

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 05, 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: **Vice Chairman Patrick** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Schmidt** moved to approve the Minutes of February 19, 2015. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: The appointment of Candace Sweigart of Boise, Idaho to the Idaho Health Insurance Exchange Board (Board), term commencing February 5, 2015 and expiring on April 10, 2017. Ms. Sweigart was unable to attend. This appointment was continued to a future meeting.

S 1076: **Relating to a Benefit Corporation Act.** **Senator Winder** said a benefit corporation is a new class of corporation that voluntarily meets higher standards of corporate purpose, accountability and transparency. Twenty-six states and the District of Columbia legally recognize benefit corporation status. Benefit corporation status does not affect a company's tax status, and a company does not have to receive certification to hold benefit corporation status.

He said the purpose of this legislation is to create the addition of a new chapter and title of Idaho Code to establish incorporation requirements for benefit corporations, to define benefit corporations, and to outline the process to adopt and terminate benefit corporation status. Standards of conduct and rules are outlined for directors, benefit directors, officers and benefit officers. This legislation also outlines the means to bring an action on behalf of a benefit corporation, requires an annual report of benefit corporations and makes that report available to certain persons and the public. There will be no fiscal impact to either the General Fund or to county and local governments.

Vice Chairman Patrick wanted to know if there was a limit on the number of shareholders and if there were any restrictions. **Senator Winder** assured him there were no restrictions.

TESTIMONY:

Lisa Fisher, Founder and President of Darshan Partners, testified in support of this bill. She said she believes business is the greatest source of solutions for the issues society faces today and that the free market can address many problems quickly and efficiently without having to resort to government handouts. She said that through her company's work with entrepreneurs across the country she has found that in many states, including Idaho, the free market is sometimes not truly free and is prevented from fully solving these issues due to current corporate law. She said this bill is a pro-business bill that will create a new voluntary business form known as a benefit corporation. Benefit corporations deregulate the purpose of a corporation by allowing the free market and not government to decide on how the business operates. This new form gives the freedom to entrepreneurs and business owners to consider other factors in addition to profit. In all other areas, including taxes and regulation, benefit corporations are the same as a traditional corporation.

Ms. Fisher stated there is an added risk for corporations. Traditional corporations may only consider additional factors if their end goal is higher profits. This is referred to as the business judgment rule, and it was the very reason Delaware passed the benefit corporation legislation. Delaware believed that without the law, the business judgment rule hindered the advancement of the free market. She said this is the case for many companies that must justify their pursuit of a mission for the sake of marketing or public relations. However, companies are always at risk of a shareholder lawsuit if they are not a benefit corporation. The impediments inherent in the traditional corporate form are particularly evident at the time of sale, succession, or during any capital raises, when many companies may have to abandon their missions in order to avoid a shareholder lawsuit or may have to simply not expand their operations.

Ms. Fisher said benefit corporation legislation also provides a cost-free economic development tool for states, because companies that voluntarily choose this form create an annual benefit report, similar to an annual financial report, but focused on their qualitative activities.

She said several companies have left their home state to incorporate in states that have benefit corporation legislation. Benefit corporation legislation is a completely voluntary cost-free option that deregulates the traditional fiduciary duty of a corporation and allows the free market to solve some of the pressing issues facing society. The legislation can help attract jobs and investment and provide economic development opportunities to Idaho.

Vice Chairman Patrick and **Ms. Fisher** had a conversation about benefit corporations and the consideration of other factors in addition to profit.

PASSED GAVEL:

Vice Chairman Patrick passed the gavel to Chairman Tippetts.

TESTIMONY:

Steve Doud, Vice President of Sales, Jitasa, testified in support of this bill. He said benefit corporations are a new voluntary business form that gives the freedom to entrepreneurs and business owners to consider other factors in addition to profit when operating their businesses. He said he believed benefit corporation legislation could bring significant economic and social improvements to Idaho without any financial cost to the State.

Mr. Doud said Jitasa was the corporate recipient of the 2014 Governor's Brightest Star Award and is the first and largest national provider of finance and accounting services exclusively supporting the nonprofit sector. If Jitasa can attain the status of a benefit corporation, that will directly strengthen the market and differentiate competition. This legislation provides businesses the freedom to expand their markets. Idaho needs additional tools to encourage business growth and benefit corporation legislation does this through encouraging growth within the free market. This legislation can help Idaho attract and build businesses, jobs and investment.

Russ Stoddard, president and owner of Oliver Russell, testified in support of this bill. He said his company is a brand-marketing firm and has been conducting business from Boise headquarters since 1991. He said he thought the best way to enable companies to address demands from the marketplace is for the State to give business owners the latitude to choose a legal structure that allows the creation of the type of company they want. He said he believed the benefit corporation was the best way to accomplish that goal.

Mr. Stoddard said his business and the State can become more competitive by providing the voluntary option of benefit corporations. By giving entrepreneurs and business owners the freedom to consider other factors in addition to profit when operating their businesses, new economic development would be encouraged in Idaho.

Vice Chairman Patrick and **Mr. Stoddard** talked about the primary differences between a C corporation and a benefit corporation, and that other objectives can be considered without a concern about profit and retribution from stockholders.

Decker Rolph, Investor, Chief Executive Officer of Woulg Holdings, Limited Liability Corporation (LLC); and Executive Producer of Treefort Music Fest (Fest), testified in support of the bill. He talked about his wife, Jessica, who is co-founder and Chief Operational Officer of HappyFamily, a highly successful, growth stage, organic children and baby food company and a certified B corporation. He said the passage of benefit corporation legislation in states across the country has created a new kind of company with expanded fiduciary duties that create value for investors and shareholders, but also for stakeholders. Importantly, this new corporate form provides a basis for entrepreneurs and investors to align themselves around the goal of building long term value.

Mr. Rolph stated he believes investing in businesses that do well by doing good is not only the best way to put capital to work in growing the local and national economy, but also offers the greatest opportunity for generating a long-term return on investments. Many high profile investors around the country are already investing in benefit corporations.

The benefit corporations' expanded fiduciary duty to consider the long-term impact of their actions on a wider group of stakeholders combats short term decision-making by directors and officers and helps investors hold

management accountable. Benefit corporations afford shareholders an efficient means of understanding and benchmarking the impact of their investment dollars.

Mr. Rolph said an investment in a business is not just an investment in a particular product or technology, it is an investment in the people that make up that company. Research shows that companies pursuing more than just profit, but also a purpose, will better attract and retain talented employees. Benefit corporations in Idaho will lead to a higher quality workforce and in turn more successful companies and investments.

Senator Schmidt asked Mr. Rolph if shareholders frequently sue corporations for mismanagement or not returning profit as expected. **Mr. Rolph** said he was unclear as to the frequency but said shareholders could prove mismanagement or a poor return on profit in court.

Senator Lakey and **Mr. Rolph** had a conversation about Fest and the qualifications for a B corporation. They talked about national bands and artists coming to Idaho for the Fest and, because choices were limited, Treefort had to become an LLC.

Mark Buchanan, law professor from Boise State University, testified in support of the bill. He said he wanted to answer some of the questions that were raised in the prior testimonies. He said the tax status of a corporation was not impacted by a benefit corporation status. There is no relationship between a C or an S corporation.

Senator Winder thanked the Committee and asked for their support.

MOTION:

Senator Lakey moved to send **S 1076** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Winder will carry the bill on the floor.

S 1062:

Direct Primary Care. This item was continued from the meeting of March 3, 2015. **Representative Luker** said he wanted to move on to the testimony.

TESTIMONY:

Steve Thomas, representing the Idaho Association of Health Plans (Association), spoke in opposition to the bill and said he tried to match the testimony on Tuesday to the bill. He said the bill was actually broader. He said some suggested changes were drafted for direct primary care, which would not involve insurance companies. He said members of the Association do not support the bill as written.

Elizabeth Criner, representing the Idaho State Dental Association, spoke in support of the bill. She said the bill ensures freedom to contract with patients for dental insurance.

Dr. Kim Keller, direct primary care provider in dentistry and practicing in Canyon County, said 45 percent of his new patients are uninsured. He remarked that dental insurance is not a permission slip to see a health care provider. He said he felt he had to create a way for the 45 percent uninsured to come to the dentist. There are concerns about cost and some people presume they do not have dental needs. By using direct primary care, half of the 45 percent have signed up for the plan.

Senator Cameron and **Dr. Keller** had a conversation about how Dr. Keller's practice could change with the passage of this legislation, the effect on the direct primary care plans and the effect on his practice as a contracted provider for an insurance company. **Dr. Keller** said with the non-passage of

this bill, he would be forced to lower his fees in order to have the insurance company send him patients. Each insurance company negotiates the price they will pay for each procedure and Dr. Keller's fees are based on negotiated prices. **Dr. Keller** said his goal was to try to drop prices for those patients who have a contract with him, but they do not receive any preferential treatment over those who do have insurance.

Senator Heider said he was concerned about where direct primary care ends when extenuating circumstances arise with a patient. **Dr. Keller** said the direct primary care plan is not offered to anyone with insurance. **Senator Heider** said the limitation of having a direct primary care plan does not prohibit the dentist from billing the insurance company. **Dr. Keller** replied that if someone has insurance, they would not be interested in purchasing a plan. His plan is only for those who have no insurance.

Senator Lakey wanted to know about the uninsured client who purchases a plan and needs a crown, for example. **Dr. Keller** stated the fee was for basics, but membership in the plan offered a discount on other services.

Shad Priest, representing Regence Blue Shield and Cambia Health Solutions, an affiliate plan of Regence, spoke in opposition to the bill. He said several states have adopted direct primary care laws with no problems, which is a move to more patient-centered care. He stated this bill was not a direct primary care bill. He said the consequences of this bill go beyond direct primary care. He gave a brief history of other states who have adopted direct primary care laws which are limited for direct primary care services. The reason other states have limited laws for direct primary care is because they did not want health care providers to start becoming or acting like insurance companies. As currently written, there are no limitations in this bill between a practice, a group of practices, a pharmacy, hospital or some combination acting as health insurers. The bill would exempt from regulation what Chapter 39, Title 41 was made to oversee.

Russ Hendricks, Idaho Farm Bureau (Bureau), testified in support of the bill. He said it was unusual for the Bureau to address a health care issue, but many of the members of the Bureau are also consumers of health care, with many living in underserved, rural areas. He cited the Bureau policy that supports legislation that permits, promotes and/or assists in the development of direct primary care in Idaho. The Bureau views this bill as enabling legislation which allows another health care option to be available for those who choose to use it. The bill does not require anyone to use direct primary care, nor does it in any way disadvantage those providers or consumers who do not choose to use direct primary care.

Norm Varin, Manager of Government Affairs, representing Pacific Source Health Plans, spoke in opposition to the bill. He said Pacific Source supports the concept of primary care and primary care medical homes. The breadth of the definition is not supported by the Affordable Care Act (ACA). He said the plan would not include any care given by any other professionals and would only include a wrap-around plan. **Mr. Varin** said the act does not require the provider to renew or continue the agreement, which is a requirement currently in place for insurance companies. This creates the opportunity for the provider to only provide care for patients they choose. This will more than likely allow providers to end agreements with members that utilize too many resources. Being terminated outside of open enrollment would mean the patient would not have access to care until the next open enrollment.

Senator Lakey clarified that Mr. Varin was in support of direct primary care, but not with such a broad definition. **Senator Lakey** and **Mr. Varin** talked about including physicians in a wrap-around plan, but not necessarily dentists.

Dr. Mark Gregg, Meridian dentist, spoke in support of this bill. He said he just returned from a workshop in Atlanta, Georgia about direct primary care. He said he has been studying direct primary care for the past two years and he thinks this is a good model for the system for physicians and patients. He mentioned some of the advantages, such as improvement in quality of care, savings of health care dollars, and allowing physicians to stay in practice longer and provide an enhanced relationship with patients. He said a bill in Idaho is needed to cut healthcare costs. This bill was modeled after legislation passed in the State of Washington.

Dr. Vicki Wooll, family physician, spoke in support of this bill. She said she manages many patients with chronic diseases who are soaking up health care dollars. By having direct primary care available to these types of patients, costs would be reduced. She said there are many regulations and bill coding is increasing. Many physicians are retiring because of these issues. She said she thought direct medical care was a good business model and it was not insurance.

Ken McClure, attorney, Idaho Medical Association, said it was not uncommon to see obstetrical care and routine births covered by a direct medical care agreement, but a cesarean section would cost more. A major medical policy is necessary for things that are not routine medical care. He said if the Committee is inclined to limit the scope of the bill to physicians, an amendment could be made.

Senator Cameron and **Mr. McClure** had a conversation about this act unintentionally undoing the good work the State of Idaho did with managed care organizations. **Mr. McClure** said he disagreed and said this bill supplements and provides another tool.

Representative Luker mentioned he had heard concerns in the last meeting and has a proposed amendment which deletes "or otherwise legally authorized" and inserts "under title 54, Idaho Code," on lines 5 and 6. He expressed a concern about unduly restricting the legislation to physician groups because there are many who provide primary care. He stated the free market should not be unduly restricted, and physicians should not be told how to run their practice. He said the problem is that government and insurance companies have too many regulations, and the physicians need to return to a direct relationship with patients. He asked the Committee to send this bill to the 14th Order for amendment.

Senator Lakey wanted to know if Title 54 covered doctors and dentists. **Representative Luker** replied that was correct. **Senator Lakey** wanted clarification from Representative Luker asking if this bill was to be sent to the 14th Order and **Representative Luker** said yes.

MOTION: **Senator Schmidt** moved that **S 1062** be referred to the 14th Order for amendment. **Senator Lakey** seconded the motion.

Senator Martin asked for clarification on sending the bill to be amended. **Senator Cameron** said he had problems with the bill as written. He said there was a risk of having multiple competing amendments on the Senate floor. He said the main question of the bill is whether or not it can exist and at what point should it be regulated. He suggested the Committee hold the bill until the factions could agree upon a unified amendment. He said he would prefer this alternative. **Senator Lee** agreed and said she wanted something all could support.

SUBSTITUTE MOTION: **Senator Cameron** moved to hold **S 1062** in Committee at the discretion of the Chair. **Senator Lee** seconded the motion.

Senator Lakey said he wanted the momentum to continue and the bill to move forward.

ROLL CALL VOTE: **Chairman Tippetts** called for a roll call vote. **Senators Cameron, Heider, Lee, Ward-Engelking** and **Chairman Tippetts** voted aye. **Senators Martin, Lakey, Schmidt** and **Vice Chairman Patrick** voted nay. The motion carried.

ADJOURNED: There being no further business, **Chairman Tippetts** adjourned the meeting at 3:07 p.m.

Senator Tippetts
Chair

Linda Kambeitz
Secretary