

MINUTES
Approved by the Committee
Occupational Licensing and Certification Laws Committee
Thursday, December 05, 2019
9:00 A.M.
Room EW40
Boise, Idaho

Cochair Lakey called the meeting to order at 9:02 a.m.; a silent roll call was requested. Members present: Cochair Senator Todd Lakey and Senators Fred Martin, Lori Den Hartog, and Grant Burgoyne; Cochair Representative Gayann DeMordaunt and Representatives Randy Armstrong and Elaine Smith (via phone); Legislative Services Office (LSO) staff Matt Drake, Maggie Smith, Christine Otto, and Jennifer Kish. Absent/excused: Representative Robert Anderst.

Other attendees: Kelley Packer - Idaho Bureau of Licensing (IBOL); MiChell Bird - Idaho Real Estate Commission; Ken McClure - Idaho Medical Association (IMA); Lindsay Atkinson, Janae Wilkerson - Idaho Freedom Foundation (IFF); Liz Hatter - Veritas Advisors; Cindy Floyd - Citizen Review Panel (CRP); Kent Absec - Idaho Board of Accountancy (ISBA); Katie Stuart, Sarah Phipps - Idaho Board of Nursing (IBON); Thomas Judge, Keith Simila - Board of Licensure for Professional Engineers & Professional Land Surveyors (IPELS); Anne K. Lawler - Board of Medicine (BOM); Mike Kane - for Engineering & Dental Boards; Lori Lodge - Idaho Counseling Assoc.; Misty Lawrence, Colby Cameron - Div. of Financial Management (DFM); Kris Ellis - Eiguren Ellis; Laura Lantz - ISCPA; Marty Durand - Idaho Building Trades.

NOTE: presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website <https://legislature.idaho.gov/sessioninfo/2019/interim>; and copies of those items are on file at the Legislative Services Office in the State Capitol.

Cochair Lakey solicited a motion to approve minutes from the November 12 meeting. **MOTION: Sen. Martin moved to approve the minutes; Sen. Den Hartog seconded the motion; motion carried by a unanimous voice vote.**

Cochair Lakey called upon Ken McClure, representing the Idaho Board of Medicine (BOM), to open the public testimony portion of the meeting. Mr. McClure noted that the board had previously submitted a letter to committee members on various issues, and today he wanted to focus on the issue of limited licenses. He summarized that licensees often had multiple scopes of practice within their field, and the limits within each scope may lead to confusion; additionally, it may require more oversight responsibility.

- Cochair Lakey noted that the current proposed legislation gave the board the discretion to issue a limited license, it was not mandatory per the draft language. Mr. McClure requested that the Legislature be prepared to allow boards to have extra staff and an expanded budget to administer that effort.
- Sen. Burgoyne asked whether BOM was concerned about what would happen within other health care professions. Mr. McClure agreed. He noted that there already existed a compact that dealt with physician licensure. Sen. Burgoyne suggested an edit be made to DRMDD047 (p. 4, l. 18) after "authority" to insert "for a limited period of time necessary for the applicant to meet the requirements for a full license", in order to address the issue that it was not an open ended situation; an individual could possess a limited license for multiple years. Mr. McClure remarked that such an edit would address a large portion of the board's concerns.
- Sen. Den Hartog inquired whether education requirements were one of the barriers to granting a license. Mr. McClure surmised that education was definitely a barrier, but equivalency training and getting an individual up-to-speed with skills was the goal.

Next was Lindsay Atkinson, policy analyst for the Idaho Freedom Foundation (IFF). Ms. Atkinson referenced a document prepared by IFF ([Lockdown to Liberty](#)) on all 288 licenses within Idaho, per administrative rules and Idaho statutes. She noted instances where DRMDD051 did not address certain professions and that there was not a provision for individuals with "withheld judgements."

- Sen. Burgoyne reported that committee members had received a memo from Mr. Drake noting certain professions that were not included for certain reasons, such as federal implications. He stated that the language suggested for IC 67-9411 by IFF for withheld judgements was a complicated issue. Ms. Atkinson suggested that information from IFF's report would enlighten the committee on the differences on how boards actually treat their licensees with past convictions.
- Cochair DeMordaunt appreciated the additional oversight from Ms. Atkinson. She noted that the committee's efforts probably would not be exhaustive - legislation of this breadth almost never was the first go-round. Additionally, the committee wanted to avoid any conflict with current compacts regarding previous convictions until further research could be completed.
- Cochair Lakey commented that the committee was not ready to tackle the issue of withheld judgements. He asked Ms. Atkinson for her opinion on the two proposed drafts for the review committee. Ms. Atkinson preferred the mandatory requirement of the review committee, hoping that the review would expose whether the licensing was necessary.

At 9:40 a.m., Matt Drake, Legislative Drafting Attorney for LSO, began his overview of [DRMDD047](#) and changes to section 67-9409: reorganized subsections, placing the sunrise process in the last section due to its later effective date; changed committee duration from two to three years; clarified the type of licensing authority; sunrise process "shall" be mandatory; required applicant to identify relationship to profession; changed application due date to May 1 vs. June 1; changed LSO analysis to August 1 vs. August 15; clarified that Pro Temp and Speaker will submit review committee's report to appropriate germane chairperson; and clarified language to encourage applicant to follow review committee's recommendations.

- Sen. Burgoyne had these suggestions: (p. 2, l. 5) uses "not regulated become regulated" rather than "licensed"; (p. 2, l. 7) uses "license, certificate, registration, permit...." with "licensing authority" and maybe should use "regulatory authority"; (p. 2, l. 12) uses "licensed not licensed" which is not parallel language with previous lines; (p. 3, l. 40-42) defines "licensure" and so could it be applied generally to the chapter; (p. 3, l. 24) insert "to" after "encouraged". Mr. Drake explained that the term "licensing authority" was defined in the chapter per existing language and he would look into that further for the proposed language.

Mr. Drake then explained changes for 67-9409: clarified that a licensing authority may compare one's scope of practice and issue a limited license.

- Sen. Burgoyne suggested: (p 4, l. 24) after "interstate licensure compact" to insert "or reciprocity agreement", also (l. 27) after "compact" and (l. 28) after "compact". He reminded Mr. Drake of the language suggested to line 18 during Mr. McClure's testimony.
- Cochair DeMordaunt suggested (p. 3, l. 37) after "for" to insert "relevant".
- Cochair Lakey was in agreement with the proposed language on page 4, line 18, to allay BOM's concerns. He noted on language regarding interstate compacts (p. 4, l. 23), which allows not using universal licensure if the profession already has a compact in place; he requested Mr. Drake to reword that section so that boards don't exclude one for the either but rather have the option to use both.
- Sen. Burgoyne inquired about the necessity of the language on page 4, lines 31-32. Mr. Drake explained that it mirrored language from H0248 (2019) regarding access, mobility, and portability to licensed occupations for military families and veterans.

Revisions for 67-9410: deleted list of disqualifying crimes; clarified that a licensing authority was not bound to the pre-approval if a subsequent offense or other relevant conduct was committed by the applicant.

- Cochair Lakey's earlier comments on this section from the licensing board representatives who were concerned about the title "prequalification request"; suggested changing the title to "exclusion request" or other such wording to explain it was an opportunity to preview one's possibilities rather than a pre-approval.
- Sen. Burgoyne provided: (p. 4, l. 42) reads "conviction" and (p. 5, l. 5) reads "criminal record" - should be the same; (p. 5, l. 13) after "submitted" to insert "or that a change in law or regulation requires a different determination".
- Cochair DeMordaunt commented that the 60-day requirement for the board to give a response would not necessarily require the complete board to make that decision; it could be a subcommittee or an individual that makes that decision.

And the final section of 67-9411: added factors for the relevancy determination; deleted the term "automatically" with respect to a denial.

- Sen. Burgoyne proffered: (p. 5, l. 22) uses "licensing" vs. "regulatory" [x2]; (p. 5, l. 21) after "fitness" insert "to engage in such profession or occupation"; (p. 5, l. 29) strike "and", (l. 31) after "individual" insert "; and" and a new paragraph "(e) and any other relevant factor."

Mr. Drake noted that [DRMDD050](#) was exactly like DRMDD047 except for: instances where the sunrise review process was permissive (p. 2, l. 3 & 10), rather than mandatory.

At 10:05 a.m., Mr. Drake began discussion on [DRMDD051](#) regarding the removal of the terms "moral turpitude" and "good/bad character" from Idaho Code where such terms relate to a criminal conviction that would bar an individual from obtaining licensure. He noted that the draft does not prevent a licensing authority from considering character. Mr. Drake provided an [index table](#) to assist in identifying the occupation while reading the large draft. The draft focusses on whether a crime was relevant to a profession/occupation rather than on the nature of the felony/misdemeanor. And Mr. Drake noted that there were code sections not included here for professions due to extenuating circumstances.

- Cochair Lakey commented that the committee was not removing all relevance of character but rather replacing it with the importance of one's criminal relevancy. He suggested to edit (p. 3, l. 16) after "determined" to insert "to be"; and (p. 12, l. 28-30) strike "~~bad moral character~~".
- Sen. Burgoyne suggested: (p. 5, line 6) remove occurrence of "crime" [duplicate] and check for others (e.g., p. 27, l. 5); whether (p. 20, l. 16) "Is of good moral character" was intended to be left in that occurrence, and likewise in lines 18-20; and (p. 26, l. 6-8) after that is to insert determined relevant in accordance with [section] 67-9411, [Idaho Code,].

After a brief break, the committee began discussion on the committee's recommendations for the final report.

- **MOTION: Sen. Martin moved to recommend DRMDD050 with the following edits: (p. 3, l. 24) after "encouraged" insert "to"; (p. 4, l. 18) after "authority" insert "for a period of time...." [as per Sen. Burgoyne proposal]; (p. 4, l. 40 [et al.]) new title for section other than PREQUALIFICATION REQUESTS; and other edits as earlier suggested during discussion pending approval of cochairs; motion failed for lack of a second.**
- **MOTION: Sen. Den Hartog moved to recommend DRMDD047 with approved edits; Rep. Armstrong seconded the motion.** DISCUSSION: Sen. Den Hartog felt that the review committee would assist efforts by both the executive and legislative branches to stem the tide of unnecessary licensing. She also felt that a preview of an application would be beneficial for both the applicant and legislative members rather than it occurring during the crunch-time of session when the germane committees are already very busy. Sen. Burgoyne supported the legislation because it

made the process about information and non-judgemental analysis. He also noted that this vote was a recommendation to the Legislature to accept the proposed process; the proposed legislation still had to go through the proper channels to be made statute. Cochair DeMordaunt supported the proposed legislation because it provided a consistent, professional procedure that was considerate of both applicants' and staffs' time while maintaining the authority of the germane committees. Sen. Martin was against the review committee being required - not the process - per feedback from fellow standing committee cochairs. Cochair Lakey supported the legislation because it allowed time for the proposed licensing to be discussed and information to be provided in a timely manner. He also remarked that the review committee would sunset in three years, upon which time the Legislature could evaluate its effectiveness and consider whether to continue the committee. He theorized that if the review committee was optional that many would not use the process, in essence, nullifying this committee's efforts. Sen. Den Hartog commented on the parallelism of how the proposed review committee would work much like this interim committee had in reviewing data and preparing legislation to recommend to the Legislature, with the germane committee having the final decision. **Motion carried by majority voice vote.**

- **MOTION: Sen. Burgoyne moved to recommend DRMDD051 with approved edits; Sen. Martin seconded the motion.** DISCUSSION: Sen. Burgoyne proposed that, if additional information was disclosed regarding various occupations outside of the scope of DRMDD051, LSO staff would relay that information to the committee, and the committee would consider an additional meeting to address those issues. **Motion carried by unanimous voice vote.**
- **MOTION: Sen. Den Hartog moved to recommend that the Occupational Licensing and Certification Laws Committee be renewed for an additional interim; Sen. Burgoyne seconded the motion. Motion carried by unanimous voice vote.**

With closing remarks concluded, the meeting was adjourned at 10:50 a.m.