

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Thursday, February 18, 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.

**MINUTES APPROVAL:** **Senator Schmidt** moved to approve the Minutes of February 4, 2016. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.  
**Senator Ward-Engelking** moved to approve the Minutes of February 9, 2016. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

**INTRODUCTION OF PAGE:** **Chairman Patrick** introduced Kennedy Jones to the Committee and asked her to tell the Committee about herself. **Kennedy Jones** said she is from Twin Falls and is excited about being here. She said she is involved in musical theater, which is going to be her major in college. She will also major in communications. She wants to learn how to be a good citizen.

**GUBERNATORIAL APPOINTMENT AND HEARING:** The appointment of Terry Gestrin, Donnelly, Idaho, to the State Insurance Fund Board, to serve a term commencing April 13, 2015, and expiring on December 1, 2016. **Representative Gestrin** said he lives in District 8 and was originally appointed to the State Insurance Fund Board in 2008. He attended Idaho State University, and he became an insurance agent in 1976. In 1995 he was elected to the Valley County Commission. He gave a short synopsis of his career. Currently, he owns and operates Long Valley Farm Service in Donnelly, which is a general store selling plumbing, hardware, electrical, feed, lawn, garden and oil supplies.

**MOTION:** **Senator Thayn** moved to send the Gubernatorial appointment of Representative Terry Gestrin to the State Insurance Fund Board to the Senate floor with the recommendation that he be confirmed by the Senate.  
**Senator Lakey** commented that he appreciated Representative Gestrin and he is well qualified to serve on the State Insurance Fund Board.  
**Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Thayn will carry the appointment on the floor.

**RS 24531** **Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Health Savings Accounts.** **Senator Thayn** gave a brief history of this proposed legislation and commented the Department of Administration asked for wording that would make it easier to administer the program. He remarked that rather than sending the bill to the amending order, the wording was revised.

**MOTION:** **Senator Rice** asked for unanimous consent to send **RS 24531** to the Senate State Affairs Committee for printing. **Vice Chairman Martin** seconded the motion. There were no objections.

**RS 24459C2** **Unanimous Consent for Referral to Senate State Affairs for Printing - Relating to Insurance Producer Licensing - Bail Bondsmen.** **Mark Estess**, Attorney, Eiguren & Ellis Public Policy Firm, gave a brief background on this legislation. He said he was speaking on behalf of the Professional Bail Agents of Idaho, Inc. (PBAI). He said all of Senator Rice's concerns were addressed. He pointed out the language on page 2 was modified to read: "Compensating, employing or soliciting any person incarcerated in any courthouse, jail or prison for the purpose of the incarcerated person referring business to the licensee." **Mr. Estess** said he had consulted with the Department of Insurance (DOI), that should the Committee have a hearing on this bill, the DOI would be available to answer any questions. **Senator Rice** disclosed for the record that in the past he was a correctional officer and worked at the Idaho State Correctional Institution (ISCI) program. He said this Routing Slip (RS) addresses what can be a real problem in any kind of setting. He noted he liked the language.

**MOTION:** **Senator Rice** asked for unanimous consent to send **RS 24459C2** to the Senate State Affairs Committee for printing. **Senator Heider** seconded the motion. There were no objections.

**S 1318** **Relating to Appraisal Management Companies (AMC).** **Sarah Fuhriman**, Lobbyist, introduced **Bill Scoggin**, Attorney and Lobbyist representing the Real Estate Appraiser Board (REAB), who said he supports this bill. He said in June 2015, a group of federal financial service agencies issued a final rule, pursuant to federal statute, establishing certain minimum standards for AMCs. This rule states that if an AMC oversees a panel of more than 15 state-licensed appraisers, or more than 25 in two or more states, they may not provide appraisal services for a federally related transaction unless they are registered with the state or are subject to federal oversight. Idaho is in a good position to ensure the regulation of AMCs is not overly burdensome, since the State has waited for the final rule to establish the minimum standards. States need to have a minimum structure oversight for appraisal companies. He said the Idaho Bankers Association (IBA) supported this bill. He received input from the REAB.

**Senator Thayn** asked if the State was setting up a new regulatory board. **Mr. Scoggin** remarked no, but this bill puts minimum oversight over appraisal companies. **Senator Thayn** asked if there was going to be a new member appointed from the appraisal companies to the REAB. **Mr. Scoggin** replied no and that rules will be written by the REAB.

**TESTIMONY:** **Scott Calhoun**, REAB, said the REAB would spend the next session preparing rules. **Senator Thayn** wanted to know what types of rules would be prepared. **Mr. Calhoun** said most rules are articulated in the legislation and address controlling persons and entities. He said he anticipated the rules would be to address how the application would be made and how the requirements would be affirmed before licensure would be granted to the appraisal management company.

**Senator Lakey** wanted to know what would happen if this legislation was not implemented. **Mr. Scoggin** said that at the end of 2018, which is the deadline, transactions that are federally related as part of the loan process, lenders cannot use AMCs unless they are federally regulated. Banks would have to decide whether to set up an independent process or withdraw from the residential real estate market and devote some of their business somewhere else. **Senator Lakey** remarked this helps keep an effective process. He wanted to know about banks that wanted to use their own independent appraisers. **Mr. Scoggin** pointed

out this is optional and allows lenders to use AMCs and will keep the system operating as smoothly as it is now.

**Senator Schmidt** commented he was looking for some place in the legislation where powers and duties of the REAB are changed. **Mr. Scoggin** said there could be some confusion, but the drafting from the Legislative Services Office (LSO) was outlined separately.

**Trent Wright**, President and CEO, Idaho Bankers Association, said he thought the appraisal management companies provide an avenue for banks, which is a huge benefit to the banks and consumers.

**MOTION:**

**Senator Guthrie** moved to send **S 1318** to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Chairman Patrick will carry the bill on the floor of the Senate.

**H 432**

**Relating to Insurance - Define Terms and Revise Procedures for How Insurances Policies Are Valued.** **Julie Hart**, American Council of Life Insurers, remarked this legislation cleans up and adds definitions. She said that page 3 adds new subsections for Principle-Based Reserving (PBR) that will only go into effect after 42 states pass similar legislation and requires the DOI Director review reserve levels annually. The legislation will update the current valuation method used for life insurance premiums to PBRs. PBRs ensure consumers pay the appropriate premiums so reserve levels more accurately reflect assumed risk. **Ms. Hart** stated all life insurance companies are required to hold financial reserves in order to support payment of policy owner claims. The PBR method modernizes reserving to ensure the reserve and premiums match the risk being assumed by the insurance company.

Pages 4 through 17 add definitions from the National Association of Insurance Commissioner's (NAIC) Model Standard Valuation Law and replaces the National Association of Insurance Commissioners with NAIC.

Pages 18 through 25 add a new section of code on life insurance. The Valuation Manual is referenced throughout this legislation and spells out the steps companies and regulators will take to determine reserve levels under PBR. This section specifies what must be in the Valuation Manual. Some items are the type of policies subject to PBR; PBR reporting and corporate governance requirements must be specified; minimum standards are defined; commissioner's right to override the Valuation Manual, if, in the commissioner's opinion, it does not comply with the law; the operative date of the Valuation Manual is specified, which would be January 1 of the first calendar year following the first July 1 after all of which the following have occurred:

- 42 states have enacted the amended Standard Valuation Law and
- States with 75 percent of 2008 premiums have enacted the amended Standard Valuation Law.

Other items that are specified in this bill are: the commissioner's right to engage an independent actuary to review reserves; the director's right to require companies to increase reserves, if in the commissioner's opinion, the Valuation Manual was not followed; conditions under which companies must establish reserves for policies and contracts; confidentiality section provides that any investigation into companies and policies will remain exempt from public records due to the nature of the private policies and nature that these companies, contracts, etc. are by private companies not public governmental agencies subject to public records. These businesses are simply regulated by the State for their reserves, but remain private companies. It provides that all information

may be examined by the DOI, but that in those examinations and investigations the results might be shared and published; however, the details of products and personal information is not public. The operative date of the Valuation Manual is January 1 of the first calendar year that the Valuation Manual is effective. Policies issued prior to the operative date of the valuation manual may use ordinary mortality tables in nonforfeiture. There is a public records exemption for information submitted by private citizens to insurance companies for the purpose of obtaining life insurance ought not be in public records. The American Council of Life Insurers (ACLI) felt current exemptions might cover this issue, but wanted to make sure all private citizens have the coverage they deserve on private matters to remain exempt from public records.

**DISCUSSION:**

**Vice Chairman Martin** said this bill would give the NAIC the potential to align the pricing of products. **Ms. Hart** remarked overall premiums are expected to decrease 38 and 62 percent, as will the reserves. **Senator Lakey** said the concept is that a more focused group would be evaluated that is more applicable for the insured to get a better rate. **Ms. Hart** said the idea is to institute a principal-based reserve. The focus is being narrowed for the actuarial analysis to determine the reserves and the rate.

**Director Cameron**, DOI, addressed Vice Chairman Martin's and Senator Lakey's questions. He said the focus was on the product type, such as whole life, universal and term insurance products. Currently, the reserve process requires an insurance company to have a certain amount of volume and reserves. This allows the companies to set aside reserves comparable to those buying whole life products versus those buying term products. The products that would most likely go down in price would be term products. The amount of reserve required for a term policy is a lot less than for a whole life policy. The chances of a company paying out a claim is greater for a whole life insurance policy, which would require a larger reserve. What this bill does is allow the DOI to modernize the reserve requirements in line with the product type and not for the individual or for the risk. This will become an accreditation standard. The new reserve requirements are not being mandated, but being offered as an alternative.

**Senator Lakey** asked Director Cameron if the product was based on a national or a regional scale. **Director Cameron** replied the product type was on a national scale.

**MOTION:**

**Vice Chairman Martin** moved to send **H 432** to the floor of the Senate with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**. Senator Nonini will carry the bill on the floor of the Senate.

**S 1264**

**Pharmacy Medical Act.** **Senator Jim Guthrie** reported this act amends the Idaho Pharmacy Act with additional requirements before a vendor is issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy; the act also adds the definition of DME supplier and adds the requirement that the facility must be accredited in the State or within 150 miles of the Idaho border. It also adds that the supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact.

**Senator Guthrie** remarked this bill seeks to put DME license and suppliers under the Board of Pharmacy for the issuance of renewals and certificates of registration. He went over the changes in the bill. He said there are requirements the DME suppliers will have to meet in order to gain renewals and certificates of registration, which include complying with the requirements for a limited service outlet; physical presence in Idaho or within 150 miles of a service area; and most importantly, inventory and staff to service or repair products.

**Senator Guthrie** explained why these changes are being sought. When bids are taken, the Centers for Medicare and Medicaid Services (CMS) will identify a Competitive Bid Area (CBA) and the number of suppliers needed to meet the needs of that service area. Bids have been coming in from all over the United States, with the companies who bid on these contracts having no ability to service them. This creates the problem of suicide bidding. Concerns have centered around whether prices go up or if competition will be eliminated. He said the opposite is true. There was federal legislation passed in 2015 that will tend to lower costs, and pricing will become even more competitive, not less.

**Senator Guthrie** summarized the federal legislation. He said that bids will be taken from January of 2017 until January 2019. This time frame allows for up to three bids. Each time the bids are made, the notion is that prices will get lower and lower. If distant providers that cannot service these accounts are artificially deflating prices, this will make it extremely difficult for rural companies to remain viable. This bill will help give rural providers an equal chance at remaining viable if the model is transitioned from a drop-ship model to a point-of-service model and will be based on the true cost of doing business, not on suicide bidding practices. This bill does not preclude anyone from doing business, but levels the playing field for those willing to provide the service. This is only applicable to high-maintenance items. Items that do not require multiple touches or a high level of service are exempt. Rural providers will be under increased pressure to remain viable due to a tougher pricing model at the federal level.

**DISCUSSION:**

**Senator Rice** said he would like to have more clarity and wanted to know if the bond that is required under federal statute is forfeited if the DME supplier cannot serve customers. He wanted to know if that is an adequate way of addressing these problems since it is timely getting these items to Idaho customers. **Senator Guthrie** answered that if the DME supplier has a bond they default on, the State would have to take them to court. If the out-of-state companies bid at a higher price, they can sell the contract to another company for a lower price. Federal legislation says that it actually encourages states to accept bids, so if a state wants something specific, all the company has to do is be established in Idaho and they can do business. **Senator Rice** said he was trying to understand persons or entities that supply mail-order programs and what the difference is between that and the DME suppliers. **Senator Guthrie** explained the legislation addresses large items, such as oxygen, wheelchairs and hospital beds.

**Jessie Taylor**, Lobbyist, said the federal government requires no set up for smaller items that can be mailed to customers, such as catheters. He said continuous positive airway pressure (CPAP) machines, beds and walkers would be covered.

**Senator Rice** asked what kind of delays would there be if no CPAP machines were available. **Mr. Taylor** said it varied, depending on where a person lived. He said it could be days if one lived in a remote area.

**TESTIMONY:**

**Jim Kissler**, CEO of Norco Medical Supply, gave an overview. He said the bid sets the price for DME. There were 300 bids submitted in the Boise area from companies from outside the area who have no presence and cannot service the area. Prices have been reduced by 40 percent. Norco has stores to service most areas. Customers can pick up products and also have them shipped. This legislation is trying to eliminate bids that are undercutting the business.

**Senator Rice** declared a conflict of interest since he has a CPAP machine serviced by Norco. **Chairman Patrick** said he also has a conflict of interest since he has a CPAP machine.

**MOTION:** **Vice Chairman Martin** moved to send **S 1264** to the floor of the Senate with a **do pass** recommendation. **Senator Heider** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** asked to be recorded as voting nay. Senator Guthrie will carry the bill on the floor of the Senate.

**S 1314** **Relating to Idaho Trust Institutions Act.** **Trent Wright**, President and CEO, Idaho Bankers Association (IBA), said the purpose of this legislation is to amend the Idaho Trust Institutions Act to clarify that an individual who does not engage in a trust business may serve as a trustee of a trust without obtaining a state trust company charter. This bill provides an exemption for "friends" acting as trustees but not engaged in the business of administering trusts as defined in Idaho Code § 26-3203 (30). This bill is "set-up" legislation for a larger conversation on minimum capital requirements for issuing a trust charter that the Idaho Department of Finance (IDOF) and the IBA Trust Committee will be preparing for the 2017 Legislative Session. IBA's friends' exemption legislation is supported by the IDOF and has been reviewed by the Trust and Estate Professionals of Idaho (TEPI). **Senator Rice** pointed out the exemption is cited in the bill on page 2, line 11, "acting as a fiduciary for relatives."

**MOTION:** **Senator Schmidt** moved to send **S 1314** to the floor of the Senate with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

**S 1315** **Relating to Trust Sale.** **Mr. Wright** said this legislation relates to personal property left unclaimed following a trustee's sale. Its purpose is to clarify the liability for disposition of personal belongings left at a property. There is no fiscal impact on State or local funds.

**Mr. Wright** explained this bill provides that following the tenth day of the trustee sale the purchaser shall not be liable for disposing of all nontitled personal property that has been left unclaimed. Personal property is often left by the prior owner or a tenant following a foreclosure. Sometimes it is difficult to determine whether the personal property has been abandoned. There is often a question of what must be done with the personal property left behind once the creditor takes possession of an otherwise vacant property. Can the creditor discard the personal property, or is an eviction required to have the personal property removed? He said there were some concerns about due process.

**Mr. Wright** referred to line 11 in the bill and noted that subsequent to recording the notice of default and at least 120 days before the day fixed by the trustee for the trustee's sale, notice of the sale shall be given by registered or certified mail, return receipt requested. He said the IBA is seeking release of liability for personal property left on the premises. Anyone living in the home should be given notice that there is a foreclosure notice. **Mr. Wright** noted that at least three good-faith attempts shall be made on different days over a period of not less than seven days with each attempt made at least 30 days prior to the day of the sale to serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. He said that following 21 days there has to be another 30 days for the foreclosure to take place. He pointed out there are only ten states that offer further protection from the ten days following a foreclosure sale. The purchaser at the trustee's sale shall be entitled to dispose of any nontitled personal property remaining on the property on the tenth day following the sale without further notice and without liability to any party claiming any interest in such personal property. Titled personal property shall be disposed of pursuant to applicable law.

**DISCUSSION:** **Senator Lakey** clarified the intent of the IBA is to be able to dispose of property that is left behind. **Mr. Wright** said there would be overwhelming circumstances about abandoned property. There are fraudulent claims because the code is not clear. **Senator Lakey** voiced a concern about those who lack responsibility and who refuse to leave the property after ten days, resulting in eviction.

**Kenneth Howell**, IBA, said that if someone remains on the property they are called a tenant in sufferance. They must leave voluntarily or be evicted. He said the new property owner has to wait until the person has vacated the premises.

**Senator Lakey** said he was not sure the correct language is specified in the bill. He cited that after the tenth day, the purchaser, without further notice and without liability may dispose of the property. **Mr. Howell** said that what the language does not say is that the new owner of the property can do whatever they wish with the personal property. There are statutes in Idaho dealing with unclaimed property. **Senator Lakey** said he thought the language needed some more work. He and Mr. Howell had a conversation about the concept of abandoned property, how it is impossible to tell if a property has been abandoned, the ten-day notice and the idea of having to go to court to prove the property was abandoned and the legal problems surrounding abandoned property.

**Senator Rice** commented he had the same concerns as Senator Lakey. He and Mr. Howell had a conversation about a tenant in sufferance who does not move out and the purchaser having to go to court to have the person removed.

**Senator Schmidt** said he had a question about the removal of liability and wanted to know if a lawsuit has been a significant issue for this process. **Mr. Howell** said lawsuits have arisen, but in some cases this is of lesser concern. However, this issue has arisen with sufficient regularity over the past years by not having a provision to remove personal property. Some people have claimed their grandmother's diamond ring was among the belongings that were disposed of, which could be a fraudulent claim.

**TESTIMONY:** **Richard Eppink**, representing the American Civil Liberties Union (ACLU) of Idaho testified in opposition to the bill. He asked the Committee to hold the bill. He said these issues were raised ten years ago. He urged a peaceful, orderly process for family possessions. Due to lack of time, **Chairman Patrick** indicated the Committee would continue to discuss **S 1315** on February 23, 2016.

**ADJOURNED:** There being no further business, Chairman Patrick adjourned the meeting at 3:00 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary