

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 22, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt, and Ward-Engelking

ABSENT/ EXCUSED: None

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.

APPROVAL OF MINUTES: **Senator Patrick** moved to approve the Minutes of January 15, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

RS 23253: **Relating to Real Estate - Language Relating to a Fee.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), mentioned realtors were "on board" with this legislation. She indicated the Commission did not pursue legislative changes without buy-in from the industry. Any changes are discussed in advance of submission, and the Commission works in a collaborative manner to develop the proposed language.

Ms. Jackson-Heim said the wording referred to outdated language for a program from the days when the Commission administered its own group errors and omissions insurance. Currently, the Commission contracts with a group insurance provider to administer the program. The Commission has not collected a fee for a number of years. The Commission did not anticipate administering the insurance program in-house nor collecting a fee in the future.

MOTION: **Senator Cameron** moved to print **RS 23253**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 23272: **Relating to Real Estate - Relating to the Term of a Course Provider's Certification and Expiration Date.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said this bill relates to certified instructors and providers. Instructors teaching pre-license, post-license and core classes must be certified. Presently, there are 98 active certified providers and 57 active certified instructors. They renew their certifications throughout the year, based on when they first applied for certification. This has been very confusing and labor intensive for staff. What this bill does is change the staggered two-year renewal dates for these certifications to an annual renewal date on the same day for everyone, which the Commission proposes to be June 30. Most certified instructors are certified to teach the core course. This is a new course effective July 1 of every year. Instructors are required to recertify annually on this date.

This change would result in less confusion for real estate educators and promote greater efficiency at the Commission. While there would be a very small increase in the fees paid by the certified providers and a few instructors, all of them have been notified of this proposed legislation. There has been no negative feedback. The renewal fee is \$50 for a provider and \$25 for an instructor.

Senator Martin wanted to know if there was a conflict in moving the renewal time from two years to one year. He asked if on line 20, the reference should be changed from two years to one year. **Ms. Jackson-Heim** noted that was not necessary for providers since they were tracked by the Commission.

Senator Lakey indicated he liked the idea of a one-year renewal, but he cautioned about charging a fee. **Ms. Jackson-Heim** answered the fee was a renewal fee and not an application fee. Currently, the fee is included in the registration fee for training.

MOTION: **Senator Schmidt** moved to print **RS 23272**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

RS 23292: **Relating to Real Estate - Relating to Fee Splitting.** **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), stated this was a bill that clarified real estate activity payments to licensees. The license law states that unlicensed people or entities cannot receive fees for brokerage activity. The law also requires any licensee to receive real estate activity payments through his or her designated broker. There is a narrow exception in the law, where payments to unlicensed entities are allowed for licensees who form limited liability corporations (LLCs) or other business entities for tax purposes or who form teams with other licensees in their office. The broker is allowed to pay fees to these unlicensed entities because the fees were earned by the owners of the entities.

Ms. Jackson-Heim pointed out as with most laws, someone has identified a loophole, and in order to close that loophole, the Commission proposed a change. The proposed change maintains the exception and allows an unlicensed entity to be paid for real estate brokerage activity, but it clarifies that one of the owner licensees must have done the work for which the fees are paid. The language also makes clear that the owner licensee receiving the payment must be licensed under the broker making the payment.

She specified the second change was on page 3, line 12, which allowed the unlicensed entity to transfer those payments to the licensee, where ordinarily they would have to come directly from the broker.

MOTION: **Senator Martin** moved to print **RS 23292**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 23237: **Relating to Real Estate Law** . **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), said the license law authorizes the Commission to deny, expire, suspend or terminate a license on the grounds the license application fee was paid using a non-sufficient fund check. This legislation updates the law to add "any other type of insufficient payment" as grounds to expire, suspend or terminate a license.

MOTION: **Senator Heider** moved to print **RS 23237**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 23231:

Relating to Real Estate - License Law. Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission (Commission), said this RS encompassed quite a few small clean-up items. These items were identified during a review by the Commission of the license law and rules. On page 1, line 32, a spelling error was corrected. On page 2, line 29, there was a grammatical correction. On page 5, lines 24-25, the Commission wants to change the word "country" to "jurisdiction", to be more inclusive of the various governmental entities. **Ms. Jackson-Heim** reported some licensing jurisdictions were not countries, they were emirates, for example. On line 30, the Commission proposed adding the word "assessment" to allow for evaluating course completion in ways other than an exam. For example, there might be an activity or a short answer essay. **Ms. Jackson-Heim** described the references on page 7, lines 25-27, to challenge exams was deleted. Last year, some similar changes were approved, but a couple of references were omitted. On page 9, line 18, there was a change to the term, "business days" for consistency. "Business days" was a defined term in real estate license law. Clarification was added on line 21, "that the providers must submit their students' legal names when turning in their course completion lists" so the education records would match with the correct applicant.

On page 10, line 30, **Ms. Jackson-Heim** clarified what happened when a provider or school was no longer certified with the Commission to offer real estate education. She pointed out this language currently did not match the language for certified instructors and courses, and the Commission wanted to make the language consistent. On the same page, line 41, clarification language was inserted to say that post license instructors were certified. This was an oversight from last year's legislation regarding real estate continuing education requirements. On page 11, line 9, the words "post license" were added for the same reason. She said on page 12, line 32, the term "final exam" was changed to "assessment" to allow for flexibility. Lines 39-41 deleted references to challenge exams. The same applies to the deletion of language on page 13, lines 4-7. On page 13, in order to make language consistent, starting on line 19, several of the same changes throughout that section were made. The Commission proposed deleting the word "office" in several places on page 13 to reflect the correct term of branch manager. Also on page 13, beginning on line 44, the same requirements for being absent from the office apply to a branch manager as well as to a designated broker.

On page 15, line 7, an offer to purchase must include the date it was signed. And, finally, on page 16, an entire section was deleted that was incongruous with other sections and did not make sense. The license law requires anyone offering courses for real estate licensees to be certified with the Commission.

MOTION:

Vice Chairman Patrick moved to print **RS 23231**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the rules review being heard.

**DOCKET NO.
33-0101-1401:**

Rules of the Idaho Real Estate Commission. **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), presented this docket. The Commission did a thorough review of the administrative rules and identified a number of areas for clean-up. The first change removed a reference to nonresident and reciprocal licenses. This type of license category was eliminated from the license law quite a few years ago and the Commission no longer distinguishes between residents and non-residents. Every Idaho licensee gets the same type of license regardless of where he lives or works.

Ms. Jackson-Heim stated in the paragraph related to failure to maintain insurance, the number of days were "business" days, as the term was defined in the license law. Subparagraph 2 has been deleted completely because it was outdated, unnecessary, and incorrect. Rule 304, at the bottom of page 167 and going through page 168, was deleted in its entirety. This rule was not enforceable, and it was more in the nature of guidance. The Commission felt broker supervision requirements were adequately stated in the Idaho Code. To the extent more clarification was needed, the Commission worked on a checklist for use by licensees and enforcement staff that incorporated this information. The Commission's customary approach to rulemaking was to first consult with industry representatives to discuss any proposed changes; that was the process the Commission followed with this docket. The Commission also invited public testimony and conducted a hearing on these proposed changes, and there were no comments.

Senator Cameron asked if the Commission had a revocation procedure. **Ms. Jackson-Heim** responded the clause was in license law. They discussed the idea that everyone had to carry errors and omissions insurance. Until an agent could show proof of insurance, the Commission could put the agent on inactive status. Once proof of insurance is established the broker can add the agent back as part of the company and there is no fee. **Senator Cameron** wanted to know what the procedure was in the event someone was incapacitated for a period of time and unable to comply with the law as outlined, but recovered and wanted to reactivate their license. **Ms. Jackson-Heim** stated the broker could put the license on inactive status at the request of the agent. The broker could reactivate the license when the agent became active again, provided they had proof of errors and omissions insurance and completed the last year of continuing education. They also discussed the idea that if someone who was incapacitated wanted to maintain their license in holding status as inactive, they would have to pay all of the fees every two years.

Senator Lakey wanted to know where it stated "an agent has to be adequately supervised" was omitted, where else that would appear. **Ms. Jackson-Heim** said the language was in Idaho Code § 54-2038.

Senator Martin wanted to know what happened to commissions that were earned if a license was suspended due to an agent not providing proof of omissions insurance. **Ms. Jackson-Heim** answered that licensees who had a license on inactive status were allowed to receive their commissions that were earned while they were actively licensed.

MOTION:

Senator Schmidt moved to adopt **Docket No. 33-0101-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
33-0102-1401:**

Rules of Practice of the Idaho Real Estate Commission Governing Contested Cases. **Jeanne Jackson-Heim**, Executive Director, Idaho Real Estate Commission (Commission), presented this docket. She stated this section of rules governs the process for disciplinary actions at the Commission and are similar to the rules of civil procedure in court cases. She pointed out these rules were originally adopted in 1993 and were written through a collaborative process with the Realtor Association. The first change was to add the words "mountain time" to clarify the Commission's office hours.

Ms. Jackson-Heim said the definitions of "chairman" and "license" were deleted, as these two terms were not used anywhere within the language of this section of the rules, and the definitions were unnecessary. She pointed out on page 172, Section 104, there were more substantive changes to the rules, which allow the Commission to serve documents electronically. The revised language has been written to closely follow the Attorney General's rules. A later change will address service of documents by other parties. The Commission did not feel the need to specify how payments were made. This section was also outdated because it did not allow for electronic payments or credit cards.

Ms. Jackson-Heim mentioned at the top of page 173, a sentence was deleted because the language was unnecessary and contradictory to the process established in the license law for pursuing a violation. The changes to Rule 209 related to service of documents by other parties for a contested case proceeding. This language was proposed to allow electronic service of documents. Finally, Rule 303 contains the proof of service language which must be included in all filings. This language was being revised to reflect the options for electronic service described elsewhere in the rules.

The Commission consulted with industry partners and held a hearing on these changes. The Commission received no comments.

Chairman Tippetts and **Ms. Jackson-Heim** discussed serving an agent at their place of business or home through regular mail and if they were a State employee through the statehouse mail. **Ms. Jackson-Heim** reported it was the responsibility of an agent to keep the Commission informed of their current address and contact information. She said this did not always happen and serving an agent who was a State employee through the statehouse mail was one more mechanism.

Senator Schmidt and **Ms. Jackson-Heim** discussed the phrase "may personally serve an agent with a summons via regular mail." **Senator Schmidt** indicated he would like to see a correction of the wording at a future date.

Senator Martin wanted to know why Section 106 was reserved and not deleted. **Ms. Jackson-Heim** explained there were other sections of the rule that followed that otherwise would have to be renumbered.

Senator Lakey stated that once the parties appeared, then service could be electronic from that time forward whether the agent consented or not. If they had not appeared, then they would have to agree to electronic service. He wanted to know if there was any discussion about obtaining consent once the agent had already appeared; so they could be served electronically. **Ms. Jackson-Heim** said the Commission did not discuss that. There are very few unrepresented parties in these proceedings. She stated that if all the Commission had was an email address, they must do the best they could. The purpose of this rule was to give the Commission some more tools to utilize.

MOTION: **Senator Schmidt** moved to approve **Docket No. 33-0102-1401**. **Senator Ward-Engelking** seconded the motion.

Senator Lee stated she was in favor of this rule, but was uncomfortable with using statehouse mail as notification. **Senator Heider** commented he was a real estate broker before becoming a Senator. If there was a reason for the Commission to be able to communicate with him, it was fitting to add statehouse mail to the rule. **Senator Lakey** mentioned he would like to have serving a summons by mail versus personal service re-examined by the attorneys.

The motion carried by **voice vote**.

DOCKET NO. 01-0101-1401: **Idaho Accountancy Rules - License Renewals**. **Kent Absec**, Executive Director, Idaho State Board of Accountancy (Board), explained the Board was a seven-member board appointed by the Governor, with one office in Boise. Since 1917, the Board has licensed and regulated Certified Public Accountants (CPA) and Licensed Public Accountants (LPA) in Idaho. A director and three staff members assist the Board in carrying out its responsibilities. The Board strives to act swiftly in protecting the public whenever an issue arises with a possible impact upon the citizens of Idaho. Currently, there are approximately 2,700 CPAs and LPAs licensed in the State.

The first pending rule amends Rule 502.01, Section (b), to reflect a new extension deadline date of April 30 for submission of a licensee's annual Continuing Professional Education (CPE) courses. CPE is required for CPAs and LPAs to maintain their professional competence and to provide quality professional services. Licensees are responsible for complying with all applicable CPE requirements, rules and regulations of state boards of accountancy, as well as those of membership associations and other professional organizations. Each year, licensees must complete their required number of CPE credits or hours for the calendar year by December 31 and are asked to report those credits using the prescribed reporting process to the Board by January 31.

Mr. Absec pointed out the Board may grant extensions of time for the completion of the CPE requirement where reasons of health, as certified by a medical doctor, prevent compliance by the licensee or other good cause exists. Licensees asking for an extension under these conditions must apply on the reporting form for the year in which the extension is sought, and within the time period set for CPE. A penalty of no more than 50 percent of the CPE hours may be assessed for extensions. In these cases, the Board has asked for the rule to be modified in order to have the licensee be required to complete the CPE hours and any assessed penalty no later than April 30. The current extension deadline is May 31.

Mr. Absec mentioned the reason for the request was to modify the rule to include determining a licensee's eligibility for renewal upon completion of the prior period CPE requirement. Licenses run from July 1 to June 30. Once an extension has been submitted to the Board office, staff reviews the submitted report and certificates for the courses taken to verify the licensee has met the CPE requirement for the year in question. With many licensees waiting until close to the end of the extension period to submit their reports, they are left with very little time to make any adjustments. He cited an example that a licensee may be required to replace a submitted course because it did not meet the qualifications of the Board before the annual renewal period deadline without a late fee expiring. By changing the extension deadline to an earlier date, it would help the licensees be in a better position to find and take any additional courses, resubmit the needed information and renew their license in a timely manner. He noted that in the last six years the Board had seen an average of 60 licensees requesting an extension. Historically, a

majority of these licensees submit their required reports and the documentation necessary for the extension close to the May 31 deadline. This makes it difficult for the staff of the Board to process these extensions, communicate with the licensees if any additional courses need to be taken and give the licensees ample time to get the needed requirements completed prior to July 1. Licensees and the general public will benefit from knowing there are guidelines for CPE extensions, which not only help promote a quality and effective learning experience, but also aids a CPA in meeting their CPE requirement.

This rule has been published through the Office of Administrative Rules. Legislative Services has reviewed the proposed rule and has no objections to the change. No negative feedback has been received from stakeholders or the general public or from the Idaho Society of CPAs.

MOTION: **Chairman Tippetts** moved to adopt **Docket No. 01-0101-1401**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 01-0101-1402: **Idaho Accountancy Rules - Modify Rule 606.01 and Annual Registration**. **Kent Absec**, Executive Director, Idaho State Board of Accountancy (Board), indicated the Board wanted to amend this rule to state that only firms performing any of the services set out in Rule 602 need to annually register with the Board. He said this pending rule would be a reflection of the practices the Board currently uses and would bring it in unison with those firms that must participate in a Peer Review Program (PRP) as outlined in Rules 602 and 603. The Board was making a change that should have been submitted in the past, but was missed. Rule 602 states "any firm that issues reports on accounting and auditing engagements, including audits, reviews, compilations, and prospective financial information shall participate." A licensee who issues compilation reports through any form of business other than a firm shall participate in the Peer Review Program". However, he pointed out "a firm that does not perform any of the services set out in Rule 602 was exempt from peer review." The Board, over the past few years, has only required those firms who offer the services stated in Rule 602 to register with the Board on an annual basis. This rule change would bring into alignment those firms performing protected services and were required to register as the same group who was performing the protected services. This change would make it easier for stakeholders to understand if they were a firm who provided the services in Rule 602, they must both register their firm with the Board and be a participant in the PRP.

Mr. Absec said this rule has been published through the Office of Administrative Rules. Legislative Services has reviewed the proposed rule and there were no objections to the change. No negative feedback was received from stakeholders, the general public or from the Idaho Society of CPA's.

Chairman Tippetts asked for clarification on the rule. He stated that for a period of time, a firm follows the rule, regardless of whether or not they perform services. However, the firm was required to submit the form referenced in the rule. **Mr. Absec** explained the Board was not requiring those individuals who did not perform those protective services, to file a registration for their firm. This rule would put into place the practices that are currently being used. **Chairman Tippetts** said he often heard the rule had been changed without changing the statute first. He commented that in the future, the rule or the statute should be changed before changing the practice whenever possible.

MOTION: **Senator Heider** moved to adopt **Docket No. 01-0101-1402**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0106-1401: **Rules of Appeals Bureau - Appeals.** Amy Hohnstein, Chief Appeals Bureau, Department of Labor (Department) said the current rule allows appeals to be filed in any of the 25 Job Service Offices throughout the State. Those appeals are collected and routed to the Department's Appeals Bureau in Boise. The rule change would prevent appeals from being delayed or misdirected by requiring them to be filed by mail or electronically transmitted directly to the Department's Appeals Bureau. Negotiated rulemaking was conducted.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 09-0106-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0104-1401: **Unemployment Insurance Benefit Fraud Overpayment.** Joshua McKenna, Benefits Bureau Chief, Department of Labor (Department), said the rule change would reflect the legal standard used by the Idaho Supreme Court in unemployment insurance benefit fraud cases by explaining that to willfully make a false statement or to willfully fail to report a material fact in order to obtain unemployment insurance benefits only required a purpose or willingness to commit the act or make the omission. It did not require an intent to violate the law. Negotiated rulemaking was conducted.

