

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 01, 2012

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Smyser, Heider, Vick, Nuxoll, Bock, and Schmidt

**ABSENT/
EXCUSED:**

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.

MINUTES: **Chairman Lodge** called the meeting to order at 3:00 p.m. and welcomed those in attendance.

MOTION: **Senator Smyser** moved, seconded by **Senator Nuxoll**, that the minutes for January 19, 2012 be approved by the Committee. The motion carried by **voice vote**.

RS 20781 **Relating to Idaho State Board of Medicine and the Dietetic Licensure Board.** **Nancy Kerr**, Executive Director, Idaho Board of Medicine, stated that this proposed legislation will remove members of the Dietetic Licensure Board from the Public Employees Retirement System of Idaho (PERSI) by changing the reference in Idaho Code from compensation to honorarium. This change will allow members to avoid possible tax implications since membership in a qualified plan, such as PERSI, limits participation in some retirement and personal IRA plans. **Ms. Kerr** requested that **RS 20781** be sent to print.

MOTION: **Vice Chairman Broadsword** moved, seconded by **Senator Nuxoll**, that **RS 20781** be sent to print. The motion carried by **voice vote**.

RS 20782 **Relating to Idaho State Board of Medicine and the Board of Athletic Trainers.** **Ms. Kerr** stated that this legislation will remove members of the Board of Athletic Trainers from PERSI for the same reasons set forth in her presentation of RS 20781. She requested that the Committee send **RS 20782** to print.

Senator Nuxoll moved, seconded by **Senator Vick**, that **RS 20782** be sent to print. The motion carried by **voice vote**.

RS 20804 **Relating to Idaho State Board of Medicine and Respiratory Care Licensure Board.** **Ms. Kerr** stated that this legislation will remove members of the Respiratory Care Licensure Board from PERSI for the same reasons set forth in her presentation of RS 20781. She requested that **RS 20804** be sent to print.

MOTION: **Senator Smyser** moved, seconded by **Vice Chairman Broadsword**, that **RS 20804** be sent to print. The motion carried by **voice vote**.

Vice Chairman Broadsword asked if it would be necessary to have a hearing on these three RS's. **Chairman Lodge** deferred the question to **Senator Darrington**, who advised the answer is, "no," but the better answer is that we ought to have it come back with the printed bill and say the same thing and then we go to the floor with it and it is a lot less messy for the office of the Secretary of the Senate and Committee Secretary.

RS 20769

Relating to Department of Health & Welfare - Advertising and Placing Children for Adoption Without a License. **Cameron Gilliland**, Program Bureau Chief, Division of Family and Community Services, Department of Health and Welfare (Department). **Mr. Gilliland** advised that unlike other licensing statutory provisions, Idaho Code does not currently impose any sanction, fine or criminal penalty in the event an unlicensed person or entity advertises or performs unlicensed adoption services in Idaho. This legislation would align adoption services with other licensing provisions and make it a misdemeanor to advertise or perform adoption services in Idaho without a license. The penalty for violation is set at \$300 per day of continuing violation. In addition, this legislation clarifies the definition of "advertisement" to better reflect current methods of advertising. **Mr. Gilliland** requested that the Committee send **RS 20769** to print.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #1).

Senator Schmidt commented that he knew of situations in which physicians have delivered infants of mothers who did not want to keep the child and who had personally contacted people to adopt the child. He asked if that physician would be violating the law. **Mr. Gilliland** responded that the physician would not be violating the law if a lawyer is handling the adoption.

Responding to questions from **Senator Vick**, **Mr. Gilliland** advised that the problem of agencies not licensed in Idaho advertising and placing adoptions, although difficult to track, is not a common problem. However, when you Google "adoption in Idaho," the first three or four listings are adoption agencies from outside the state, so it is somewhat of a problem and this legislation would prevent problems in the future. He stated that there is no penalty for a birth or adoptive parent who might be unaware of this legislation. **Mr. Gilliland** further advised that adoption agencies who are licensed in Idaho will occasionally take this problem to law enforcement and are advised they are unable to do anything because there is no penalty. He believes the Department does not intend to be adoption police, but will approach this on a "catch as catch can" basis. There are currently 29 states with similar statutes and Idaho will be added to that list so unlicensed agencies should take notice. This legislation does not prevent these agencies from working in Idaho, it just requires that they associate with someone licensed in Idaho.

MOTION: **Vice Chairman Broadsword** moved, seconded by **Senator Schmidt**, to send **RS 20769** to print. The motion carried by **voice vote**.

RS 20794

Relating to Department of Health and Welfare - Liability of Legal Guardians. **Robert Luce**, Administrator, Division of Family and Community Services, Department of Health and Welfare (Department), advised that the purpose of this legislation is to resolve apparent conflicts in the statute and clarify that, while a guardian with physical and legal custody of a ward may be held financially liable for his or her failure to supervise a ward, guardians are not financially liable to third persons for acts of the ward by reason of the parental relationship. He stated that this conflict came to light with legislation enacted during the 2011 session and a search of the Code found more than ten statutes that seemingly conflict with the Probate Code which states that a guardian is not legally obligated to provide from his own funds for the ward and is not financially liable to third persons by reason of the parental relationship for acts of the ward. He briefly discussed what the implications of recruiting guardians might be if a ward's negligence, in legal terms, was imputed to the guardian and requested that the Committee send **RS 20794** to print.

Senator Darrington commented that he did not recall the details of the 2011 legislation on this issue, but the point **Mr. Luce** is making does make sense. **Senator Nuxoll** asked if "guardian" and "legal guardian" are one and the same and

if so, and the guardian is not responsible, why is it called "legal guardian." **Mr. Luce** advised that the terms are one and the same and in most instances guardianship occurs through a court proceeding. However, the statute does allow for a six-month temporary guardianship that people can enter into between themselves with a notary. **Senator Vick** commented that if legal guardians are no longer liable, it would appear that taxpayers would be liable. **Mr. Luce** noted that when this was brought to the attention of the courts, their reaction was that we do need to fix this but they were not aware of judges entering orders against guardians and making them pay. He stated the phrase in question talks about liability of the parents and inserts guardians, legal guardian, or other persons legally responsible, so there are other payers out there; it wouldn't necessarily default to taxpayers.

MOTION: **Senator Darrington** moved, seconded by **Vice Chairman Broadsword** that **RS 20794** be sent to print. The motion carried by **voice vote**.

RS 20841 **Relating to Department of Health & Welfare - Adoption of Children.** **Shirley Alexander**, Child Welfare Bureau Chief, Division of Family and Community Services, Department of Health and Welfare (Department), advised that **RS 20841** would, through written contact agreements, provide a method for biological parents and siblings to maintain contact and communication with adoptees, who are within the foster care system, following termination of parental rights. Some biological parents may be more willing to voluntarily terminate parental rights if they have the ability to contact and communicate with a child following termination of parental rights. According to the Adoption Statute children over the age of 12 have to consent to adoption. As with their biological parents, minor children over the age of 12 may be more willing to consent to a prospective adoption if they have the ability to contact and communicate with siblings or biological parents following termination of parental rights. If the parties do not abide by the terms of the agreement, it does not impact the termination of parental rights or adoption; both would be final and irrevocable. **Ms. Alexander** emphasized that this proposed legislation does not apply to private adoption, only to those children and youth in the foster care system. She requested that the Committee send **RS 20841** to print.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #2).

Senator Darrington asked **Ms. Alexander** if this will lead to open adoption. **Ms. Alexander** responded that this would, in effect, create open adoption for those youth within the foster care system, and that the amount of contact would be negotiated and agreed upon between the biological and adoptive parents; the adoptive parents, however, would always be the guardians.

MOTION: **Senator Heider** moved, seconded by **Senator Nuxoll**, that **RS 20841** be sent to print. The motion carried by **voice vote**.

Chairman Lodge thanked the presenters and announced that on Thursday, the Committee would meet around 2:45 p.m. for a tour of the ISU dental lab.

ADJOURN: **Chairman Lodge** adjourned the meeting at 3:32 p.m.

Senator Lodge
Chairman

Lois Bencken
Secretary

Diana Page
Assistant Secretary