MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE:	Thursday, February 20, 2025
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Foreman, Vice Chairman Lenney, Senators Lakey, Guthrie, Nichols, Bernt, Zito, Ward-Engelking, and Ruchti
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 Foreman** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

H 38 **INSURANCE - Amends existing law to revise provisions of the Idaho Life and Health Insurance Guaranty Association Act (ILHIGAA)**. **Representative Ehlers** stated this legislation updated the ILHIGAA first enacted by the Idaho Legislature in 1977, to ensure that consumers, not insurance companies, were protected when an insurer became insolvent. This legislation amended current law in four ways:

First, it clarified that "factoring companies" and "factored transactions" were not eligible for coverage under the ILHIGAA to prevent misuse or misunderstanding of the law.

Second, it adjusted coverage determinations for high-risk long-term care or other health insurance policies with above-average interest rates to align with standard interest rates when an insurance company became insolvent.

Third, it required health insurance co-ops created under the Affordable Care Act (ACA), to become members of the Idaho Life and Health Insurance Guarantee Association (ILHIGA).

Fourth, it removed the annual $300 cap on ILHIGA membership fees to provide more flexibility in funding its operations.

Representative Ehlers mentioned that in 2018, the National Association of Insurance Commissioners (NAIC) recommended that states adopt best practices and national standards to enhance consumer protection, particularly in the context of insurance insolvency. While Idaho had already implemented many of these recommendations, the legislation he discussed was intended to incorporate the final necessary changes, ensuring that Idaho's laws were fully aligned with these national standards. This showed a continued effort to modernize and improve consumer protections, following guidance from a national body, ensuring that Idaho's insurance regulations were in step with the most up-to-date industry practices.

Representative Ehlers explained this legislation caused no additional expenditure of funds at the State or local level of government nor did it cause an increase or decrease in revenue for State government. While the cap was being removed on association fees, the ILHIGA was not a State agency.

TESTIMONY: **Bruce Spencer**, Mountain Health Co-op, testified in support of the bill. He stated he was happy to join the ILHIGA.

MOTION: **Senator Lakey** moved to send **H 38** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1055 **ELECTRONIC PAYMENT TRANSACTIONS - Adds to existing law to establish provisions regarding electronic payment transaction interchange fees**. **Senator Harris** reported that this legislation addressed interchange fees, also known as swipe fees, which were the fees merchants were charged when consumers used credit or debit cards for transactions. The key aspects of the legislation included: 1) Exclusion of Taxes and Gratuities. The legislation excluded State and local sales taxes, as well as gratuities, from the calculation of the amount on which an interchange fee was charged. This meant that the fees merchants paid would not be calculated based on the tax and tip portions of the transaction. 2) Payment Card Network Requirements: The legislation required payment card networks to either: a) Deduct the amount of any state or local sales tax and/or gratuity from the calculation of interchange fees on purchases, or b) Rebate the interchange fee that was imposed on the tax or gratuity portion of the transaction.

Senator Harris explained this move aimed to reduce the overall costs merchants faced when processing electronic payments, particularly those that included taxes or tips, and could potentially lower prices for consumers as well.

Senator Harris stated this legislation had no negative impact on the General Fund or local units of government. He pointed out that if State or local governments charged a sales tax on an item and it was paid for with an electronic payment, the fiscal impact of this legislation would be positive. Specifically, for entities like the Idaho State Liquor Division, the savings from lower swipe fees would positively impact their accounts. Since swipe fees were not negotiable and could be a burden, especially for smaller businesses, this bill helped level the playing field. By excluding taxes and gratuities from the calculation of interchange fees, the legislation reduced the overall fee burden on businesses, making it more fair and balanced for everyone involved. Small businesses, in particular, stood to benefit because they were typically more sensitive to transaction costs. This could be a significant boost for both public and private sectors, improving the financial landscape for State-run entities and small businesses alike.

DISCUSSION: **Senator Nichols** inquired about the legislative actions taken by other states regarding swipe fees. **Senator Harris** responded that Illinois had passed legislation requiring local banks to comply with specific rules regarding swipe fees, but national banks were not subject to the same regulations. **Senator Nichols** then asked about the potential impact of this legislation on the global market. **Senator Harris** clarified that the proposed legislation only applied to businesses within Idaho. This meant it would not affect out-of-state businesses or transactions made outside Idaho. In fact, if someone from another state made a purchase in Idaho, they would not be subject to different swipe fees based on their out-of-state status. The law was strictly limited to transactions involving Idaho businesses and applied only to payments made within the State. This made the impact of the legislation more localized, benefiting Idaho businesses without affecting broader global markets or interstate transactions.

Chairman Foreman mentioned that there had been suggestions that retailers could recoup the costs of swipe fees by passing those costs on to consumers. He pointed out that this eliminated the need for reimbursement through legislation. **Senator Harris** responded by confirming that when retailers charged fees, they typically passed those costs on to the consumer as part of the overall transaction. The discussion then shifted to the specific issue at hand: the bill sought to ensure

that businesses did not charge swipe fees on the sales tax portion of a transaction. Essentially, the intent of the bill was to prevent businesses from charging interchange fees on the tax component of a purchase, which otherwise increased costs for consumers unnecessarily. The legislation aimed to protect consumers by keeping those fees more reasonable and focused on the actual price of the goods or services being sold, excluding the tax or gratuity portion.

TESTIMONY: **Melinda Merrill**, Northwest Grocery Retail Association, testified in support of the bill, emphasizing that swipe fees should never have been applied to the sales tax portion of transactions in the first place. She explained that businesses could not easily absorb these costs as part of their standard operating expenses. While businesses could theoretically add a 2 percent surcharge when a credit card was used, the swipe fees still existed and represented an additional charge, meaning businesses were still paying a fee on the sales tax portion of the transaction. This created a loss for businesses, particularly on the small portion of the transaction related to sales tax. **Ms. Merrill's** testimony reinforced the idea that businesses were unfairly burdened by swipe fees on taxes, and this bill helped reduce that financial strain by preventing fees on the sales tax portion, ultimately benefiting retailers.

DISCUSSION: **Vice Chairman Lenney** queried why other states had not yet passed similar legislation. **Ms. Merrill** explained that this was a relatively recent movement. The fees associated with credit card transactions have evolved, and the entities that set these fees did not allow retailers to negotiate them. She mentioned that approximately a dozen states were pursuing similar legislation this year, indicating a growing trend.

Senator Lakey and **Ms. Merrill** then discussed whether swipe fees had increased or if the volume of sales had gone up. This likely related to the broader issue of how swipe fees impacted businesses, especially as consumer spending patterns and payment methods evolved.

Senator Nichols raised a concern about potential conflicts between State and federal regulations. She referred to a situation in Illinois, where the state was being sued over removing swipe fees from the sales tax portion, and a judge extended an injunction to include out-of-state banks as well. **Ms. Merrill** clarified that there was no conflict at the federal level, suggesting that the proposed Idaho legislation would not face legal hurdles from federal regulations.

Chairman Foreman asked about the banks processing the entire transaction, questioning whether this was simply a cost of doing business for them. **Ms. Merrill** countered by asking why consumers should be charged a fee on the sales tax portion, especially since the vendor was just collecting taxes on behalf of the State and did not get to keep those funds. The fee applied to sales tax was essentially a charge the vendor did not benefit from, which she argued was unfair to both consumers and businesses. This exchange highlighted the challenges retailers faced with fixed swipe fees, particularly when those fees were applied to portions of the transaction like taxes, which businesses did not profit from.

TESTIMONY: **Steve Rauschenberger**, Electronic Payment Coalition and former Illinois legislator, testified in opposition to the bill. He noted the approach was not the correct one and the costs were too much at over $2 million per merchant.

Zach Forster, Idaho Credit Unions, spoke in opposition to the bill, arguing that it could have negative consequences for consumers, public safety, and payment security. He highlighted several concerns: 1) Consumer Harm and Public Safety: He argued that the changes proposed in the bill could harm consumers by jeopardizing fraud protection and the security of payment systems. Security risks could be heightened, which could undermine consumer confidence in electronic payments. 2) Technological Challenges: He noted that the technology required to implement the changes was not simple and could result in additional complexities in the payment system. This included issues like real-time fund verification and guaranteed fund transfers, which were essential for ensuring secure transactions between consumers and merchants. 3) Cost and Risk Management: **Mr. Forster** explained that credit unions, like other financial institutions, played a critical role in the broader payment system. The fees collected through interchange help cover the significant costs associated with maintaining secure systems, fraud protection, issuing cards, and managing credit risks. These were resource-intensive processes that were essential to ensure smooth, safe, and reliable transactions. 4) Impact on Idaho Credit Unions: He pointed out that Idaho's State-chartered credit unions did not control interchange rates or fees, and passing the bill could lead to them losing the resources that helped protect both consumers and merchants. Furthermore, there was concern that payment processors might refuse to accept transactions from Idaho's State-chartered institutions. This could happen because federally chartered institutions would likely be exempt from the new law, and payment processors may not be willing to redesign their global networks just for one state's financial institutions.

Stacey Satterlee, Idaho Bankers' Association, testified in opposition to the bill. She explained that interchange or swipe fees helped cover the operational costs for banks, which included maintaining the infrastructure necessary to process payments, manage fraud protection, and ensure security. Without these fees, banks would face financial challenges in continuing to provide these services. **Ms Satterlee** pointed out that under the proposed changes, merchants would need to submit more detailed information to the payment processing companies. This additional requirement could complicate transactions and potentially increase costs for merchants, who would need to manage and provide more data during each sale. She raised a key concern about the involvement of private companies in obtaining and processing personal and confidential consumer information. The more data that was shared with payment processors, the higher the risk of consumer privacy being compromised. This could lead to potential harms, such as data breaches or identity theft, which would undermine consumer trust in the payment system.

DISCUSSION: **Senator Ward-Engelking** raised a concern that some states did not charge sales tax and questioned whether the bill in discussion included the sales tax in the total amount charged. **Ms. Satterlee** responded that she was uncertain whether the software being discussed could separate the sales tax from the total bill. The two continued discussing the complexity of setting up such a system, specifically in Idaho, to correctly separate sales tax in transactions.

TESTIMONY: **Pam Eaton**, Idaho Retailer's Association, testified in support of the bill (Attachment 1), emphasizing several key points in favor of its implementation. She pointed out that the National Federation of Independent Retailers also supported the bill. She addressed concerns raised by the Committee, particularly highlighting the global payment system and how it handled credit card transactions differently overseas. Specifically, she mentioned that Level 2 transactions, which broke out sales taxes and gratuities, were already in use by restaurants with a high percentage of credit card transactions between 80 and 90 percent. This bill allowed merchants to either participate directly in the system or submit documentation for sales tax and gratuities, a system that was already being used in many states. **Ms. Eaton** clarified that credit card companies already supported Level 2 transactions, meaning no special hardware was required for merchants to implement the system. This allowed for better visibility of sales tax and what was spent.

She discussed the issue of swipe fees (or interchange fees), noting that MasterCard in the U.S. had 600 different swipe fees, which affected small businesses. These fees sometimes resulted in merchants being charged for fraudulent purchases, with the merchant bearing the cost. This was particularly problematic for small businesses in Idaho, which were paying $136 million in transfer fees.

Ms. Eaton also mentioned a lawsuit in Illinois where an injunction was issued requiring national banks and out-of-state charter banks to update their systems, but this did not apply to in-state banks, credit unions, and credit card companies. She highlighted that 14 other states had already introduced similar legislation, and small businesses were pushing for swipe fees to be excluded from state taxes to reduce the financial burden.

DISCUSSION: **Senator Guthrie** suggested that there could be a trigger to prevent the bill from becoming law until several states had passed similar legislation. He mentioned that in a year or two, other states might adopt this type of law. **Ms. Eaton** noted that this was already happening and both sides had agreed to disagree. She remarked that a trigger was an interesting idea. **Senator Guthrie** commented that the elimination of the swipe fee on the sales tax had only been implemented in one state.

TESTIMONY: **Steve Rauschenberger**, Electronic Payment Coalition and former Illinois legislator, stated that Levels 2 and 3 were informational fields. He noted that worldwide there was no field for tips or tax. Only 10 to 12 percent of retailers in the U.S. had been able to separate the data. The retail part of the sales tax was not connected to the global system. In Level 2 there had been some connection for collecting sales tax, but the system had not known if there was a tax or a tip.

DISCUSSION: **Senator Guthrie** mentioned that he believed a trigger law would be important and suitable once six, eight, or ten states had enacted similar legislation. **Mr. Rauschenberger** indicated that 91 to 92 percent of the credit market was in opposition.

Senator Nichols referred to the Durbin Amendment, a law passed in 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which limited debit card interchange fees for banks with over $10 billion in assets. She pointed out that this bill might conflict with the Durbin Amendment and expressed concerns about the legality of the legislation, particularly with the inclusion of gratuities.

Ms. Eaton remarked of the 14 bills introduced this year, all but one included the gratuity. She said the Durbin Amendment looked at federal laws and how the interchange fees were not in conflict.

Senator Ward-Engelking remarked she was not happy about the companies being charged swipe fees on sales tax.

Senator Lakey noted he wanted to help small business, but he was reluctant to have the State tell business what to do. He stated these fees were the cost of doing business for both the seller and the banks.

MOTION: **Chairman Foreman** remarked that due to the lack of a motion, the bill failed.

H 107 **OCCUPATIONAL LICENSING REFORM ACT - Amends existing law to provide for certain occupational licensing policy and to provide for universal occupational licensing practice authority**. **Representative Redman** reported this legislation prohibited the creation of a new license by rule or policy unless authorized by statute. It required that all licensing fees be established through rule instead of solely by the director of a department. It allowed for universal licensing practice for licensed professionals to perform acts consistent with education, training, and experience. This legislation caused no additional expenditure of funds at the State or local level of government, nor did it cause an increase or decrease in revenue for State or local government. The legislation had no fiscal impact. He stated this bill insured there were additional protections. He gave a brief outline of the bill.

TESTIMONY: **Kate Haas**, Kestrel West, testified in support of the bill. She stated this bill provided protection for the licensee and the Idaho Division of Professional and Occupational Licenses Board (DOPL).

Paige Terryberry, FGA Action, testified in support of the bill noting this bill had oversight over the DOPL Board. Her organization had supported the bill because it enhanced oversight and protected taxpayers. The bill ensured that the DOPL Board could not establish new licensing requirements or fees without Legislative approval. It also ensured that the DOPL Board could not impose a higher standard of care for professionals who obtained their license through universal licensing recognition, as opposed to the traditional path.

DISCUSSION: **Senator Ward-Engelking** asked Representative Redman if this bill allowed flexibility if the licensee currently had an occupational license or was this something that had to be put in statute too. **Representative Redman** stated this bill provided flexibility for the DOPL Board.

MOTION: **Vice Chairman Lenney** moved to send **H 107** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Foreman** adjourned the meeting at 2:42 p.m.

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Senator Foreman
Chair

Linda Kambeitz
Secretary