

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 29, 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. and welcomed all.

RS 23306: **Relating to Unclaimed Life Insurance Benefits. Senator Cameron** disclosed for the record that he is licensed to sell health and life insurance in the State. He gave a brief background on unclaimed life insurance benefits and what happens when no one claims the insurance in the case of a death. He said the solution to this issue has developed over time and it is a consumer-friendly bill to make sure the consumer or the family receives the funds.

John Mackey, representing United Heritage Life Insurance Company, said this was model legislation adopted by the National Conference of Insurance Legislators (NCOIL). The legislation will require life insurance companies doing business in Idaho to compare certain in force life insurance policies, annuity contracts and retained asset accounts at least semi-annually with the Social Security Administration Master Death File or an equivalent database. The life insurance companies must determine if a person has died, and if the decedent was an insured policy or owner of an annuity or asset account as defined in the legislation.

When a match occurs, the legislation requires timely action by the life insurance company to pay benefits to the rightful beneficiary or ultimately escheat the benefits to the State of Idaho as unclaimed property if a beneficiary cannot be found.

Both the Department of Insurance and State Treasurer's offices are supportive of this legislation.

MOTION: **Senator Martin** moved to send **RS 23306** to print. **Senator Heider** 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.

**DOCKET NO.
18-0146 -1401:**

Department of Insurance - Recognition of New Annuity Mortality Tables. Tom Donovan, Acting Director, Department of Insurance (Department). **Mr. Donovan** gave background information on the rulemaking. He explained rulemaking amends Rule 46 to adopt the National Association of Insurance Commissioners (NAIC) 2012 Individual Annuity Reserve Table (IAR) 2012), consistent with NAIC Model Regulation 821, for annuities issued January 1, 2015, and later. The model was developed by actuaries representing regulators and industry representatives. This new reserving method will allow companies to adjust reserves in recognition that reserves should not merely be based on age, but that mortality expectations change over time. Generally, the rule would result in higher reserves being held by companies. There has been a national push to make the changes set forth in this model. The status of that effort is that 27 states have adopted this model, 5 other states in addition to Idaho have the rule pending, and it is believed that another 3 states will adopt the rule this year.

Mr. Donovan said the Department conducted negotiated rulemaking. A notice of intent to promulgate rules was published in the Administrative Bulletin on July 2, 2014, and also on the Department website notifying potential interested parties of a public meeting to be held on July 24, 2014. The public meeting was held, however, no one appeared. The Department received a letter in support of the rulemaking dated July 24, 2014, from the American Council of Life Insurers (ACLI) indicating that it represented more than 300 member companies and that 250 of those companies write business for Idahoans.

Mr. Donovan pointed out the proposed rule was published September 3, 2014. In response to the proposed rulemaking, the Department did not receive any request for hearing but did receive a comment letter from the ACLI of a technical nature. The concern arose from references to certain subsections. Following that letter, the Department actuary, Wes Trexler, had a telephone conversation with the senior actuary for the ACLI. The Department spoke to an actuary at the NAIC. Following those discussions, the language was revised by inserting specific dates rather than referring to effective dates of various subsections. This resulted in removing potential ambiguity from the prior language.

This rulemaking matches the national model and will help create a level playing field. Aside from the support of the ACLI, the Department has not heard from anyone else concerning this rulemaking and knows of no opposition.

Vice Chairman Patrick asked why more reserves were required since people were living longer. **Mr. Donovan** said that as life expectancy grows, life insurance companies must have higher reserves.

Chairman Tippetts and **Mr. Donovan** discussed the magnitude of the increase in reserves and the initial adjustment in funds.

Senator Lakey said he noticed the tables were from 2012 and wanted to know how often they were updated. **Mr. Donovan** reported they were not updated very often.

MOTION:

Senator Schmidt moved to approve **Docket No. 18-0146-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0153-1401:**

Department of Insurance - Continuing Education. Tom Donovan Acting Director, Department of Insurance (Department) reported the first couple of pages have some general rulemaking cleanup provisions, such as changing the title of the rule and including some of the standard sections to conform with rulemaking protocol. A new definition for "licensee" was added. A definition of the term "licensee" adds specificity and clarity to include an individual licensed as a producer (previously referred to as an agent or broker), and "adjuster" or one who adjusts insurance claims. For example, an adjuster investigates and negotiates settlement of insurance claims and a "public adjuster" is one who, for compensation, acts on behalf of an insured in first party claims on real or personal property. This continuing education (CE) requirement already applied to public adjusters in addition to producers. The biggest change in this rulemaking is to apply CE requirements to adjusters (sometimes referred to as independent adjusters). The Department was already authorized by statute to require CE, but just had not put that in place. Adjusters have been added to the CE rule as part of a move towards greater reciprocity and perhaps uniformity among states. Once CE credits are accepted and tracked for adjusters, they will be able to satisfy the requirement. This protocol was already established for producers and public adjusters. Non-resident licensees that satisfy comparable requirements in their home states are not required to satisfy additional requirements in Idaho. Approximately 34 states license adjusters and 20 of those require CE for adjusters.

The Department conducted negotiated rulemaking, and a public meeting was held on July 22, 2014. The Department prepared a draft of the rulemaking and had that available at the meeting and circulated it to interested parties just prior to the meeting, as well as posting it on its website. No interested parties or members of the public attended the July 22 public meeting. The Department received no comments from the public or industry.

Senator Patrick wanted to know why the word "producer" was used instead of "salesman." **Mr. Donovan** said the term was based on the National Insurance Commission (NIC) model and was standard in the industry.

Senator Cameron disclosed for the record that he is an insurance agent. He asked Mr. Donovan to give him an example of what type of written statement his Department may require regarding this rule. **Senator Cameron** expressed a concern that an agency could circumvent the rules process. **Mr. Donovan** stated this was fairly standard language inserted at the suggestion of the Office of Administrative Rules. His Department generally updates provisions because the first nine or ten sections of the rules are generally the same. He said there were no written interpretations with respect to this rule. He said the Department of Insurance (DOI) follows a protocol that is very common among insurance regulators in other states. He commented his Department sometimes issues bulletins which explain and add additional clarity. Bulletins do not have the force and effect of law. He said it was conceivable that something as informal as a letter would fall into the category of interpretation.

Senator Martin wanted to know why the office hours and mailing and street addresses were being put into the rule. **Mr. Donovan** said the Office of Administrative Rules requested that agencies include this information as routine practice in case the public has an issue or concern. **Senator Martin** commented he typically sees Mountain Standard Time after the hours of operation and wanted to know why that was not included. **Mr. Donovan** said the DOI has a regional office in Coeur d'Alene in Pacific Time. The Department decided not to include the time zone since part of the State is in Pacific Time and part is in Mountain Time.

MOTION: **Chairman Tippetts** moved to approve **Docket No. 18-0153-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0144-1401: **Department of Insurance - Schedule of Fees, Licenses and Miscellaneous Charges**. **Tom Donovan**, Acting Director for the Department of Insurance (Department), said there was one change from the proposed rule made at the pending rule stage. The fee amount paid to a third party vendor but not received by the Department has been added. In addition to minor technical changes eliminating surplus language, the pending rule does three things: (1) Expressly provides that the \$500 registration fee is applicable to self-funded student plans, not just self-funded employee plans. (2) Provides that adjusters pay the same licensure fee as public adjusters of \$80. Additional language adds public adjuster to the fee provisions concerning taking an examination for licensure and for license renewal. These first two changes are the result of legislative changes in relatively recent years, and the Department is conforming the language in the fee rule to those changes. (3) Changes the allowable examination fee for those taking an exam to become licensed. This has not changed in 13 years and follows a renegotiation of the contract for examination services and allows for greater flexibility with a "not to exceed amount."