Senator Schmidt questioned why intent to violate the law was not required. **Larry Ingram**, Compliance Chief, Department, answered that was the standard from the Idaho Supreme Court that has been used since 1979, but never publicized. **Senator Schmidt** clarified the lack of intent was understood, but it would now be in writing. **Chairman Tippetts** asked assuming a person admitted to intentionally making a false statement, were they using it as a defense that they didn't intend to break the law? **Mr. Ingram** replied that intent was being used as a defense.

MOTION: **Senator Schmidt** moved to adopt **Docket No. 09-0104-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 09-0130-1401: **Unemployment Insurance Benefits Administration Rules.** Joshua McKenna, Benefits Bureau Chief, Department of Labor (Department), presented this docket. He said the rule was being changed to reflect how the Department currently processes unemployment insurance claims. He explained this rule change would delete references to "mailed" and "in person" claims because they were no longer used by the Department. Instead, claims are filed over the internet, or in special circumstances, by telephone.

Chairman Tippetts mentioned the rule was a pending rule and would become effective at the end of the Legislative Session if approved. He wanted to know if the provisions in this rule were currently effective. **Mr. McKenna** explained the rule was not effective today. Claims were handled via the internet and over the telephone. He said claims were not being handled in person now. **Chairman Tippetts** pointed out the change had not been approved, and yet, the Department was not currently allowing in-person filing or mailing of claims. The Department had changed the process before they had the authority in rule to do so. **Chairman Tippetts** remarked the Department had violated their own rules, and then after the fact, had to ask the Committee to approve what the Department was currently doing. **Mr. McKenna** said he understood the point and would pass the information on to staff to make sure they were in compliance. **Chairman Tippetts** asked what would be the impact on the Department if the Committee chose now to reject this rule. **Mr. McKenna** explained the Department would have to look at the internal process of handling unemployment claims. **Chairman Tippetts** wanted to know about the cost and the disruption to the process in making the transition of accepting claims at offices around the State or mailing the claims, as opposed to making claims through the internet. **Mr. McKenna** responded the rejection of this rule would be very disruptive. During the high volume periods, not all of the claims would be handled

without the internet process. **Vice Chairman Patrick** inquired whether there were computer terminals available at local unemployment offices. **Mr. McKenna** said terminals were set up at local offices, libraries or wherever there was internet access. **Chairman Tippetts** said prior to eliminating the option of filing a claim at a local office or via mail, electronic filing was already allowed by the Department. He clarified that what this rule said was a claim could be filed electronically, but could not be dropped off at the office or mailed. **Mr. McKenna** said that was correct.

Senator Ward-Engelking remarked the Department was assuming every single person knew how to file a claim electronically. **Mr. McKenna** disclosed there were employees available at the different offices to assist applicants with electronic data entry and available by phone. He said staff worked closely with the local libraries to make sure applicants had access.

Senator Lakey commented about the language on page 69, Section 3, namely, new claims may be filed by phone, which may create potential documentation problems. His concern was with the Department's discretion. Usually, when a claim was filed there was some type of legal process based on the date of the claim. He felt there should be a deadline. He said that he did not think a claim should be discretionary when submitted by phone. **Mr. McKenna** indicated this section of the rule was for someone with a disability or limited English proficiency. **Senator Lakey** said the decision should not be discretionary.

Senator Martin indicated he also had a problem with that language. He gave the example of a person applying by phone who was accepted, but his friend called on the phone and was denied. He indicated it sounded like the Department was deciding, but there was no criteria. **Mr. McKenna** said discretion was put into the rule to handle special circumstances. He stated his Department was bound by the United States Department of Labor to provide equal access to all customers.

Senator Martin remarked he had many questions about this rule. Was it appropriate the rule be held?

MOTION: **Senator Martin** moved that **Docket No. 09-0130-1401** be held indefinitely with the understanding the docket would be placed back on the agenda. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

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

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

Senator Tippetts
Chair

Linda Kambeitz
Secretary