

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, March 12, 2013

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, 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.

CONVENED: **Chairman Heider** convened the meeting at 3:01 p.m.

H 214 **Chairman Heider** said **H 214** relates to putative fathers and would be presented to the committee by Rob Luce, Administrator for the Division of Family and Community Services, Department of Health and Welfare.

Mr. Luce said **H 214** is an act relating to adoptions and putative fathers (men who claim to be the biological father of a child born out of wedlock). The committee has visited the issue in the past. There was a print hearing that became a bill. When it was printed as a Senate bill, it was found that certain changes that had been contemplated did not make it in. Along with constituent concerns and a few other changes that needed to be made, it was determined it was time to start all over again. Rather than redo the bill, it was decided to start again – this time on the House side. **Mr. Luce** said this particular bill can be as simple or as complicated as one likes. It can conjure up all kinds of philosophical debates – debates on abortion, debates on biological mothers' rights versus biological fathers' rights, debates on whether or not this bill will increase more adoptions or fewer adoptions, etc. Or, this bill could be a no-brainer – and that is what it turned out to be for those who spent time drafting it. **Mr. Luce** said **H 214** is a bill that favors children in Idaho and is a bill that is in the best interest of those children. **Mr. Luce** said it is not about abortion, it is not about the biological rights of one parent over another's – it is solely about strengthening adoptions in Idaho and reducing the risks that an adoption will be overturned on the grounds that we currently have laws that favor one parent over another. This bill has been in the works for nearly five years – maybe longer. **Mr. Luce** said **H 214** is the result of work done – with leadership provided by Senator Davis – by himself; Idaho Falls attorney Wiley Dennert; Salt Lake City attorney David McConkie, who is general counsel for The Church of Jesus Christ of Latter-day Saints; esteemed domestic relations Boise attorney Stanley Welsh, who has practiced law for about 50 years; and many others who are extremely bright in this area of the law. Is it perfect? **Mr. Luce** said he would venture to say that the jury is still out on whether it is perfect or not. But, is it a good bill; is it the right bill? **Mr. Luce** said he thinks it certainly is. Is the time right? **Mr. Luce** said yes, that is for certain. **Mr. Luce** said if **H 214** is passed, it will not only further the best interest of the child, but it will clarify in Idaho law that putative fathers have to strictly comply with the law in order to protect their rights. It will also establish a date certain within which putative fathers must act in order to protect their rights; it will establish one exception to that date certain; and it will direct the department to produce a pamphlet and host, on the world wide web, a public

service announcement that will actually explain the law in this area. **Mr. Luce** continued his presentation with a slide show (See Attachment 1.)

Senator Bock apologized for interrupting and said he was looking for a clear definition of putative father in the bill and asked if it is in some place in there. **Mr. Luce** said he did not believe it is in Idaho Code. **Senator Bock** asked if that would be wise. **Mr. Luce** said the authors of the bill could put that in code, but that he did not know if it was reason enough to hold up the bill. **Vice Chairman Nuxoll** asked what the "date certain" is. **Mr. Luce** said the date certain is for a father to protect his rights. In the general case, it is the date that the petition is filed to terminate the mother's parental rights. For example, if a child is born Sunday morning, most attorneys and most agencies would have the papers to terminate the mother's parental rights when the courthouse opened on Monday morning. **Mr. Luce** said the general rule is that it is "a race to the courthouse" because if a mother has decided to give up her baby for adoption, the paperwork would have already been created and all that would be needed for that paperwork was the child's birth date. Once those adoption papers are filed, if the father has not commenced paternity proceedings and put his name on the putative father registry, his rights are cut off. **Senator Schmidt** asked – in regard to "lack of knowledge of the pregnancy is not an acceptable reason for his failure to timely file" – if a putative father did not know of the child and did not file a petition, does that mean he has surrendered his rights? **Mr. Luce** said that is correct, but is not new in either Idaho Supreme Court case law or U.S. Supreme Court case law. It is a restatement of current law. **Senator Lakey** asked, in the scenario in which a mother takes off before the child is born, what a father must do to protect his rights. **Mr. Luce** said at the particular point in time when the father finds out, he must prove, by clear and convincing evidence, that it was not possible for him to commence proceedings to file with the putative father registry – it was through no fault of his own. **Senator Lakey** asked about the putative father registry. **Mr. Luce** said the putative father registry is a registry maintained by the Department of Health and Welfare Vital Statistics Unit. It is a one-page document and is not a burdensome or expensive process. **Mr. Luce** said the commencement of paternity proceedings would be more onerous.

Senator Bock said the verbage "through no fault of his own" seemed to be inconsistent with "lack of knowledge of the pregnancy is not an acceptable excuse" and asked how that works. **Mr. Luce** said it is a very limited and case-specific driven for a court to decide whether an individual will fit into that or not. The situation trying to be addressed can be best described by three cases that occurred in Utah last year. Last year, the Utah Supreme Court – for the very first time in maybe twenty years, certainly ten – unwound not one, but two adoptions involving putative dads. A district court unwound a third in the span of less than eleven months. All were on the grounds that the fathers were defrauded. One involved a military officer whose name was on the birth certificate. Four years later, the court unwound that adoption. Another adoption that was unwound involved a mother who not only defrauded the father, but misrepresented to the court the facts of the father's involvement, where he was, what she had told him about the pregnancy and what she intended to do. **Mr. Luce** said how this will play out – or for him to even predict how this is all going work – he does not know. **Senator Bock** asked if there are any standards for the courts to use to determine the father has provided "clear and convincing evidence." **Mr. Luce** said the language in **H 214** has been tested by courts in at least three states. **Senator Hagedorn** asked where the "ten days" number came from and if it is a standard number. **Mr. Luce** said the number was a compromise from what other states have done in the area of putative father registries. States across the country have gone anywhere from thirty days to seventy-two hours. Uncertainty in adoptions is a very bad thing – thirty days could be considered too long, seventy-two hours too short.

Chairman Heider thanked **Mr. Luce** and asked him to proceed with his slideshow presentation.

Mr. Luce said the authors of the bill did not want adoptions overturned in Idaho for the reason that state laws favor what is quick over what is right. This legislation addresses those issues, it adds clarification and consistency, it strengthens adoptions and it reduces the chances that Idaho will see adoptions unwound.

Vice Chairman Nuxoll asked Mr. Luce to explain the pamphlet and the registry. **Mr. Luce** said the registry is the result of a US Supreme Court case that came out of the state of New York. After that case came out, every state ended up with a putative father registry as a way for fathers to protect their rights. **Vice Chairman Nuxoll** asked, if a father signs up in that registry, does it mean he wants to retain his rights? **Mr. Luce** said it is one of two things a father must do to protect his rights. He must sign on the registry and commence paternity proceedings. **Mr. Luce** said the pamphlet is going to go into what the law is and what fathers must do if they want to protect their parental rights. **Senator Schmidt** asked for clarification to the verbage "either parent" or "both parents" must be involved in the proceedings to establish paternity. **Mr. Luce** said that is correct – it is either or both. **Vice Chairman Nuxoll** asked how long a putative father has to establish his rights. **Mr. Luce** said some folks would say a father has the entire term of the pregnancy to put their name on the putative father registry and commence paternity proceedings and, in fact, that is true.

Chairman Heider asked if anyone in the audience wanted to speak. **Chairman Heider** thanked Mr. Luce for this attendance and said he had given a very good explanation of **H 214**.

MOTION: **Senator Martin** moved that **H 214** be sent to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion.

DISCUSSION: **Senator Bock** said he had trouble agreeing that **H 214** protects fathers and that he thought it went too far, too fast and required a putative father to do impossible things to protect his rights. **Senator Bock** said there needed to be a bill that provides the putative father with a chance to assert his rights. **Senator Bock** said **H 214**, as he sees it, takes those rights away, that he will be voting against it and asked for his vote to be recorded.

ROLL CALL VOTE: **Chairman Heider** called for a roll call vote. **Chairman Heider, Vice Chairman Nuxoll, Senator Lodge, Senator Hagedorn, Senator Guthrie, Senator Martin, Senator Lakey** and **Senator Schmidt** voted aye. **Senator Bock** voted nay. The motion carried.

Chairman Heider told the committee that Senator Davis had asked if he could carry **H 214** to the Senate floor. The committee did not object.

ADJOURNED: There being no further business before the committee, **Chairman Heider** adjourned the meeting at 3:44 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary