

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 01, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Senators Lakey, Guthrie, Heider, Rice, Thayn and Ward-Engelking

ABSENT/ EXCUSED: Vice Chairman Martin and Senator Schmidt

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 meeting of the Commerce and Human Resources Committee (Committee) to order at 1:31 p.m.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of February 18, 2016. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

S 1359 **Relating to Farm Implements and Equipment.** **Roger Batt**, Western Equipment Dealers, stated the focus of this bill is on two sections of Idaho statute relating to the repurchase of farm machinery, equipment and parts. He said that under current law whenever an equipment dealership sells implements, repair parts or equipment, the dealership enters into a written contract with a manufacturer, wholesaler or distributor. The dealership maintains a stock of parts for repairs, machines and attachments, and may also have demonstration and rental equipment as part of the business. If the agreement between the dealer and supplier is terminated, unless the dealer has a contractual right to keep the merchandise, the manufacturer, wholesaler or distributor shall pay the dealer 100 percent of the net cost of all the unused, unsold and undamaged complete farm implements, equipment, machinery, attachments or parts in new condition that were purchased from the supplier within 36 months preceding notification by either party of their intent to cancel or discontinue the contract.

Mr. Batt remarked this legislation would remove the 36-month limitation and allow for parts older than 36 months to be eligible for repurchase (lines 29-30 were stricken). Idaho's 36-month limitation is not consistent with surrounding state statutes or industry practices, as parts can be older than three years. Many surrounding states do not have any limitations on repurchasing of parts including Oregon, Washington, Wyoming, Utah and California. Idaho's statute also says if the dealer has any rental or demonstration equipment that the return right on the equipment would be within 36 months immediately preceding notification by either party of their intent to cancel or discontinue the contract. Under this legislation, rental or demonstration equipment that has not been retailed to an end-user would now be adjusted and depreciated based on "activity" instead of a "sum equal to the depreciated value of the equipment." Oftentimes there are policy manuals that allow a certain amount of hours of rent on a piece of equipment that would determine whether the equipment was new or used. This would also play a role in determining the depreciation of the equipment. Returns on this type of equipment would also allow the dealer to be paid for transportation charges for implements, equipment, machinery or attachments.

Mr. Batt said that in addition, the language on page 2 of the bill would clarify that the manufacturer, wholesaler or distributor would pay the dealer a reasonable reimbursement for services performed in connection with the assembly and pre-delivery inspections of farm implements or machinery and attachments that are subject to repurchase. If the wholesaler, manufacturer or distributor is required to purchase farm implements or equipment, machinery and attachments, those entities would also be required to repurchase any hardware, software or computer communications hardware required by the manufacturer, wholesaler or distributor to meet its minimum requirements and purchased by the dealer in the prior five years and held by the dealer on the date of termination. The purchase price formula paid by the manufacturer, wholesaler, or distributor to the dealer for these items would be the original net cost to the dealer minus 20 percent per year. **Mr. Batt** stated with respect to the repurchase of specialized repair tools (which by definition are tools required by the supplier and unique to the diagnosis or repair of a supplier's products), these shall be considered to be in usable condition and shall be purchased based on the formula of the original net cost to the dealer less 20 percent per year depreciation, but not less than 50 percent of the original purchase price. The rest of the changes are to clean up the statute.

DISCUSSION:

Senator Lakey wanted to know if **Mr. Batt** thought the State was interfering with a contractual relationship. **Mr. Batt** and **Senator Lakey** discussed the positive aspects of contractual agreements between a dealer and a wholesaler, manufacturer or distributor.

Senator Thayn and **Mr. Batt** had a conversation about smaller equipment dealers, the limitations of bargaining power and repurchasing agreements on parts. They also discussed industry standards in other states.

Senator Rice wanted to know if these types of contracts are generally negotiated or do manufacturers have a standard contract? **Mr. Batt** remarked there are no real negotiations, but rather contracts of adhesions, or "take-it or leave-it" agreements in order to keep doing business. They discussed the maintenance of the contracts and how dealers must carry a certain inventory of parts for the entire time the contract is in place.

MOTION:

Senator Rice moved to send **S 1359** to the floor of the Senate with a **do pass** recommendation. He remarked that it is not an appropriate practice to require someone to buy something to perform a contract and require them to keep and pay for it until the contract is cancelled. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Chairman Patrick will carry the bill on the floor.

Chairman Patrick explained that **H 396** would be heard next due to a prior commitment for the presenter.

H 396

Employment Security Law - Amends Existing Law to Expand Department of Labor Notice Provision (DOL). **Joshua McKenna**, Benefits Bureau Chief, DOL, said the DOL is proposing to change the current statute, Idaho Code § 72-1368(5) to include the words, "written and digital communications from the department providing notice of an administrative or other deadline including, but not limited to" and also "and letters from the department requiring a response within a specified time."

Mr. McKenna stated this bill would allow the DOL to consider documents requesting information to be considered served and complete when the DOL mails documents to the claimant's last known address or email address. This law change arose as a result of an Idaho Supreme Court case involving the

DOL. A claimant had been sent a letter to their last known address, asking them to do an online assessment. The claimant failed to take the online assessment and was denied benefits. The Idaho Supreme Court overturned the decision on the basis that the current statute did not include language related to letters the DOL sends, only decisions or determinations. Because of the narrow wording of Idaho Code § 72-1368(5), uncertainty remains as to when service would be complete for any DOL communications other than determinations, revised determinations or special redeterminations decisions. The proposed legislation is intended to remedy that uncertainty. The law change allows the DOL to contact claimants electronically and via mailings to provide information and hold claimants accountable if they fail to respond to the DOLs request. Since claimants often move and fail to update their address, the electronic piece is needed as well so the DOL can contact them through email and in the future, the claimant portal. It should be noted the DOL only utilizes electronic communications when the claimant tells the DOL their preferred method of communication.

DISCUSSION: **Senator Thayn** asked Mr. McKenna how claimants indicate they want to be notified via email. **Mr. McKenna** replied they had to check a box on the assessment form.

MOTION: **Senator Thayn** moved to send **H 396** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the bill on the floor.

H 332 **Relating to Residential Care Facility (RCA).** **Mitch Toryanski**, Attorney, Idaho Bureau of Occupational Licenses (IBOL), said this bill concerns renewal and reinstatement of RCA licenses. Licenses are renewed every year. If they are not renewed, they expire. However licensees have their licenses reinstated if they apply for reinstatement within five years.

Mr. Toryanski stated the 2015 Legislature passed H 117, which simplified the IBOLs renewal and reinstatement of licenses statute as noted in Idaho Code § 67-2614. H 117 raised the license reinstatement fee from \$25 to \$35, but offset the increase by requiring just one renewal fee for every year the license was expired. In this case, RCA has two of their own license renewal and reinstatement statutes, Idaho Code § 54-4208 and § 54-4209.

H 332 consolidates the two statutes into one, Idaho Code § 54-4209, and adopts the new IBOL statute that was passed into law last year. The changes were approved by the RCA Board in an open meeting that was noticed to the public. The IBOL received no communication opposing this bill.

MOTION: **Senator Heider** moved to send **H 332** to the floor of the Senate with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor.

H 333 **Relating to Optometrists - License Renewal.** **Mr. Toryanski** stated this bill concerns renewal and reinstatement of optometrist licenses. Licenses are renewed every year. If they are not renewed, they expire. However, licensees have their licenses reinstated if they apply for reinstatement within five years. Last year, the Legislature passed H 117, which simplified the IBOL's renewal and reinstatement of licenses statute, Idaho Code § 67-2614. H 117 raised the license reinstatement fee from \$25 to \$35, but offset the increase by requiring just one renewal fee for every year the license was expired.

Mr. Toryanski said that in this case, optometrists's reinstatement fee (they are allowed to set their own) is set in their own statute and in their own rule at \$150. This bill will allow the IBOL to amend its rules to adopt Idaho Code

§ 67-2614 in its entirety and lower its reinstatement fee from \$150 to \$35. The changes contained in this legislation were approved by the Optometrist's Board in an open meeting that was noticed to the public. The IBOL received no communication opposing this bill.

MOTION: **Senator Thayn** moved to send **H 333** to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 334 **Relating to Physical Therapy - License Renewal.** **Mr. Toryanski** stated this bill concerns renewal and reinstatement of physical therapy licenses. Licenses are renewed every year. If they are not renewed, they expire. However licensees have their licenses reinstated if they apply for reinstatement within five years. Last year, the Legislature passed H 117, which simplified the IBOL's renewal and reinstatement of licenses statute, which is Idaho Code § 67-2614. H 117 raised the license reinstatement fee from \$25 to \$35, but offset the increase by requiring just one renewal fee for every year that the license was expired.

Mr. Toryanski noted that in this case, the physical therapy license has two license renewal and reinstatement statutes, Idaho Code § 54-2214 and § 54-2215. This legislation consolidates the two statutes into one, Idaho Code § 54-2215, and adopts the IBOL's new license renewal and reinstatement statute. This mainly eliminates language that is redundant to other authority and duplicative of the IBOL's renewal and reinstatement statute, Idaho Code § 67-2614.

MOTION: **Senator Thayn** moved to send **H 334** to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the bill on the floor.

H 441 **Cosmeticians - Amends Existing Law to Provide for License Renewal.** **Mr. Toryanski** stated this bill concerns renewal and reinstatement of physical therapy licenses. Licenses are renewed every year. If they are not renewed, they expire. However, licensees have their licenses reinstated if they apply for reinstatement within five years. Last year, the Legislature passed H 117, which simplified the IBOL's renewal and reinstatement of licenses statute, Idaho Code § 67-2614.

Mr. Toryanski noted that many of the State's regulatory boards like the new statute, Idaho Code § 67-2614, and are adopting it in its entirety. The IBOL wants to adopt this statute as well. The new statute takes the license reinstatement fee from \$25 to \$35, but offsets it by requiring just one renewal fee upon reinstatement instead of a renewal fee for each year the license is expired. The changes were approved by the IBOL in an open meeting that was noticed to the public.

MOTION: **Senator Lakey** moved to send **H 441** to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor.

H 397

Employment Security Law - Amends Existing Law to Clarify Notice and Appeal Provisions for Certain Determinations. **Larry Ingram**, Unemployment Compliance Bureau Chief, reported the DOL is asking for amendments to various sections of the Idaho Employment Security Law (ESL) with this legislation. **Mr. Ingram** explained these amendments are requested to make the notice provisions for determinations and other important actions by the DOL consistent throughout the ESL (Title 72, Chapter 13). These changes will benefit both employers and claimants because the rules will be clear and consistent. These changes are housekeeping measures because the intent of the law is not changed and the rights provided to employers and claimants are not changed during the established appeal processes. The majority of these changes make reference to one of two different sections of the Idaho ESL, Idaho Code § 72-1368(5), which the DOL is asking to be amended in a companion bill, **H 396**, to address notice issues created by a recent Idaho Supreme Court case (*Boyd-Davis v. Macomber* - 2015). Directing the notice requirements to one statute has the added benefit that, if for some reason changes in law require a change in the notice requirements of the ESL, the changes can be made to all the affected statutes by only amending one statute, Idaho Code § 72-1368(5).

MOTION:

Senator Guthrie moved to send **H 397** to the floor of the Senate with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Guthrie will carry the bill on the floor.

GUBERNATORIAL APPOINTMENT AND HEARING:

The appointment of Susan Buxton, Boise, Idaho, as Administrator of the Department of Human Resources (DHR), effective March 1, 2016, to serve at the pleasure of the Governor, not to extend beyond his term. **Ms. Buxton** remarked she was excited to be before the Committee. She appreciates the chance to be the Administrator at the DHR and to work with the staff. She said while an attorney she represented local government entities and businesses dealing with human resources.

DISCUSSION:

Senator Lakey asked Ms. Buxton to talk about her perspective from the standpoint of a business owner and how owning a business has helped her with this position. **Ms. Buxton** said there are human resources issues that arise whenever one owns a business. She has experience with hiring the right person for the job and firing someone who does not work well within the business. **Ms. Buxton** remarked she has an understanding of the market, core values, goals and how to keep employee morale flowing in a positive direction. She said she has spent many hours looking at different ways to manage human resources and to do a better job. She remarked she is amazed at the caliber of State of Idaho employees.

Senator Thayn wanted to know if Ms. Buxton is legally qualified for her position as Administrator, DHR. **Ms. Buxton** stated she has administered human resources throughout her career, representing entities, policies, hiring and firing.

MOTION:

Senator Lakey moved to send the Gubernatorial appointment of Susan Buxton as Administrator of the Department of Human Resources to the Senate floor with the recommendation that she be confirmed by the Senate. **Senator Rice** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the appointment on the floor.

ADJOURNED:

There being no further business, **Chairman Patrick** adjourned the meeting at 2:14 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary