

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, January 26, 2016
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, 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 Patrick** called the Commerce and Human Resources Committee (Committee) meeting to order at 1:30 p.m.

RS 24057 **Relating to Licensing. Dean Cameron**, Director, Department of Insurance (DOI), gave a brief history. He said the proposed legislation accomplishes three things relating to producer, agent, surplus and lines broker licensing in Idaho:

1) Idaho Code § 41-1016(2) currently provides summary order authority to suspend or revoke the Idaho nonresident license where the resident license has been suspended or revoked in the licensee's home state. The proposed legislation amends this section of code adding additional circumstances of terminating a nonresident Idaho license, where the resident license in another state has been voluntarily surrendered or lapsed. This amendment streamlines the process for terminating the license of a nonresident producer who no longer meets a prerequisite to hold this license.

2) Amends Idaho Code § 41-1026(3) to provide that a former licensee whose license has been revoked may not reapply for a license until not less than one year and up to five years have passed rather than the current one-year waiting period.

3) Amends Idaho Code § 41-1026 to provide a new subsection (4) where a person whose application for a producer license has been denied must wait one year before reapplying. Currently, there is no specific time period in which a person must wait before reapplying for a producer license. Individuals who reapply quickly following a denial or revocation waste their time and that of the DOI in processing and denying the application.

There is no fiscal impact.

Chairman Patrick reminded the Committee that this was a print hearing.

Senator Rice indicated he wanted to pursue the idea of constitutionality of this change for a producer who lives in a nearby state but sells insurance in Idaho only, the producers would have to hold a license in their state of residence. **Director Cameron** said he would be happy to meet and discuss this item. He stated the current code states that in order to obtain an Idaho insurance license, the producers would have to possess a valid insurance license in their state of residency.

Senator Thayne referred to Section 3 and asked for an explanation. **Director Cameron** responded that those sections are referring to other code sections that are applicable.

MOTION: **Senator Heider** moved to send **RS 24057** to print. **Senator Lakey** seconded the motion.

Senator Guthrie questioned page 3, Section 4, and wanted to know if the revised language would allow producers to make an application for reinstatement prior to a year. **Director Cameron** explained there would be certain circumstances where producers would need to gather information prior to reapplying. He praised the licensing team in Idaho for being nationally recognized for their good work.

The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT & VOTE: The appointment of Dean Cameron of Rupert, Idaho, as Director of the Department of Insurance (DOI), to serve a term of four years subject to early removal by the Governor.

Director Cameron thanked the Committee for their time, support and consideration. He said he missed the Committee, but felt it was time for a change. He outlined his qualifications and said he holds several insurance licenses. He noted he has been honored to serve in his new position. He introduced his wife, Linda, and several other members from the DOI. **Director Cameron** disclosed he had to sell his insurance agency and divest himself of any affiliations. **Senator Rice** said he was looking forward to working with Director Cameron on the Health Insurance Exchange Board.

GUBERNATORIAL APPOINTMENT: **Senator Rice** moved to send the gubernatorial appointment of Dean Cameron, Director, DOI, to the floor with the recommendation that he be confirmed by the Senate. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the appointment on the floor.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to review the rules.

DOCKET NO. 18-0144-1501 **Schedule of Fees, Licenses and Miscellaneous Charges.** **Director Cameron** said the pending fee rule changes fees consistent with recent statutory changes; removes from the fee rule a specific enumerated fee paid by applicants to a third party vendor and references the amount by contract; and makes technical changes. He stated there are no changes to the pending rule and it is being adopted as originally proposed. The fiscal impact of the changes is expected to be revenue neutral. Negotiated rulemaking was conducted.

Director Cameron reiterated that even though the bill initially connected to this rule did not pass through the House, adjustments were made in order to satisfy those requirements. The purpose of the rule is to clarify that registration of self-funded student health plans is subject to the licensing/renewal fee of \$500, which is the same as self-funded employer plans, by removing the specific reference to "employee" plans. A licensing/renewal fee was added for public adjusters of \$80.

Director Cameron explained there was a change to the provision regarding the cost paid to a third party vendor by an applicant for a producer, public adjuster or adjuster license to take an examination by eliminating the \$60 fee referenced. It also provides that the applicant will pay an amount to the vendor as indicated by contract between the DOI and the testing vendor. Fees were eliminated for solicitation permits in Section 18.01.040 because related code sections have been repealed. Technical corrections were made to update terminology and

include catchall language regarding service of process fees, and to eliminate unnecessary language in Section 18.01.020.04.

Chairman Patrick asked Director Cameron if he had any indication that the House would be accepting this rule. **Director Cameron** replied he was meeting with House members tomorrow and he was hopeful the modifications would be acceptable.

MOTION:

Senator Guthrie moved to approve **Docket No. 18-0144-1501**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0127-1501**

Self-Funded Employee Health Care Plans Rule. **Director Cameron** stated the pending rule makes changes consistent with recent code changes, adds clarity and removes duplicative language. He remarked the DOI is revising language in Section .027, narrowing the scope of required fidelity bonds or equivalent coverage based on comments received. There is no fiscal impact. Negotiated rulemaking was conducted and modest questions were asked. **Director Cameron** remarked the main purpose of the rule was to remove duplicative language in statute and to clarify issues.

Director Cameron reported that all contributions must be paid in advance and must be deposited in and disbursed from a trust fund. Some conflicting language was removed for clarification. A third party administrator is defined. He pointed out that the contribution rates in Section .028 were the most controversial, but they have been in Idaho Code since 1974. He specifically mentioned 028.01, stating contribution rates shall be calculated at least annually by a qualified actuary. The contribution rate calculations should be broken down and designated as the rate for the employer and the rate per employee, or the rate for the postsecondary educational institution and the rate per student. **Director Cameron** explained contracts and agreements valued at greater than \$500 entered into by the plan need to be in writing and approved by resolution of the Board of Trustees (Board) and placed in the minutes and records of the plan. By entering into contracts and agreements, the trustees are not permitted to transfer or otherwise avoid their statutory fiduciary responsibilities.

Senator Lakey disclosed for the record that he has a government self-funded plan as a client. He asked if the actuary was required to be qualified and who determines those qualifications. **Director Cameron** replied there is a current code provision and typically a qualified actuary is someone who has the appropriate education and ability.

Wes Trexler, Bureau Chief and Actuary, DOI, stated an actuary is someone who has experience setting rates for health plans, is a member of the American Society of Actuaries or is an enrolled actuary.

Senator Lakey asked how many types of private plans are handled by the DOI. **Director Cameron** replied there are three active plans that fall under Chapter 41, Idaho Code, Rule 28, and eight plans that fall under Chapter 40, Idaho Code, Rule 27. Some plans are no longer active. **Director Cameron** said approximately 10 or 11 are inactive.

Senator Lakey referred to contracts for services and noted all contracts for services including, but not limited to, accounting legal services, legal services, custodial agreements and agreements for lease, rent or insurance coverage to be performed or entered into on behalf of the plan will be directly with the plan as agreed to by the Board and the other party. He wanted to know the definition of a

custodial agreement. **Georgia Siehl**, Company Activities, Bureau Chief, DOI, explained that a custodial agreement was an agreement between a bank or an investment company that has certain qualifications and is charged with the custody and safekeeping of the investments of a trust.

Senator Guthrie referred to contribution rates that must be calculated annually by a qualified actuary. He wanted to know if it would be financially problematic for those who have not had contribution rates calculated annually. **Director Cameron** explained that the majority of companies are doing an annual contribution rate calculation with a qualified actuary. He said some did not realize they had to calculate contribution rates annually. This way the DOI will make sure these companies are not overcharging. Companies should be making an evaluation prior to the knowledge of claims based on expectations and have money set aside in case a claim should occur. This is especially important for government entities to prevent bankruptcy.

Senator Lakey and **Director Cameron** discussed the annual contribution rate calculations by a qualified actuary and the discretion of the Board to establish rates. **Director Cameron** stated the Board has the responsibility to follow the actuary's recommendation.

MOTION:

Senator Thayn moved to approve **Docket No. 18-0127-1501**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
18-0160-1501**

Relating to Long-Term Care Insurance Minimum Standards. **Director Cameron** said the pending rule will clarify that while inflation protection must be provided for long-term care partnership policies, no minimum inflation levels are established. The pending rule also clarifies and standardizes references to documents by reference. There are no changes to the pending rule and it is being adopted as originally proposed.

Qualifying long-term care partnership policies allow consumers who buy them to qualify for the Medicaid asset disregard as provided for in Idaho Code, Title 56, Chapter 13. For long-term care partnership policies, the DOI has required a minimum of 5 percent compound inflation protection for policyholders less than age 61, and 5 percent simple inflation for those ages 61 to 75, or alternatively benefit guarantees of not less than the annual change in the Consumer Price Index (CPI). The rule will clarify annual inflation protection requirements applicable to long-term care partnership policies, but will not require any minimum level of inflation protection. This may promote more purchases of such policies. There is no fiscal impact. Negotiated rulemaking was conducted.

Director Cameron pointed out that Medicaid would disregard \$50,000 of a person's assets to determine Medicaid long-term care. A federal law was passed in March 2007 and many states adopted the program. The federal government requires an inflation protection rider to keep up with inflation. The DOI made a 5 percent requirement, which made the plan too expensive. Then the DOI proposed to reduce the percentage from 5 to 3. However, through the negotiated rulemaking process, the State learned that many states moved to a 0 percent requirement. There is an inflation protection offer for insurers. Insurers may offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. **Director Cameron** indicated the addition of wording made the rule a consumer-friendly piece. **Senator Schmidt** wanted to know if the flexibility in this rule would satisfy

the federal requirement. **Director Cameron** said it would. There is no specific percent that is specified in federal regulations.

MOTION: **Chairman Patrick** moved to approve **Docket No. 18-0160-1501**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Martin passed the gavel back to Chairman Patrick to introduce the next presenter.

PRESENTATION: **Idaho Health Exchange**. **Patrick Kelly**, Executive Director, Your Health Idaho (YHI) ,said the mission was to maintain maximum control of Idaho's health insurance marketplace at a minimal cost to its citizens. The goals are being met that were put into place less than three years ago. He reported YHI is providing Idaho-based resources to thousands of Idahoans who choose to use YHI to find health insurance. He explained YHI establishment costs are the lowest in the country among state-based exchanges. More than 84,000 Idahoans found coverage through YHI. Idaho ranked fourth in the nation in per capita enrollments. **Director Kelly** outlined the improvements made in 2015, including strengthening partnerships with agents, brokers and enrollment entities, investing in more training for call center staff and transitioning from outsourced staffing to in-house resources. Idahoans saved more than \$10 million in federal assessment fees. He mentioned the significant accomplishments for 2015. Consumer choices continue to expand; Idaho's conservative business model became the focus of a Leavitt Partners case study; advanced training was conducted for agents and brokers; and enrollment counselors expanded YHI's outreach and engagement. He pointed out the Centers for Medicare and Medicaid granted YHI an extension to use previously awarded grant funds for establishment activities in 2016.

Director Kelly talked about the solid foundation set for agents and brokers through YHI. There were more than 1,000 agents and brokers across the State to help Idahoans make informed decisions. After open enrollment, YHI staff traveled around the State to hear feedback and provide additional training. Using the feedback, YHI reworked the training program to include more face-to-face, hands-on system training. He described the sustainability of YHI. In 2015 assessment fees were set at 1.5 percent. The Board of Directors (BOD) voted to increase assessment fees to 1.99 percent in 2016. He explained that operational expenses are funded by assessment fees from plans sold on the YHI Exchange. YHI has built a healthy cash reserve and currently has more than six months of operating costs set aside.

Director Kelly explained the most popular plan among enrollees is the Silver plan, with 70 percent enrollment. Eighty-nine percent of enrollees received a tax credit. **Director Kelly** said that \$34.8 million was spent on technology solutions, \$24.2 million on operational expenses and \$11 million on outreach and education. Grant fund expenditures to date have been \$84.4 million with \$19.9 million funds remaining.

The projection for the year ahead includes YHI and stakeholders reviewing future technology improvement and the evaluation of all improvements based on return on investment to ensure that Idahoans are offered the best tools at the lowest cost to support access to affordable insurance. **Director Kelly** summarized the benefits of the State-based Exchange (Exchange). He remarked that YHI offers plans for sale that are regulated and managed by Idaho; agents and brokers are the primary resources for consumers; the assessment fee is determined by Idaho; YHI is governed by a Board from Idaho; and YHI makes security a priority.

Senator Rice praised Director Kelly for the outstanding job he has done with YHI.

Senator Guthrie asked about the increase of 1.99 percent and would it sustain YHI for the foreseeable future? **Director Kelly** responded in the affirmative that the projections show that with a 1.99 assessment fee and the enrollment growth this year, this increase is exactly within the plan for sustainability. YHI has \$5 million in cash reserves. YHI does not anticipate utilizing the cash reserves, but if something unforeseen were to happen, the funds are there. He said the cash reserves could actually grow.

Senator Schmidt remarked that if the marketplace is being established for people to competitively look for insurance, the price will go down. He wanted to know if there was any comparison between insurance products bought on the Exchange versus not. **Director Kelly** replied that a policy sold via the Exchange would be sold for the same cost outside the Exchange. There is no difference. YHI has no control over the rates set by the carriers. YHI will continue to educate Idahoans about their options and to ensure the plan selected meets family needs and budgets.

Vice Chairman Martin said he wanted to make sure that YHI is utilizing the model of navigators and agents. He asked for clarification regarding when someone calls into the office or uses the website, what is the final process of them actually obtaining the insurance? **Director Kelly** said that if a client needs help selecting a plan, the client would work with an agent. If a consumer wants general information about the process, how to apply for a tax credit, or how to apply for insurance, the consumer would work with an enrollment counselor. This year YHI has expanded and has tried to strengthen the relationship between the enrollment counselor and the agents to ensure there is a strong referral and that the consumers who seek general information are passed to an agent or a broker so they can choose a plan that fits them best. Not everyone on the Exchange chooses an agent. There is no cost to the consumer.

Senator Rice indicated the 1.5 percent assessment fee was actually set before there was any idea of what the enrollments would be. The BOD wanted to set something that would allow the Exchange to create a reserve and would be somewhere in the ballpark that could be adjusted based on actual experience. Actual experience indicated the appropriate level was at the 1.99 percent. He remarked there will be changes with more money being spent on advertising in the future. The adjustment was not because the Exchange was losing money, it was because the Exchange was still operating under grants.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to continue hearing the rules.

**DOCKET NO.
24-2501-1501**

Relating to Rules of the Idaho Driving Business Licensure Board (BDLB). **Mitch Toryanski**, attorney for the Idaho Bureau of Occupational Licenses, stated there are no changes to the pending rule and it is being adopted as originally proposed. Applicants for licensure as a driving instructor must undergo a medical examination and obtain a new medical certificate 30 days before applying for the instructor apprenticeship training program and before applying for an instructor license. Because the apprenticeship program normally takes more than one month to complete, applicants usually must undergo two medical exams in a short period of time to obtain an instructor license. This redundancy is expensive and is unnecessary for the protection of the safety, health and welfare of the public. Extending the period to two years will eliminate this waste of time, money and other resources. There is no fiscal impact. Negotiated rulemaking was not conducted because the amendment will benefit the applicants and it was discussed during a noticed, open meeting of the Board.

MOTION: Senator Heider moved to approve **Docket No. 24-2501-1501**. Senator Schmidt seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 24-0001-1500 **Relating to the Licensing Board Served by the Bureau of Occupational Licenses.** Mitch Toryanski reported there are no changes to the pending fee rule and it is being adopted as originally proposed. He said he represented eight boards, including the Boards of: Drinking Water and Waste Waters Professionals, Occupational Therapists, Landscape Architects, Physical Therapists, Real Estate Appraisers, Liquefied Petroleum Gas Dealers and Massage Therapists.

Mr. Toryanski explained the rule sets the fees that licensees pay when they do not renew their license and it expires and they want to reinstate it. The licensee has five years to reinstate their license. The boards operate solely on dedicated funds derived primarily from licensing and registration fees. This rulemaking increases the reinstatement fee for five boards from \$25 to \$35; it will have no effect on one board and will reduce the fee for two other boards from \$75 and \$50 to \$35. The number of annual renewal fees collected will be capped at just one rather than one for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. There will be no fiscal impact to the State General Fund since licensing and registration fees collected are dedicated funds. Negotiated rulemaking was not conducted because regulatory boards decided to propose this rule at properly noticed open meetings to which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

MOTION: Senator Ward-Engelking moved to approve **Docket No. 24-0001-1500**. Senator Thayn seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 49-0101-1501 **Relating to Rules of Procedure of the Idaho Certified Shorthand Reporters Board (ICSRB).** Mitch Toryanski indicated there are no changes to the pending fee rule and it is being adopted as originally proposed. This rule will increase the reinstatement fee from \$25 to \$35. The number of annual renewal fees collected will be capped at one rather than one for each year that a license is expired. It is expected that the higher reinstatement fee will be offset by the fact that multiple renewal fees will no longer be collected. Negotiated rulemaking was not conducted because the ICSRB decided to propose this rule at properly noticed open meetings to which interested parties were welcome to attend. Additionally, licensees and registrants who will allow their licenses/registrations to lapse in the future and later seek reinstatement cannot be identified.

MOTION: Senator Thayn moved to approve **Docket No. 49-0101-1501**. Senator Ward-Engelking seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 3:01 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary