

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 18, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**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 Lodge** called the meeting to order at 1:30 p.m. and asked the secretary to call the roll.

H 125 **Relating to Guardianship and Conservatorship - Representative Burgoyne** stated this bill will require guardians, conservators and vulnerable adults to disclose their civil judgments and bankruptcies, and to undergo FBI criminal history and background checks. Other provisions of the bill allow, but do not require, courts to require those who will be living with the ward to undergo a criminal history and background check if determined by the court.

Institutions and legal and commercial entities are exempt from the criminal history and background check requirements, as well as the requirement to disclose civil judgments and bankruptcies.

The purpose of this bill is to provide information to the court, but it is not to tell the court what it has to do with that information. The information may not be disqualifying; it is up to the court. Section 1, 2 and 3 of the bill pertain to incapacitated adults, i.e. an elderly person unable to manage his/her affairs. Section 4 of the bill authorizes the Department of Health and Welfare to perform a criminal history and background checks. Section 5 and 6 of the bill pertain to adults with developmental disabilities. Title 15 pertains to visitors and the reference to the evaluation committee carries out the roll of visitor for the developmentally disabled. The coalition behind this bill was the Idaho Council of Developmental Disabilities, the Department of Health and Welfare, the Idaho State Police, various disability advocates and the Trust Estate Professionals of Idaho, Inc. (TEPI).

MOTION: **Senator Hagedorn** moved to send **H 125** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

S 1151 **Relating to Criminal Procedure - Senator Davis** explained the purpose of this bill is to allow courts to reduce felony convictions to misdemeanors and amend judgments of conviction in certain circumstances. A defendant that has straightened up his life can petition the court for modification of the order of conviction. If it has been less than five years, the application can be granted only if the prosecuting attorney stipulates to the reduction. If it has been more than five years, the defendant has to prove his case to the court and the discretion is with the court whether or not to grant it. There are some exceptions. If a defendant is beyond the five year time period and the convicted offense is one of the fifteen listed in the bill, the court can grant the requested relief, but only if the prosecuting attorney stipulates to the reduction. Without the attorney stipulation and with a

conviction of one those fifteen offenses, the defendant would not be eligible for the relief that is provided.

Senator Hagedorn asked why these fifteen offenses and not others. **Senator Davis** said the fifteen does not include sex offender registry or those type of sex crimes, but they are delineated in sub-part (4) of the bill. **Senator Davis** then responded that the list that was part of a compromise with judicial and prosecuting attorneys, plus the language of when prosecutorial consent was needed.

MOTION: **Senator Bock** moved to send **S 1151** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

S 1165 **Relating to Attorney's Fees - Lyn Darrington**, representing State Farm Insurance Company, explained this bill has been a work in progress for many months. She said her client, and other interested insurers had worked with Barbara Jorden of the Idaho Trial Lawyers to reach a middle ground and this is the result. This bill makes a change to Idaho Code § 41-1839 and it only affects one type of insurance claim; uninsured motorists (UM) and underinsured motorists (UIM) claims. These are personal injury claims and are unique in that benefits are only recovered when the insured is legally entitled to collect damages from the at fault UM or UIM driver. This means the insured must be less at fault than the UM or UIM driver. **Ms. Darrington** said this would also give insurers up to 60 days instead of 30 to complete the necessary investigation and make an offer before becoming liable for attorney fees for UM or UIM claims.

Senator Davis asked why there were two different time periods. He wanted to know why 60 days was needed for the UM or UIM claim and only 30 days for the insured. **Ms. Darrington** said it often takes more time to get the medical data and determine exactly what happened.

MOTION: **Senator Hagedorn** moved to send **S 1165** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 30AA **Relating to the Administration of Oaths and Affirmations - Michael Henderson**, Counsel to the Courts, explained this bill enacts a new statute that provides for a matter to be supported by an unsworn written statement which is signed and is declared to be made under penalty of perjury pursuant to Idaho Law. It would also provide that a person who willfully makes a false statement on a material matter in a document including such a declaration commits perjury. These provisions, similar to those in several other states, will facilitate the preparation and filing of many types of legal documents, and will also be helpful in permitting the eventual electronic filing of documents. In addition, the Idaho Code already contains many references to written statements that must be made "under penalty of perjury," but there is nothing in the code that clearly provides that making false statements in such statements constitutes perjury. This bill will repair this omission.

MOTION: **Senator Mortimer** moved to send **H 30aa** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Senator Bock** moved to approve the minutes of March 11, 2013 as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:12 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary