

MINUTES

## SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

**DATE:** Tuesday, February 12, 2019

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Agenbroad, Senators Martin, Lakey, Guthrie, Thayn, Souza, Ward-Engelking, and Burgoyne

**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 meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

**MINUTES APPROVAL:** **Senator Ward-Engelking** moved to approve the Minutes of January 29, 2019. **Vice Chairman Agenbroad** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Chairman Patrick passed the gavel to Vice Chairman Agenbroad to introduce the presenters for the rules.

**DOCKET NO. 17-0211-1801** **Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Self-Insured Employers.** **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), stated the IIC wanted to clarify the new electronic requirements for self-insured employers on the submission of First Reports of Injury and Claims for Benefits, notices of occupational illness, and fatalities. The changes also eliminate the need to submit paper documentation in support of electronically-filed initial payments. There is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**MOTION:** **Chairman Patrick** moved to approve **Docket No. 17-0211-1801**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 17-0211-1802** **Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Self-Insured Employers.** **Patti Vaughn**, Benefits Administration Manager, Idaho Industrial Commission (IIC), stated the IIC wanted to authorize and set forth conditions for the use of electronic fund transfers and access cards to pay benefits due to injured workers by self-insured employers. There is no fiscal impact to the General Fund. Negotiated rulemaking was conducted. There is no incorporation by reference.

**MOTION:** **Senator Souza** moved to approve **Docket No. 17-0211-1802** with the deletion of section 051.08.e, subsection ii. **Senator Burgoyne** seconded the motion.

**DISCUSSION:** **Chairman Patrick** queried if rejection of part of the rule was acceptable to Ms. Vaughn. **Ms. Vaughn** affirmed that without a requirement, injured workers who could not understand the language, could opt out. **Senator Souza** stated the motion was made due to confusion on the part of the Committee as to the impact the phrase, "any other language common to the claimant population," would have upon non-English speaking injured workers. She remarked clarifying language should be submitted by the IIC for next year. **Ms. Vaughn** asserted the IIC would work on improving the language.

**VOICE VOTE:** The motion to approve **Docket No. 17-0211-1802** with the deletion of section 051.08.e, subsection iii, carried by **voice vote**.

**DOCKET NO. 12-0109-1801** **Rules Pursuant to the Idaho Credit Code.** **Anthony Polidori**, Consumer Finance Bureau Chief, Idaho Department of Finance (IDOF), stated the pending rule references incorporated federal laws and regulations that are included within the federal Consumer Credit Protection Act (CCPA) and the implementation of regulations. There is no fiscal impact to the General Fund. Negotiated rulemaking was not conducted because the rule is simple in nature, as it merely references incorporated federal laws and regulations.

**Mr. Polidori** reported Idaho Code § 28-41-302 defines the federal CCPA and its implementing regulations for incorporation into the Idaho Credit Code (ICC) and the rules pursuant to the ICC. This proposed rule incorporates by reference the laws and regulations that are included within the federal CCPA, promoting consistency in state and federal consumer financial services laws so that Idaho consumer financial service providers are not faced with an untenable requirement of complying with conflicting state and federal laws.

**DISCUSSION:** **Senator Burgoyne** and **Mr. Polidori** discussed the negotiated rulemaking process, if there was any opposition to the change in the rule, and the notification process. **Senator Lakey** commented he was concerned negotiated rulemaking was not conducted. He asked Mr. Polidori to clarify the phrase "as amended to include January 1, 2019." **Mr. Polidori** indicated the intent was not to include amendments after that date.

**Senator Burgoyne** commented the lack of negotiated rulemaking puts consumers in a worse situation. **Mr. Polidori** referred to the synopsis (Attachment 1) given to the Committee and remarked the changes provide greater consumer protection.

**Senator Lakey** queried if the updates were needed for compliance or for any regulatory requirement at the federal level. **Mr. Polidori** remarked the updates are required for consumer finance licensees. Without these updates, consumer finance licensees are currently operating under two different standards regarding disclosures and the treatment of credit balances, whether it is under the Truth in Lending Act or the transmission of electronic funds under the regulation. Under certain circumstances, consumer financial lenders in the State have to comply to bring the State on a par with federal law requirements.

**Chairman Patrick** commented this rule would pertain to institutions more than the general public and he did not see a problem with the lack of negotiated rulemaking.

**MOTION:** **Senator Guthrie** moved to approve **Docket No. 12-0109-1801**. **Senator Ward-Engelking** seconded the motion.

**DISCUSSION:** **Senator Burgoyne** stated he would be voting nay since there was no negotiated rulemaking conducted.

**Senator Guthrie** commented the lack of negotiated rulemaking could be driven by cost and the Committee should find out the costs involved. **Vice Chairman Agenbroad** stated he agreed.

**VOICE VOTE:** The motion to approve **Docket No. 12-0109-1801** carried by **voice vote**. **Senators Burgoyne** and **Lakey** asked to be recorded as voting nay.

**DOCKET NO. 12-0110-1801** **Rules Pursuant to the Idaho Residential Mortgage Practices Act. Anthony Polidori**, Consumer Finance Bureau Chief, Idaho Department of Finance (IDOF), reported the proposed rule updates the versions of the federal laws and regulations that are incorporated by reference, as well as standards adopted by a nationally-recognized organization (Truth in Lending and Regulation Z, Real Estate Settlement Procedures Act and Regulation S, and the Nationwide Multi-State Licensing System and Registry (NMLS) Policy Guidebook).

**Mr. Polidori** reported there is no fiscal impact to the General Fund. Negotiated rulemaking was not conducted because the rule is simple in nature. Idaho Code § 23-31-102 defines Regulations X and Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act for incorporation into the Idaho Residential Mortgage Rules (RESPA) pursuant to that Act. He stated this proposed rule promotes consistency in state and federal mortgage-related laws so that Idaho mortgage licensees are not faced with an untenable requirement of complying with conflicting state and federal laws. **Mr. Polidori** stated that furthermore, the proposed rule updates references to the NMLS Policy Guidebook, promoting consistency in nationwide licensing standards for mortgage licensees.

**DISCUSSION:** **Senator Souza** and **Mr. Polidori** discussed a conflict of dates in the rule and when the last update was done. **Mr. Polidori** indicated the last adoption of a pending rule related to these updates was in March 2018. He explained that during the last legislative session, references were updated to Truth In Lending in implementing regulations and RESPA regulations, which is the reference to March 2018. The NMLS Policy Guidebook has not been updated or modified since 2012. **Mr. Polidori** stated the IDOF is seeking to update the reference to February 2, 2018. In essence, the IDOF has updated references to those federal laws and regulations through January 1, 2019 into the NMLS Policy Guidebook through February 2, 2018.

**MOTION:** **Senator Souza** moved to approve **Docket No. 12-0110-1801**. **Senator Thayn** seconded the motion.

**DISCUSSION:** **Senator Lakey** commented he would be voting nay as he was concerned about incorporating into rule a guidebook that has not been updated since 2012. **Senator Burgoyne** stated he would be voting nay as he voiced an additional concern of incorporating an entire federal act into Idaho rule. **Senator Thayn** remarked he was comfortable with the motion since the rule addresses interstate commerce. **Chairman Patrick** stated he agreed with Senator Thayn and that the State has to comply with federal rules.

**VOICE VOTE:** The motion to approve **Docket No. 12-0110-1801** carried by **voice vote**. **Senator Lakey** asked to be recorded as voting nay. Senator Burgoyne did not vote nay.

**DOCKET NO.  
12-0111-1801**

**Rules Pursuant to the Idaho Collection Agency Act. Anthony Polidori**, Consumer Finance Bureau Chief, Idaho Department of Finance (IDOF), reported the proposed rule incorporates by reference federal law (the federal Fair Debt Collection Practices Act) (FDCPA). There is no fiscal impact to the General Fund. Negotiated rulemaking was not conducted because the rule is simple in nature as it updates references to incorporated federal law. **Mr. Polidori** stated Idaho Code § 26-2229A incorporates the provisions of the FDCPA. This proposed rule incorporates the federal FDCPA by reference, promoting consistency in state and federal debt collection laws, so that Idaho collection agency licensees are not faced with an untenable requirement of complying with conflicting state and federal laws.

**MOTION:**

**Senator Guthrie** moved to approve **Docket No. 12-0111-1801**. **Senator Thayne** seconded the motion. The motion carried by **voice vote**.

**PASSED THE  
GAVEL:**

Vice Chairman Agenbroad passed the gavel back to Chairman Patrick.

**S 1007**

**Relating to Collection Agencies. Anthony Polidori**, Consumer Finance Bureau Chief, Idaho Department of Finance (IDOF), stated the purpose of this legislation is to add a provision to allow collection agencies to collect incidental charges included in the contract between the creditor and the debtor. Additionally, the legislation makes this licensing process for collection agents, debt counselors, credit counselors, and credit repair entities similar to other entities licensed by the IDOF by requiring the use of a nationwide system of licensing and allowing for reinstatement of expired applications. **Mr. Polidori** remarked that further, the legislation creates the Idaho Collection Agency Recovery Fund (ICARF) to allow reimbursement to persons to whom the Idaho courts award actual damages resulting from acts constituting violations of this chapter by a collection agent, debt counselor, credit counselor, or credit repair organization. To pay for the ICARF, all licensees will have to pay a fee of \$250 for home office locations and \$100 for each branch office. To offset the ICARF fee, the bonding requirement for licensees is eliminated. Finally, the legislation provides for the creation, by rule, of an industry advisory board.

**Mr. Polidori** reported the proposed legislation does not alter license application fees collected by the IDOF from licensees or license applicants and does not alter the application of the licensing requirements to entities conducting covered activities in Idaho. There is no fiscal impact to the General Fund.

**Mr. Polidori** referred to a letter received from Supreme Court Senior Judge Barry Wood, Deputy Administrator of the Courts (Attachment 2). He stated the comments address section 12 of the bill, page 8, lines 5 and 6, indicating where the existing language of the printed bill could be modified to provide greater clarity for plaintiffs and to reasonably reduce the obligations of a plaintiff seeking remediation through the proposed ICARF. **Barry Wood**, Idaho Supreme Court Senior Judge, stated the IDOF concurs and requests that page 8 be amended, beginning on line 5 and continuing through line 7 to read, "judgment has been entered, and execution returned unsatisfied, may file a verified claim and the same case in which the underlying judgment was entered."

**DISCUSSION:** **Senator Burgoyne** remarked he objected to a provision at the bottom of page 4, line 47, "expressly authorized by the agreement creating the debt, except as otherwise prohibited by law," noting collection agencies can charge fees and expenses, which would conflict with laws already enacted. **Senator Burgoyne** stated he would like to have his concerns addressed and have the courts approve the fees. **Mr. Polidori** commented the IDOF has moved away from what currently exists in the Fair Debt Collection Practices Act (FDCPA), which allows a collection agency to collect anything that is contracted between the client and its consumers. A restriction is placed by stating it must be a lawful provision and expressly provided for in the contract. Collection agencies would still be required to make certain that any provision that they are collecting is lawful. **Mr. Polidori** stated that consumers and clients, or the creditor clients, would be allowed to contract for the services and the potential interest or penalties that may be lawful into the contract. The collection agency may collect on behalf of the creditor client, but not on behalf of the agency. The collection agency still imposes a restriction on the amount any collector can retain for collections under the Idaho Collection Agency Act (ICAA). Only 50 percent of the amounts collected can be retained regardless of whether there is a provision within the contract, where more money could be collected for fees.

**TESTIMONY:** **John Watts**, Idaho Collection Agency, testified in support of the bill and remarked he has had discussions with the IDOF on many of the changes. There were no objections to sending this bill to the 14th Order. He stated the electronic registry process is good. Having an advisory committee is a few decades overdue. The ICARF will affect different agencies.

**DISCUSSION:** **Vice Chairman Agenbroad** asked Mr. Watts about the costs and fees associated with this bill. **Mr. Watts** reported it depended on the size of the agency and he could not give a precise number. He stated there were no comments received.

**TESTIMONY:** **Barry Wood**, Idaho Supreme Court Senior Judge, voiced a concern about the mechanics of this statute. He referred to Idaho Code § 12-2655, subpart 5, and remarked if there is a final judgment in court, by the statute of limitations, this action has to be brought within a year. He remarked the courts are trying to figure out if this is analogous to an execution situation on a final judgment where a judgment creditor is trying to levy on property when a third party claims it does not belong to the judgment debtor. He queried if this intended to be that sort of reform or if this was a whole new lawsuit, as pointed out in his letter (Attachment 2). **Judge Wood** noted Idaho Code § 26-2255, line 3, page 8, may actually create a kind of trap for the unwary. He reported the trap is in the findings of violations of this chapter. The big struggle the Supreme Court has had to recently overrule Idaho Code § 26-2254 in what is not a judgment, and what is not in a judgment. He questioned if these particular findings are not in that judgment, which is now by definition final, then are the users of this precluded from bringing the action. He pointed out these issues for clarification purposes.

**Mr. Polidori** commented the intent was to limit remediation to those acts that constitute violations of the ICAA. **Mr. Polidori** stated it is not intended as a recovery fund to remediate people who have been harmed solely by a violation of the FDCPA, but pointed out that a violation of the FDCPA through incorporation by reference in the ICAA would be in essence a violation of the code.

**MOTION:** **Senator Guthrie** moved to send **S 1007** to the 14th Order of Business for possible amendment. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**S 1013**

**Relating to the Heating, Ventilation, and Air Conditioning (HVAC) Board.** **John Nielsen**, Plumbing HVAC Program Manager, Idaho Division of Building Safety (IDBS), reported Idaho Code § 54-5004 currently requires one HVAC Board member to be an HVAC specialty contractor. The IDBS and the HVAC Board have had difficulty filling this position with a qualified, willing, specialty contractor. This proposal will require one HVAC Board member to be a representative of the HVAC industry, instead of an HVAC specialty contractor. This change will allow the HVAC Board and IDBS to adequately fill this position, while ensuring this position represents the interests of the HVAC industry.

**Mr. Nielsen** stated here is no fiscal impact to the General Fund and the HVAC Board. This legislative proposal will change the composition of the HVAC Board, but will not change the costs of conducting HVAC Board meetings.

**DISCUSSION:**

**Vice Chairman Agenbroad** asked for clarification on whether this change precluded a contractor from applying for this position. **Mr. Nielsen** said it was permissible for a contractor to apply.

**MOTION:**

**Senator Martin** moved to send **S 1013** to the floor with a **do pass** recommendation. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**S 1014**

**Relating to Plumbing and Plumbers.** **John Nielsen**, Plumbing Heating, Ventilation and Air Conditioning (HVAC) Program Manager, Idaho Division of Building Safety (IDBS), reported this legislative proposal will require and clarify that all plumbing contractors must be qualified journeymen. **Mr. Nielsen** remarked that requiring all plumbing contractors to be qualified journeymen will ensure plumbing contractors are qualified in the technical aspects of the trade and increase the quality of plumbing work. There is no fiscal impact to the General Fund and the Idaho Plumbing Board (IPB) fund. This legislative proposal will change administrative requirements associated with obtaining a plumbing contractor's license, but will not change the costs of issuing licenses.

**DISCUSSION:**

A discussion ensued between **Senator Lakey** and **Mr. Nielsen** regarding whether this legislation requires plumbing contractors to be qualified journeymen. **Senator Lakey** commented it seemed appropriate for someone to operate a business who is not a qualified journeyman, but who employs a qualified journeyman. **Mr. Nielsen** remarked the current plumbing contractor's test requires contractors to be journeymen. **Senator Lakey** inquired if this qualification was in rule and not in the law. **Mr. Nielsen** stated the requirement is in rule and that in order to take the contractor's test, the candidate must be a journeyman plumber for 2-1/2 years. **Senator Lakey** commented it was appropriate for someone to own a business and employ a journeyman and he was more inclined to follow the statute, rather than the rule.

**Senator Souza** remarked she agreed with Senator Lakey. She stated there are people who are very good at their craft and are not good at running a business. She queried why someone would be prohibited from owning a plumbing business, who was not a qualified journeyman, but who was a good business person. **Vice Chairman Agenbroad** remarked there is a conflict with statute and rule and queried what the advantage of this legislation was. **Mr. Nielsen** replied the IDBS Board wanted this legislation because they thought a contractor should be a licensed journeyman.

**Senator Burgoyne** inquired as to the definition of a plumbing contractor and how the term was used. **Mr. Nielsen** reported a plumbing journeyman contractor's license is issued to an individual and not a business.

**MOTION:** **Senator Guthrie** moved to hold **S 1014** in Committee. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**S 1037** **Relating to Engineers and Surveyors.** **Tom Judge**, Deputy Director, Surveying, Idaho Professional Engineers and Land Surveyors (IPELS), indicated the authorization to access and locate necessary property corners and evidence related to boundaries enables land surveyors to conduct a proper survey. Surveys supported by all of the required evidence protect real property rights.

**Mr. Judge** noted the objective of the proposal is to provide reliable access to private land for professional land surveyors and their subordinates when conducting land surveys, thereby putting the property rights of all owners on a level field. Land surveyors must access private property to correctly determine property boundaries. The gathering of many forms of evidence, such as survey marks, fences, streams, or other features, some a mile or more away, are necessary to complete a survey. Under current law, only select surveyors working on limited government surveys have a legal right to enter private property. Private surveyors are required to obtain permission from the owner of every property they enter. That permission is revocable at any time without warning. This adds significant cost and even prevents completion of many projects. Refusal to grant access causes turmoil if boundary determinations are made without access to the required evidence. Owners and businesses suffer loss when surveys are cancelled midstream or elevated to the courts. The IPELS Board is asking for reasonable access with sensible controls that protect owners and businesses.

**Mr. Judge** stated there is no fiscal impact to the General Fund or the dedicated fund of the IPELS Board, as the amendment addresses the manner in which private land surveyors conduct surveys and does not adversely impact the regulation of professional land survey licenses.

**Mr. Judge** reported that while working through the process, some language for an amendment was provided which is modeled after Oregon law. He commented there will be a more definitive provision that written notice be sent out ahead of time with the requirement to cooperate with businesses and agricultural operations, so there is no disruption. At this point, **Mr. Judge** stated this is a bill that grants the necessary authority to protect businesses and owners. One person cannot stop the IPELS from doing a survey.

**DISCUSSION:** **Senator Agenbroad** questioned special rights for railroads and inquired as to why this was in the legislation. **Mr. Judge** replied that historically, railroads asked for this language and indicated they would oppose the legislation if the wording was not added. Additional restrictions were placed on the railroad by the Department of Homeland Security, which makes accessing railroad property problematic. He explained that if a railroad has an easement, that easement is honored.

**Senator Burgoyne** remarked if this bill is going to the amending order, he requested sections 3 and 4 be reworked relating to disruption of operations. Land surveyors have to be able to access the property. Property owners could regulate a time so surveyors could schedule operations around the timeframe. **Senator Burgoyne** pointed out the best way to post a notice is to post it on the property in question, but that could be considered trespassing. He suggested the wording has to be such that a notice could be posted, but the surveyor would not be considered trespassing.

**Senator Guthrie** referred to line 11 of the bill and queried if the language should include all subordinates or if that was implied. **Mr. Judge** advised the language in the statute is now for federal surveyors and that may not be an issue. He indicated he would talk with the attorney for the IPELS Board about that subject. **Senator Guthrie** inquired as to the punitive element if the landowner refused to allow a surveyor on the property. **Mr. Judge** stated he would try to get the sheriff and police to try to help the landowner through the process.

**Michael Kane**, Attorney, IPELS Board, stated there is no penalty. He remarked this bill tries to carry forward what the coalition put together last year.

**TESTIMONY:**

**Aaron Rush**, professional land surveyor, testified in support of the bill and the amendment. He remarked access to property is essential. Owners of all four corners of the property have to consent to a survey.

**MOTION:**

**Senator Thayn** moved to send **S 1037** to the 14th Order of Business for possible amendment. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:58 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary