be admissible in a private civil action. The director would be authorized to use the information, however, in furtherance of the official duties of the Department. Much of the language on page 25 addresses sharing confidential information with other regulators and receiving similar information and the entry into confidentiality agreements to accomplish that. While more detailed and extensive, these provisions authorizing the sharing of confidential regulatory information with other agencies, is consistent with authority the director already has.

On page 27, line 26, section 41-3819, providing for sanctions are set forth. This section exists in the current code. However, there are a few changes to draw to the attention of the committee. In subsection 1, the maximum penalty remains unchanged. However, on line 29 the per-day penalty is increased from \$100 to \$200. On page 28, in subsections 4 and 5, the criminal penalty, which under current law provides for imprisonment not greater than one year, which would be a misdemeanor, is increased to not more than two years under subsection 4 and not more than three years under subsection 3. On page 30, starting on line 10, section 41-3824, dealing with mutual insurance holding companies, is basically retained without substantive changes. This is a section that is not part of the model NAIC law but it has been in existing chapter 38 since 1998.

In conclusion, the Department believes these changes are necessary and appropriate to continue effective regulation and monitoring of insurance holding company systems, and to maintain its accreditation within the NAIC. Presuming the enactment of **H 197**, the Department will need to amend its Rule 23 (IDAPA 18.01.23) to expressly recognize the electronic filing of required forms, include the idea of divestiture of control in Form A, add Form F (the Enterprise Risk Report), and any other relatively minor changes to the forms or text of the rule. There is no fiscal impact.

Senator Goedde and **Mr. Donovan** talked about whether the bill applied to domestic companies only. They also discussed what areas of the bill would apply to foreign companies, that the new parts of this bill is all model NAIC language and the definition of a supervisory college. **Vice Chairman Patrick** expressed a concern about the penalty for someone who willfully violates and is convicted of a felony that carries a maximum jail sentence of two years. **Mr. Donovan** explained, that in general, criminal law if someone is sanctioned for one year, the crime is considered to be a misdemeanor. A felony exists when sanctioning is beyond one year.

Senator Lakey referred to page 5, line 15, where it says, "the director shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction," and asked if those factors were going to be included in updating Rule 23. **Mr. Donovan** said he was not sure. They discussed approval of a divestiture. **Mr. Donovan** said that if there was a controlling interest, the requirement was that a Form A should be filed with the Department. **Mr. Donovan** pointed out there were some groups who gave part of their company interest to various charities and that if there was a concerted effort for the owners to divest themselves of a sense of responsibility and control of the company, he said the director would want to see a Form A pre-acquisition notice filing. **Senator Lakey** asked what the process would be if the director determines the individual wants to get out, but determines they need to stay in place, and the company continues to fail. **Mr. Donovan** said chapter

33 in the bill addresses that concern, which works in a coordinated fashion with the guarantee associations. There is an express exemption from the bankruptcy code for insurance companies. There is a current law for the director to take over the company as a rehabilitator or liquidator which acts like a bankruptcy case. The director is vested by law. There is a state statute that highlights the priority level when claims are paid from the insurance company's assets, which is handled in the Fourth District Court.

MOTION: **Senator Cameron** moved that **H 197** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. **Senator Durst** asked **Mr. Donovan** what the overriding factor was to repeal existing sections of code and write this bill to establish the new statutes. **Mr. Donovan** replied, they would have done it differently, with a more traditional format, and they would have moved some sections around. The motion carried by **voice vote**. Senator Cameron will carry the bill on the floor of the Senate.

CONVENED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:22 p.m.

Senator Tippetts
Chairman

Linda Kambeitz
Secretary