Mr. Donovan explained the next change simply addresses a technical language fix, where a clause is struck in paragraph 020.04.k referencing subsection or paragraph 020.05.g. This is appropriate because the referenced paragraph does not exist. The second substantive change adds public adjusters into the fee rule in the appropriate references for application fee, examination fee, and renewal fee.

Mr. Donovan indicated the double underscored language in subsection 030.02 was added at the pending rule stage to clarify that the examination fees were collected by a third-party and not by the Department. Taking an examination and passing is a prerequisite to licensure, but not something the Department directly administers.

The examination fee referenced currently as \$60 is to be changed to provide that it shall not exceed \$80. The most recent contract for exam administration services complied with this provision. However, the vendor sought to charge a \$70 fee for examinations. This change will allow a future change in the examination fee. A couple of years ago, the Department had a similar situation with the administration of fingerprint fees where the fee was raised from \$60 to an amount not to exceed \$80. The Department would like the flexibility to adjust this in the future.

He said negotiated rulemaking with the Notice of Intent to Promulgate Rules was published on July 2, 2014; a public meeting was held on July 24, 2014. Additionally, the Department prepared a draft of the rulemaking for discussion at the public meeting and had that available at the meeting and circulated it to interested parties just prior to the meeting and posted it on its website. At the July 24 public meeting, no interested parties or members of the public attended. The Department received an inquiry from the Idaho Associated General Contractors (AGC) who was not able to attend the public meeting. After they saw a draft of the rulemaking on the website, the Department received an indication that the AGC had no concerns. The notice of proposed rulemaking and the text of rule changes were published in the administrative bulletin on September 3, 2014; the notice of adoption of the pending rule was published on November 5, 2014.

Chairman Tippetts congratulated the Department for conducting negotiated rulemaking.

Senator Lakey disclosed for the record that his law firm represented a government self-funded program.

MOTION: **Senator Schmidt** moved to approve **Docket No. 18-0144-1401**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0201-1401: **Rules of the Board of Barber Examiners.** **Roger Hales**, Attorney, presented this rule on behalf of the Board of Barbers (Board). He said the Board regulates the practice of barbers and is served by the Bureau of Occupational Licenses (Bureau). He said the rules are being updated to simplify and clarify the licensing of contiguous barber shops, which allows a licensee to practice as an independent contractor. Currently, a license is issued to a space or station within a primary barber shop and a new application is required if the licensee changes the space they are working in. The updates will allow the issuance of a contiguous barber shop license to the address of the primary shop, which will allow licensees to move their workspace within the primary shop without reapplying for a new license. The sanitation rules are also being updated to standardize the inspection process.

Negotiated rulemaking was not conducted because the rules of the Board are being updated to simplify and clarify the licensing of contiguous shops, which allows a licensee to practice as an independent contractor. The Board has worked with interested parties including licensees, representatives from the Department of Labor and the Industrial Commission in order to protect a contiguous licensee's independent contractor status.

Mr. Hales said that a barber shop and a cosmetology shop could be together, separated by a partition not more than seven feet high. The change in the rule gives more flexibility and updates and clarifies sanitation rules.

The change in definition updates the definition of service dogs trained to do work or perform tasks for persons with disabilities in order to be in compliance with the federal Americans With Disabilities Act (ADA).

Senator Schmidt wanted to know how many licensed barbers there are in the State. **Mr. Hales** indicated there are approximately 900. **Senator Schmidt** and **Mr. Hales** had a conversation about possible problems with unlicensed barbers and sanitary conditions and fixed locations. **Mr. Hales** explained the owner of the shop would determine what stations were reserved for employees and what stations would be reserved for contiguous areas.

Senator Lee questioned whether the Board wanted to reference service animals, such as miniature horses or service dogs, or if the ADA says specifically service dogs. **Mr. Hales** said it was his understanding that a service animal included a miniature horse, and that federal law prevails. He said he thought this rule meant to emphasize that service dogs are allowed and no other animals. The intent was to clarify service dogs and refer to the definition of service animals under the ADA. **Senator Lee** urged **Mr. Hales** to make sure the State was not out of compliance.

Senator Lakey mentioned he read the rules as no animals are allowed in a shop except service dogs, which should be consistent with the ADA definition of service animal. **Mr. Hales** replied he could clarify the concern with the Board.

Chairman Tippetts brought up the situation of a business adjacent to living quarters and wanted to know if the intent was that the doors should be closed during the hours of business or should they also be closed outside the hours of business. **Mr. Hales** said the door must be closed during business operation. There may be a good reason to have the door closed otherwise from the living area. He said home shops have to provide a separate outdoor entrance and all doors from the adjacent shop shall be closed. The intent was the door between the living quarters and the business should be closed. **Chairman Tippetts** stated there should be a little more

thought given to when the door should be closed.

Chairman Tippetts brought up negotiated rulemaking and wanted to know if the Bureau or the various boards have resources to conduct negotiated rulemaking. He said he did not believe this was done for any of the occupational licenses rules and he said the reasons given did not seem to justify not performing negotiated rulemaking.

Tana Cory, Chief, Bureau of Occupational Licenses (Bureau), said all of the meetings are open to the public. They are noticed to the public, posted on their website, and interested parties are notified. Formal negotiated rulemaking has not been done, but the Board does conduct informal negotiated rulemaking. Once the rules have been published, postcards are sent to licensees about changes. They have had a very good response. If they receive a certain number of comments, there is a requirement to do formal negotiated rulemaking. **Chairman Tippetts** commented he was sometimes concerned when agencies did not conduct negotiated rulemaking even if they notified the interested parties and invited them to participate. There are others who may have an opinion, but were not invited to the meeting. Negotiated rulemaking is a more open process. He asked Ms. Cory if she was confident when the Bureau is conducting these meetings other parties who may not have had an invitation sent to them are not excluded. **Ms. Cory** said that was a concern so the Bureau mails a postcard to every licensee who would be impacted by any rule change. However, if there are not enough comments to trigger the formal negotiated rulemaking, negotiated rulemaking is not conducted.

MOTION: **Senator Schmidt** moved to approve **Docket No. 24-0201-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0401-1401: **Rules of the Idaho Board of Cosmetology**. **Roger Hales**, Attorney, presented this rule on behalf of the Board of Cosmetology (Board). He said the rules were being updated to simplify and clarify the licensing of contiguous establishments which allows a licensee to practice as an independent contractor. Currently the licenses are issued to the space or station within a primary establishment and requires a new application if the licensee changes the space they are working in. The updates will allow the issuance of a contiguous license to the address of the primary establishment, which will allow licensees to move their workspace within the primary establishment without reapplying for a new establishment license. **Mr. Hales** said this idea was addressed in the previous rule, but the language differed. He said the contiguous person was responsible for sanitation.

He said negotiated rulemaking was not conducted because the rules of the Board are being updated to simplify and clarify the licensing of contiguous shops, which allows a licensee to practice as an independent contractor. The Board has worked with interested parties including licensees, representatives from the Department of Labor and the Industrial Commission in order to protect a contiguous licensee's independent contractor status.

Senator Schmidt referred to part of the rule that said restroom facilities should contain an approved hot and cold running water source and approved drainage system. He wanted to know if an establishment would be denied a license if there was only a cold water tap. **Mr. Hales** said that typically, bathroom water cannot be used to run an operation and does not count as hot and cold running water.

TESTIMONY: **Merrilyn Cleland**, cosmetologist and a member of the Board, testified that she has three contiguous licenses for hair, nails and esthetician. She spoke in support of this rule. **Senator Lakey** and **Ms. Cleland** discussed the change in this rule, the idea of separate licenses, a group setting and sanitation.

Korrine Sword, representing herself as a cosmetology shop owner in Nampa, indicated she had sent a letter to all of the Senators in support of this rule. She pointed out the amount of paperwork it took to apply for a contiguous license. **Chairman Tippets** commented there was a lot of regulation, and it was nice when the amount of paperwork was reduced. He asked if there were other areas where work could be reduced. **Senator Schmidt** wanted to know if unlicensed practitioners posed a particular health problem. **Ms. Sword** replied there should be some regulation over the business because of health and safety involved with working with the public.

MOTION: **Senator Ward-Engelking** moved to approve **Docket No. 24-0401-1401**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-2501-1401: **Rules of the Idaho Driving Business Licensure Board**. **Roger Hales**, Attorney, presented this rule on behalf of the Driving Business Licensure Board (Board). He said H 359, passed by the 2014 Legislature, allows the Board to waive the apprenticeship requirement for licensure for those applicants who hold a current equivalent license in another state or who have the requisite training and experience. The rule allows a waiver of the apprentice training program if an individual holds a current active unrestricted license from another state; or an individual has held an active unrestricted public driver education instructor license from the Idaho Department of Education for two years. This bill was passed with an emergency clause and is in full force and effect. The proposed rule implements the new law.

Negotiated rulemaking was not conducted because the rules of the Board need to be updated to conform with H 359.

Senator Schmidt asked what the financial impact would be with this change. **Mr. Hales** responded that possibly this could increase the number of applicants for private driving instructors.

MOTION: **Chairman Tippets** moved to approve **Docket No. 24-2501-1401**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 49-0101-1401: **Rules of Procedure of the Idaho Certified Shorthand Reporter's Board**. **Roger Hales**, Attorney, presented this rule on behalf of the Certified Shorthand Reporter's Board (Board). He said the rules are being amended to clarify the nature and scope of the examination, segments of the examination, and temporary permits. These amendments are necessary to establish clear standards for the examination, its content and to further clarify qualifications for a temporary permit.

Negotiated rulemaking was not conducted because the amendments are needed to clarify the scope of the examination, segments of the examination, and temporary permits. This change will benefit the applicants in preparing for the examination. These changes were discussed during noticed, open meetings of the Board. There was no opposition.

MOTION: **Senator Cameron** moved to approve **Docket No. 49-0101-1401**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
38-0301-1401:**

Rules Governing Group Insurance. **Keith Reynolds**, Chief Fiscal Officer, Department of Administration (Department), said revisions incorporate changes in federal law in governing health plan eligibility and the expiration of the Medicare prescription drug reimbursement program. He explained there is a change in dependent eligibility as required by the Affordable Care Act (ACA). There is a requirement this year to cover all dependents under the age of 26 regardless of their access to other insurance options.

The remainder of the rule changes arise from the expiration of the Medicare Prescription Medication Reimbursement Program (MPMR). The MPMR was put into place by the 2009 Legislature, effective January 1, 2010, expiring December 2013. Under the reimbursement program, retirees over 65 and their spouses were able to apply for up to \$2,000 annually to cover prescription costs that fall into the Medicare Prescription "donut hole." Although up to \$800,000 was anticipated as the total cost, the actual amount paid was \$242,000 to 126 participants.

Negotiated rulemaking was not conducted because the proposed rule change will provide conformity with federal law.

Senator Schmidt wanted to know if anyone wanted to appeal, would they have any recourse since the administrative appeals procedure section was removed? **Mr. Reynolds** said appeals are referred to Blue Cross as the administrator of the plan. **Senator Schmidt** wanted to know if that information was referenced in the rule. **Mr. Reynolds** said it was not.

Senator Cameron commented he was here when this provision was negotiated. He talked about the fact that negotiated rulemaking was not conducted because it conflicted with federal law, which was the case for the first part of the rule, but it is not the case in the removal of the reimbursement program. He stated we are doing a disservice to former employees of the State, who should have been notified and at least given an opportunity to express their opinions. **Mr. Reynolds** said he believed the expiration of the reimbursement program was in statute and that was the reason negotiated rulemaking was not conducted.

MOTION:

Chairman Tippetts moved to approve **Docket No. 38-0301-1401**. **Senator Martin** 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 3:04 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary