

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

- DATE:** Monday, March 03, 2014
- 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:** None
- 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.
- PRESENTATION: ISP K9 Program - Major Steve Richardson**, Idaho State Police, stated that at present they just have the one dog stationed in the Jerome Office but will be receiving three additional dogs. One dog will go to Coeur D'Alene, the second dog will be placed in Meridian and the third dog will be stationed in Idaho Falls. The ISP K9 Program is strictly narcotics detection dogs and they are not dual purpose. **Senator Nuxoll** asked do the dogs ever miss finding the narcotics? **Major Richardson** answered that it is not uncommon that a dog will indicate on an area or vehicle where drugs have been recently. **Major Richardson** showed a Channel 2 segment to the Committee on their Canine Program.
- Trooper Otto** stated that Idaho has a huge amount of trafficking with methamphetamine, heroin, cocaine and marijuana going over Idaho's interstates and Idaho only has one dog on duty at this point. Bingo is assigned to Trooper Otto 24/7, he comes home with him, has a kennel and is not a pet. Trooper Otto and Bingo train on a weekly basis with the Twin Falls City Police Department K9 Program. Bingo is a passive indication dog; indication alert means a non-trained response. When Trooper Otto runs around a car or an area there will be a change of behavior in Bingo. When Bingo is doing his own searching he may have a deep nasal breathing or a fixation on a certain area, that response is an alert. Alerts are easy to defend in court because it is a non-trained response. The dogs are trained in Utah with their handlers for two months, ten hours a day, four days a week and trained on nothing but narcotics area searches - cars, rooms, packages, and luggage. Then the dog must go through a certification process in Utah, and when the dog is brought to Idaho it must be certified in Idaho. **Trooper Otto** demonstrated Bingo's abilities to locate narcotics by planting some scented cotton balls in the Committee chamber.
- RS 22993C1** **Relating to Uniform Controlled Substances**, with a letter of unanimous consent request from the Health and Welfare Committee to print the RS.
- MOTION:** **Senator Lakey** moved to print **RS 22993C1**. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

RS 22920

Relating to the Idaho Uniform Business Organization Code request from Senator Davis to print the RS. **Senator Davis** stated **RS 22920** has 317 pages so the Committee packets have only the outline of the Uniform Business Organization Code (see attachment 1.) The red lettering represents the work of the Uniform Law Conference and the blue is not the work of the Uniform Law Conference instead represents the appropriate law section that has reviewed the material. This legislation relates to unincorporated business organizations and adopts the Harmonized Uniform Business Organizations Code created by the Uniform Law Commission. The purpose of the legislation is to harmonize Idaho's unincorporated entity statutes so they can be integrated into a single code of entity laws. In addition to the uniform law, at the request of the Corporate Section of the Idaho State Bar this legislation includes the laws relating to general business corporations and nonprofit corporations in order to create a single comprehensive state business code.

MOTION:

Senator Bock moved to print **RS 22920**. Seconded by **Senator Werk**. The motion carried by **voice vote**.

S 1250

Relating to Protected Persons - Robert L. Aldridge, Trust and Estate Professionals of Idaho, stated that the Committee has before them the **RS 22513A1** amendment and the original bill. The original **S 1250** Section 1, regarding testamentary capacity, is unchanged; and defines capacity. Section 2 has been deleted in **S 1250** because of the new method that will be used the section will remain unchanged. A new Section 2 in the RS amendment amends existing 15-5 through 4; which is findings and words of appointment. **Senator Davis** asked for clarification on **S 1250**. If you strike everything excepts Sections 1 and 3 the amended RS is the rest of the bill. **Mr. Aldridge** answered that is correct. **Mr. Aldridge** stated in Section 2 (d), lines 31 to 34 parallels what is existing in the conservatorship code. Section 3 remains the same. Section 4 has been changed to include new language in § 32-109. The net effect of these changes are to provide that just because an individual has had a guardian or conservator appointed for them does not automatically mean that the individual has lost capacity. The capacity issue would be a separate determination that would be made in individual cases.

MOTION:

Senator Davis moved that **S 1250** be referred to the 14th Order for amendment. Seconded by **Senator Werk**. The motion carried by **voice vote**.

S 1354

Relating to Bad Faith Assertions of Patent Infringement - Mike Reynoldson, Government Affairs Manager, Micron, stated patents are the lifeblood of Micron Technology. Their company spends \$1.5 billion per year on research and development and is a top ten patent holder in the world. **S 1354** deals with deceptive demand letters to businesses large and small, containing vague allegations of patent infringement and demanding payment from those businesses. **Mr. Reynoldson** passed out an example of a bad faith demand letter (see attachment 2). The entities that send these letters setup shell corporations and then one will shut down and another corporation will start up. While this letter does not have all of the characteristics that are outlined in this bill as to what bad faith assertion activity might look like it represents a view of the characteristic of the demand letters.

There has been further development in this legislation concerning Pharmaceutical Research and Manufacturers of America (PhRMA) (see attachment 3) a letter from the law firm of Risch and Pisca. **RS22892A1** amendments will be added to **S 1354**.

Amy Lombardo - Parsons, Bailey and Latimer, stated patent trolling is not defined in the legislation because it is a behavior, not necessarily the definition of the entity. This legislation focuses on stopping the bad faith assertions of patent infringement. The common theme of the letters sent out by these bad faith assertions threaten litigation or further action if demands are not met immediately by paying an exorbitant licensing fee. The common scenarios are payment of \$1,000 per employee if your business utilized the technology to scan documents to e-mail because of your connection to a network. Any entity that might have a website that has an on-line shopping cart function. In the banking industry requests are made that they owe money because of the use of the technology for ATM transactions. **Ms. Lombardo** explained the specifics of **S 1354** to the Committee. **Senator Davis** stated on page 4 of the bill there is a three year limitation on action. How does this time track with the limitation of actions on the patent holders? Why wouldn't you have a limitation of action in the bill that mirrors there right to make a claim for a breach. If they had knowledge and they make a claim and they have a right to assert a claim for up to six years why wouldn't you want to give a corresponding time shield to the target business. **Mike Meyers** - patent counsel for Micron Technology, answered the limitation in this bill would be three years rather than the action for a patent infringement. There does not need to be a link between the time limit on a patent owners right to assert infringement because what triggers the violation of this act is the sending of the demand letter. If the target of the letter wants to take action within three years that will give the target plenty of time, and if four or five years after the first bad faith letters is sent the patent owner takes another action then the time period would be started again.

MOTION:

Senator Davis moved that **S 1354** be referred to the 14th Order for amendment. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

S 1375

Relating to Suspension of Judgment - Michael Henderson, Legal Counsel for the Courts, stated this bill will clarify some of the provisions in Idaho Code § 19-2604(1), which provides that upon making certain showings, a person who has received a suspended sentence or withheld judgement may have the plea of guilty or conviction set aside, or have a felony conviction reduced to misdemeanor.

First, the list of persons who would be eligible for relief would include all defendants who were not actually required to serve a sentence in the custody of the Board of Correction and all those misdemeanor defendants who were not required to serve a term in the county jail. Second, Idaho courts have often set aside or reduced the convictions of persons who applied for relief following completion of their probation term. But the literal language of this section seems to indicate that relief can be granted only while the defendant is still on probation, since the defendant must convince the court "that there is no longer cause for continuing the period of probation." This bill would make clear that persons who have successfully completed a period of probation can apply for relief. Third, the provision that relief can be granted only "if it be compatible with the public interest" has been interpreted in various ways. The bill would provide that relief can be granted if the court finds good cause for granting it, the same standard that is used to guide a court's exercise of discretion in many other settings. Finally, the bill provides that a violation of the terms of an agreement of supervision with the Board of Correction would not preclude the granting of relief. **Senator Hagedorn** said that good cause was mentioned a few times in the presentation then you referred to a good cause standard: is that defined somewhere or is it implied? **Mr. Henderson** answered it is a standard that is very general and very broad that the court uses to apply in a variety of circumstances. It is not to be inclusive of any factors that relate to the particular persons that may be affected. If you are speaking of a criminal case that would mean society as a whole which could be affected by this.

MOTION: **Senator Davis** moved to send **S 1375** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**.

H 456 **Relating to County Jails - Michael Kane**, representing the Sheriffs Association asked that **H 456** referred to the 14th Order. The Sheriffs Association has been working with leadership in the House, Senate and JFAC and have collectively recommended that it would be reasonable to place a \$45 a day rate rather than \$50. This bill is based upon the daily rate that is paid, by the State, for state prisoners to be housed in county jails. Currently the rate is \$40 per day and there is an agreement between the Department of Correction and the sheriffs to pay \$2.50 per day extra for medical services. This rate has not changed since the year 2000 but in the meantime there has been a 35 percent cumulative inflation. In today's dollars it takes \$54 to buy what was purchasable in 2000. The sheriffs and the counties believe it is appropriate to adjust the rate accordingly.

There are two kinds of State inmates that are held in county jails. One group is either on parole or is being transferred and being held for a small period of time. At any given time there are between 200 to 250 state inmates that are held in county jails under these circumstances. In your packet (see attachment 4) is approximate Idaho jail costs per day; how much it costs a county to house one prisoner. The second group of prisoners in the jails are long term prisoners. The Department of Correction has had the sheriffs hold 400 to 600 prisoners in county jails in lieu of building another prison facility to house them. The prisoners benefit by being in State, the counties benefit by having the extra money to help upgrade their jails and the Department benefits by not having to send prisoners out of State. **Senator Werk** asked are the prisoners supposed to be getting services and programming that is very specific for the inmates. **Mr. Kane** responded that the certified jails where the second group of prisoners are housed have rules, regulations and programs that the jails must provide based upon national standards. **Senator Nuxoll** asked why would the counties want to take these prisoners if they lose money. **Mr. Kane** answered the jails have no choice for the first 250 prisoners because they will be housed in the county jails for any given time for all different reasons. There are jails that are willing to take more prisoners because, as an example, they are building a new jail and need extra money, etc. The jails are not losing money under the circumstances because they have agreed specifically to take prisoners in and they have to hire staff, contract for food, clothing, and medical services. When the prisoners are released and the beds are empty they do not want to lay staff off and break contracts so they take the state prisoners in and fill the beds.

MOTION: **Vice Chairman Vick** moved that **H 456** be referred to the 14th Order for amendment. Seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

MOTION: **Vice Chairman Vick** moved to approve the Minutes of February 12, 2014. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:24 p.m.

Senator Lodge
Chair

Carol Deis
Secretary