

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, January 24, 2014

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Senators Mortimer, Nuxoll, Hagedorn, Lakey and Werk

ABSENT/ EXCUSED: Vice Chairman Vick, Senators Davis and Bock

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. **Chairwoman Lodge** stated that there was a quorum and welcomed Bob Aldridge to the Committee.

RS 22509 **Relating to Estates - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., stated that the first bill was a housekeeping matter regarding legislative changes to the code that have been made. The references to what was eliminated needed to be removed as well in order to avoid confusion. Mr. Aldridge stated that the first change was on page 1, line 31 which was repeated on page 2, lines 13 and 30 and referenced that the Family Allowance had been eliminated from the Probate Code as it was based on archaic ideas on the function of the probate. He stated that the other elimination was in section 2, page 2, line 4, a change in the time period in which claims could be presented in probate from two years to three years.

MOTION: **Senator Lakey** moved to print **RS 22509**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

RS 22510 **Relating to Guardians - Mr. Aldridge** then stated that Justice Jones pointed out in the Doe v Doe that while the Idaho Code did have some provisions for removal of a minor guardian, it did not have any provisions for termination or modification. **Mr. Aldridge** outlined the addition to page 1, line -16 which was "or upon termination of the guardianship" and on line 20 "if a guardian resigns without the appointment of a successor guardian than that does not terminate the guardianship" stating that there must be a successor in place. In Section 210, lines, 23 through 25, they paralleled the "best interest" test already in place for "removal". A minor over 14 has the ability to object to the appointment and that has been preserved for the modification and termination.

MOTION: **Senator Mortimer** moved to print **RS 22510**. Seconded by **Senator Nuxoll**.
Senator Hagedorn asked for clarification on page 1, line 24 that states the guardianship may be terminated upon petition by an "interested person". What are the parameters of "interested person"? **Mr. Aldridge** responded that in the Probate Code 151201 there was a definition for the term.

Senator Werk asked what would occur if a guardian was not appointed.**Mr. Aldridge** responded that the information was the subject of the next bill.

VOTE: Motion carried by **voice vote**.

RS 22511 **Relating to Testamentary Appointments of Guardians of Minors - Mr. Aldridge** then presented **RS 22511** and stated that, while they have had in the statutes the ability for a parent to appoint a guardian for their minor, there was no procedure if there was a list of possible guardians. He said that the change occurred in lines 29 through 36 where the parent can appoint by Will one or more alternate guardians, in order of priority. If a guardian appointed by will fails to accept within 30 days or files a notice declining to act than the alternate guardian, next in line in priority, can file their notice of acceptance. A minor over 14 has the ability to object to these appointments.

MOTION: **Senator Hagedorn** moved to print **RS 22511**. Seconded by **Senator Werk**. The motion carried by **voice vote**.

RS 22512 **Relating to Probate - Mr. Aldridge** said that two very useful portions of the Probate Code were Summary Administration, a non-probate procedure where a surviving spouse files a petition that acts like a deed that transfers property to them, and a Small Estate Affidavit. This legislation clarifies that neither of these procedures are subject to the three-year provision laid out on page 1, lines 14, 15, 35 and 36 which avoids the conflicting rulings that have occurred in regards to them.

MOTION: **Senator Nuxoll** moved to print **RS 22512**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

RS 22513 **Mr. Aldridge** explained that it is a well known fact that an appointment of a guardianship does not automatically mean that the person has no capacity to do anything, and that it is a matter of looking at the capacity test for whatever action they intend to undertake. That in the case of the conservatorship there was an expressed term that stated it had no effect on capacity. There was no provision for that in the guardianship in the original code. **Mr. Aldridge** cited an Idaho Supreme Court case from 2011 in which an individual, suffering from Alzheimer and unable to act on his own behalf, had his son appointed guardian for him. Subsequently there was an online application for a life insurance policy that disclosed neither the guardianship nor the Alzheimer and named the son as the sole beneficiary. The individual died shortly thereafter and the insurance company, upon investigation, refused to pay. The Idaho Supreme Court held that, in Title 32 along with terms in the Probate Code, the contract was voided. Consequently, an issue with testamentary capacity and how it was defined, along with limited guardianships or conservatorships arose and in response they put together a committee which produced a solution.

Mr. Aldridge said that the solution was in a new section to the code which states that the appointment of a conservator or other protective order does not have an effect on the testamentary capacity of the protected individual; similarly, the appointment of a temporary guardian/conservator has no effect on testamentary capacity. Testamentary capacity is defined as executing/modifying a will or other document that distributes at death, as well as, identifying beneficiaries on life insurance or retirement plans and pay-on-death/transfer-on-death account designation. In order to make it clear that this was not an automatic action, it was stated that nothing alters or amends any of the standard claims, challenges or defenses regarding the validity of the exercise of testamentary capacity by the protected person.

Mr. Aldridge outlined 15-5-427 which was a preservation of the estate plan and stated that a conservator and a guardian both had a duty to continue and preserve the estate plan of the protected person as much as possible.

Mr. Aldridge summarized section 4 and 5, which he had referenced in Title 32, as being enacted in territorial days and reflect an outmoded concept of how mental health is treated currently. He stated that changes occurred in 32-106, lines 25 through 27 in order to update the language to modern standards as well as a change to remove the word "insane" which was replaced by "incapacitated".

MOTION: **Senator Mortimer** moved to print **RS 22513**. Seconded by **Senator Hagedorn**. Motion carried by **voice vote**.

RS 22435

Relating to the Peace Officer Standards Training Council - Rory Olsen, POST Deputy Director, **RS 22435** is a proposed amendment to Idaho Code § 19-5101 on behalf of the Idaho State Police Division of Peace Officer Standards and Training and the Governor's Peace Officers Standards and Training, commonly known as POST. Idaho Code § 19-5101 provides definitions to terms referred to throughout Chapter 51 and specifically to the sections they were seeking to amend. He stated that in § 19-5101D the proposed addition was "or voluntary reserve officer" to the definition of "peace officer" on line 19 of the legislation. Voluntary reserve officers were a vital asset to law enforcement agencies throughout Idaho and have been certified by POST since 1989. There are currently over 290 reserve officers and that they have been certified by POST under the current definition of "peace officer" § 19-5101 subsection D with further definition within the Administrative Rules. During a recent review of provisions for voluntary reserve officers the POST council thought it would be prudent to include "voluntary reserve officer" in the definition of "peace officer". He stated that the POST council formed a subcommittee to seek input from chiefs and sheriffs regarding the need and use of reserve officers. They found that varying agencies depend on reserve officers to provide needed services to the public and voted to seek a legislative amendment.

Senator Mortimer asked if changing the definition would change any aspect of the requirements or conditions in regards to insurance liability or ability to attend POST. **Mr. Olsen** replied that it was simply a matter of addition to definition in order to ensure that reserve officers had the authority to carry out their actions.

MOTION: **Senator Mortimer** moved to print **RS 22435**. Seconded by **Senator Nuxoll**. Motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned at 1:58 p.m.

Senator Lodge
Chair

Carol Deis
Secretary

David Ayotte
Majority Staff Assistant