

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 12, 2012

TIME: 8:00 A.M.

PLACE: Auditorium - WW02

MEMBERS PRESENT: Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett

**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.

Chairman McKenzie called the meeting to order at 8:02 a.m. with a quorum present. The first order of business was **RS21506** presented by **Julie Lynde**, Executive Director, Cornerstone Family Council.

RS21506 **Ms. Lynde**, explained that **RS21506** adds the inadvertent omission of the severability clause that was intended to be in **S 1349**. The severability clause appears on page four, lines twenty-two - twenty-six. There is also a correction to the title. Nothing changes in the fiscal note. The body of **RS21506** is identical to **S 1349** with the addition of the severability clause. **Ms. Lynde** is asking the Committee to print this RS.

Senator Stennett asked why this change is coming as an RS. **Ms. Lynde** responded that they decided to take this approach instead of going to the amending order.

Chairman McKenzie explained that **S 1349** is scheduled later in the week and the sponsors discovered the omission of the severability clause and brought this RS to make that addition. This bill will replace the original bill.

MOTION: **Senator Fulcher** moved, seconded by **Senator Hill**, to send **RS21506** to print.

VOTE: The motion carried by voice vote.

H 450 RELATING TO ALCOHOLIC BEVERAGES to create an Alcohol Beverage Control Fund and to provide for the use of the fund moneys.

Lt. Robert Clements, Idaho State Police (ISP), brings **HB 450** to the Committee. **Lt. Clements** outlined the sections of *Idaho Code* that gives the legislature authority over the sale and control of alcoholic beverages and who then charges the ISP with the responsibility and duty of assisting in the policing of the state to enforce the Idaho Liquor Act. That responsibility falls under the auspices of Alcohol Beverage Control (ABC).

Lt. Clements explained that over 8,000 license applications are processed annually and approximately 5,000 establishments are licensed to sell/dispense alcoholic beverages. ABC currently has one detective whose position is partially funded by a grant, to cover ABC enforcement for the entire state. ABC is responsible for the administration and issuance of licenses, background checks, premise checks, enforcement, and interpretation of alcohol beverage laws. This includes compliance, investigations, and assisting other law enforcement agencies in investigating criminal activity associated with alcohol. In addition, ABC is responsible for industry regulations such as aid to retailers and extension

of credit laws, providing training and guidance to ensure understanding, and compliance with alcohol regulations. There has been an increase of activity in all of these areas.

With adequate staffing, ABC could proactively ensure compliance with alcohol beverage laws consistently throughout the state; enhance customer service through increased assistance to licensees and other law enforcement agencies; and provide more efficient service for the citizens of Idaho. ABC had ten officers in 1964 with a population of approximately 667,191. Today, Idaho's population is reported to be 1,567,582 and ABC is operating with the same number of officers. There should be twenty three officers at the current level of population. The Governor's 2020 Blue Ribbon Task Force estimated the annual cost of alcohol abuse in Idaho to range from \$120 million to \$500 million. Underage drinking cost the citizens of Idaho \$300.0 million in 2010.

Lt. Clements added that this proposed legislation is to secure dedicated funding for ABC. It creates a dedicated account and funding source from current license fees for ABC staffing and operations by making changes to *Idaho Code 23-940*. For a list of agencies that support this bill, see **Lt. Clements** notes recorded as part of the minutes.

Senator Darrington stated that this is long overdue. Has JFAC authorized the ISP to hire people needed to move into this program? **Lt. Clements** answered that JFAC will fund this based on the legislative changes that are approved.

Senator Winder said he was asked a question coming into the meeting. Is there a transfer fee charged on liquor by the drink? **Lt. Clements** responded yes. Nothing changes as far as the license or transfer fees.

Testimony in support of H 450:

Justin Ruen, Association of Idaho Cities.

Ken Harward, Executive Director of Association of Idaho Cities submitted a letter of support.

R. David Moore, Blackfoot Police Department.

Michael Kane, Idaho State Police representing the Sheriff's Association.

Senator Fulcher questioned **Mr. Kane** about "may" in line twenty-five, page one. If these monies are not expended by ABC, where would they go? **Mr. Kane** said his understanding is that they would go into the general fund.

Senator Davis interpreted the language to say the funds may be expended but subject to appropriation. It might be better to take the "may" out on line twenty-five and say the appropriations process shall be subject to legislative..... **Mr. Kane** supports this bill and would not be opposed to some amendments with language changes.

Roger Batt, representing the Idaho Grape Growers and Wine Producers, spoke in support of H 450.

John Evans, Mayor, City of Garden City, supports H 450. Garden City deals with the consequences of over-serving i.e., significant issues with DUIs and, both misdemeanor and felony aggravated assaults. They do not have the tools they need to avoid these issues. **Mayor Evans** said they need the help from ABC for training the servers and bar owners about state provisions. Right now, ABC can't provide those services.

Jeff Lavey, Chief of Police, Meridian, spoke as President Elect of the Idaho Chiefs of Police Association (ICPA). **Chief Lavey** testified in support of H 450 and submitted a letter of support from ICPA.

Stacy Arnold, Sergeant, Meridian Police Department, testified in support of **H 450**. **Sgt. Arnold** provided some background and costs associated with alcohol control experienced by the City of Meridian.

Jeremy Pisca, Attorney with Risch & Pisca representing the Idaho Beer and Wine Distributors Association, supports **H 450**. This legislation is long overdue. The dues and license fees are really user fees but since those fees go into the general fund, the users are not receiving any benefit from them. Under-funding ABC is tantamount to deregulating alcohol and that is a very important program to fund. There is currently a backlog of investigations in the ABC that are critical to the enforcement of the three-tier system.

Ken Burgess testified in support of **H 450** representing the Idaho Licensed Beverage Association which is comprised of liquor by the drink licensees. This proposal will allow ABC to enhance and improve its enforcement and investigation activities around the state. **Mr. Burgess** said they believe ABC should take a lead role in training local law enforcement and the hospitality industry on what constitutes a violation and to provide clear expectations of what happens in the event of a violation. The passage of this bill will go a long way toward accomplishing the common goal of responsible alcohol beverage service.

Cindy Schiller, Nampa, Idaho, representing Treasure Valley Alcohol & Drug Coalition (TVADC) and Community Coalition of Idaho (CCI), testified in support of **H 450**. **Ms. Schiller** stated that a national organization report that enforcing underage drinking laws is the number one deterrent to underage drinking. She asked the Committee to support this bill.

Testimony in opposition to H 450: Jan Sylvester, Meridian, Idaho

Lt. Clements asked if there were any further questions about the 200% in the bill. **Senator Davis** stated that he had some alternative language to review regarding the monies in the fund that can be expended. On line thirty, looking at the word "current," were you trying to apply it to 2012 or the current fiscal year? **Lt. Clements** said that the 200% of the appropriation for that year would roll back to the General Fund so the fund wouldn't grow to much.

MOTION:

Senator Davis moved, seconded by **Senator Fulcher**, to send **H 450** to the 14th order for possible amendment.

Senator Davis noted that he would consult with his counterpart in the House to ensure that if the amendments are made quickly, there would still be time to get **H 450** through the legislative process. If the answer is no, then the inclination is to advise the ISP to bring this legislation back for improvement next year. There are only two amendments to the bill: (1) On line twenty-five, change "funds may be expended pursuant" to "the expenditures in the fund shall be subject to legislative appropriation for use by the ISP and ACB" and pick up the remaining language in that sentence. (2) On line thirty where it says "the current fiscal year," change the word "current" to "that" fiscal year. That is the target the ISP wants to achieve and that is the intent of the motion.

Chairman McKenzie asked for a vote on the motion to send **H 450** to the 14th amendment.

VOTE:

The motion carried by voice vote.

S 1348

RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT to revise provisions relating to health care providers unwilling to conform to the desires of patients and those authorized to consent for them.

Senator Nuxoll introduced **S 1348** stating that this bill is a pro-patient bill and a preventive measure bill. The reasons for the changes are; patients need to be protected from involuntary denial of food and fluids and from involuntary denial of life preserving medical treatment. Patients and their families, not others, should be able to decide whether their lives are worth preserving with lifesaving medical treatment, food, and fluids. **Senator Nuxoll** proceeded through the bill, explaining each change and the reason for that change. Points that are important to consider are

- Who should make the life/death decision; the patient and family or the doctor?
- Is it the patients right to decide how he/she wants to live, even for a short period of time?
- This is a balance between extremes: (1) keeping patients alive by machines while in a vegetative state and (2) letting patients die by refusing treatment based on personal opinion against individual directions or advanced directives.
- What is the definition of "good faith effort?"
- How is "medically inappropriate or futile" interpreted?

Senator Nuxoll addresses these issues in her explanation of the bill and how the bill provides a standard to be followed by the patient and/or surrogate and by the physician. The bill has been reviewed by the following entities and has their support.

Right to Life of Idaho

Idaho Chooses Life

Cornerstone Family Institute

Idaho's Affiliate of Focus on the Family

Idaho Council for Developmental Disabilities

Senator Nuxoll announced that there had been a compromise between the Idaho Medical Association and Idaho Right to Life resulting in some amendments that will be made to the bill. **Senator Nuxoll** requested that **Jason Herring**, Right to Life of Idaho, be allowed to speak for this bill.

Mr. Herring testified in favor of **S 1348** stating that they had been working diligently to come to a compromise that would satisfy all parties involved. **Mr. Herring** introduced **Ken McClure**, who spoke on behalf of the Idaho Medical Association (IMA). **Mr. McClure** had a draft of the changes made to **S 1348** that met the requirements agreed upon during the discussions leading to the compromise. The IMA has been troubled by legislation that deals with end of life care. End of life care is a personal thing for doctors as they deal with it every day.

The IMA was concerned with the implications of the original bill that physicians are making decisions that discriminate between patients. That is a violation of doctors' ethics, a violation of the Hippocratic Oath, and a violation of Idaho law. The focus of the new language makes it clear that the patient is "in the driver's seat" with respect to the degree or standard of care he/she wants. *Section 39-4515 (3), Idaho Code*, outlines the withdrawal of care segment of the bill and the changes that were made. This section was removed from the euthanasia section because it is not related to euthanasia. **Mr. McClure** addressed all the changes that were suggested by the IMA. The IMA's view is that this bill puts the patient in charge, it balances the rights of patient versus the ability of medicine to do some things and the inability of medicine to do other things. **Mr. McClure** noted that this bill does not conflict with changes made in the earlier bill, **S 1294**, that came from the Health and Welfare Committee.

Senator Stennett asked if this would only apply to a patient who is lucid and conscious and able to determine what choices to make. **Mr. McClure** responded

not entirely. This bill only comes into effect when the patient is not competent. If the patient is not competent, the directives are important because they, or a surrogate will make the decision for that patient. **Senator Stennett** asked what happens if the patient decides he/she wants something different than what is in the directive – where does that place the physician? **Mr. McClure** said a competent patient can always withdraw a directive. An incompetent patient who has a surrogate can also give direction. For an incompetent patient without a surrogate, it would be hard for the directive to be changed because they are considered incompetent. However, doctors try to do what a patient wants to be done. If it is legal they will, if family is around, they take the family's wishes into consideration. A family's wishes are typically listened to. **Senator Stennett** stated that she has a problem with this part of the bill. When a surrogate or family can undo the wishes of the patient, it is a whole different area. In the end, a family member can determine the patient's care, is that correct? **Mr. McClure** indicated that there are lawyers in ICU and if families do not agree, then the lawyers get involved. As a matter of practice, if the treating physicians and the hospital staff are aware that the patient wants a different kind of treatment, they are not legally permitted to give that treatment if it is not in the directive. That is existing law and this bill is not going to change it.

Senator Malepeai stated that there are people in Idaho communities that are economically challenged and cannot afford the cost to prepare advanced directives. When there is a situation where there is no advanced directive, and there is no legal family although the persons involved have been considered a family, who then, can make those decisions? **Mr. McClure** responded that advanced directives are easy and they do not require a lawyer. One can be obtained at any hospital in the state and it can be completed at the time of check-in. In the case of someone who doesn't have a directive, authorized surrogates are available to make those choices for that patient.

Mr. Herring confirmed that their lawyers agreed that there was no conflict with **S 1294**. To address some other points raised, the original language did not deal with the administration of comfort care but only the withdrawal of comfort care. **Mr. Herring** provided a side-by-side comparison of the original draft and amended draft of **S 1348** on file with these minutes. This is not an anti doctor bill and it is not an indictment against hospitals. This is a preventative measure.

Mr. Herring continued his explanation, saying that this legislation protects the rights of the patient and is groundbreaking for Idaho in its definition of futile care by making the standard a medical judgment. Medical technology and science has advanced to a degree where people can be kept alive longer than ever before but there may be a time when care becomes futile. This bill recognizes and defines that line. It requires physicians to go beyond that point and protects the patient by preventing a doctor from preempting that line based on a subjective standard.

Monica Hopkins, Executive Director, ACLU of Idaho, testified that originally they were going to oppose this bill. Their concerns echoed the IMA's concerns. Given the substantial amendments to the bill, the ACLU will be neutral until they have time to review those amendments.

Dr. LaVonne Mills, family physician from Pocatello, spoke on behalf of **S 1348**. **Dr. Mills** stated that about seventy five percent of her practice is caring for geriatric patients and adults with disabilities. In addition, **Dr. Mills** is a hospice physician and the medical director for a hospice agency in Southeast Idaho. The Idaho Natural Death Act currently says that doctors are not compelled to provide medical care that they believe is inappropriate or futile and that will not change with these amendments. The doctor can withdraw as the patient's physician as long as they make a good faith effort to assist the patient in obtaining

another physician willing to provide the desired care. The problem with the current statute is that the doctor can refuse to provide or stop the types of medical care that they believe to be inappropriate or futile even against the explicit wishes of the patient or his/her surrogate or advanced directive. There are no guidelines or limits to help the doctor determine that the medical care is inappropriate or futile except that euthanasia is not legal. Supporting these proposed amendments will at least give some additional, reasonable guidance for doctors in making that kind of determination. With these amendments, determination of futile care would need to be based on a scientific medical assessment that death is imminent. In cases of disagreement, these amendments spell out clearly for doctors, health care providers, and ordinary people, that if health care such as the use of artificial nutrition and hydration or antibiotics can actually prolong someone's life, then it is the patient who decides whether or not to use the treatment, not the doctor deciding by him or herself.

Kerry Uhlencott, Legislative Coordinator, Right to Life of Idaho, testified in support of S 1348. **Ms. Uhlencott** gave a narrative of her personal experience when a physician, not the family physician, tried to stop care for her mother. The family doctor had prescribed basic hydration and nutrition through a feeding tube. The secondary physician pursued his objections by contacting other members of the medical staff and ethics committee. Ultimately, the family prevailed. However, if the primary doctor had disagreed with them, under current law, he would have been allowed to stop treatment because "medically inappropriate or futile" was not clearly defined. When it comes to lifesaving treatment issues, the wishes of the patient and/or family needs to be respected and protected.

Julie Lynde, Executive Director, Cornerstone Family Council testified in support of S 1348. This legislation is a proactive and preventative bill that focuses on the important aspects of comfort care, futile care, food and hydration. **S 1348** is an affirmation of the patient's wishes through an advance directive or surrogate. This is good policy because it replaces a standard "good faith judgment" with objective standards. It separates important components of care: comfort care, futile care, and hydration and nutrition. It clarifies the priority of a patient's advance directive, surrogate and the advice of the physician. The proposed amendment provides for a definition of "futile care."

David Ripley, Executive Director, Idaho Chooses Life, testified in support of S 1348. The purpose behind this bill is to strengthen the legal protections for human beings in the state of Idaho. This bill affirms that food and water are not extraordinary medical treatment but a need for human life.

MOTION: **Senator Winder** moved, seconded by **Senator Fulcher**, to send **S 1348** to the 14th order for possible amendment.

VOTE: The motion carried by voice vote.

RS21502 STATING FINDINGS OF THE LEGISLATURE and encouraging all Idahoans to use the year of March 4, 2012, to March 3, 2013, to prepare for the Idaho Territorial Sesquicentennial.

Senator Darrington stated that this is a concurrent resolution to recognize the coming Sesquicentennial of Idaho territory in 1813. A ceremony was held in the Governor's office where the State of Idaho received a contribution of the Lincoln Collection that was given to the State Historical Society, State Archives, and Museum. This resolution asks the communities, groups, and interested parties throughout Idaho to spend the next year in preparation for the celebrations and commemorative events honoring the Territorial Sesquicentennial.

Janet Gallimore, Executive Director, Idaho State Historical Society (ISHS), explained that this concurrent resolution allows Idaho to commemorate its Territorial Sesquicentennial and celebrate the legacies of the territorial era. The ISHS is serving as a catalyst for a statewide, grassroots effort to create a community level program for maximum impact. The passing of **RS21502** will help encourage Idahoans to make the connection between the territorial roots and create legacies for Idaho's future.

MOTION: **Senator Winder** moved, seconded by **Senator Lodge**, to send **RS21502** to print.

VOTE: The motion carried by voice vote.

ADJOURNMENT: Being no further business, **Chairman McKenzie** adjourned the meeting at 9:51 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary