

Kandee Yearsley
SB 1067
Committee 2/25

SB 1067 – Relating to the Uniform Interstate Family Support Act

Mr. (Madame) Chairman, members of the committee

Good afternoon, my name is Kandee Yearsley. I am the Child Support Bureau Chief with the Department of Health and Welfare, Division of Welfare. I am here to present Senate Bill 1067 relating to the Uniform Interstate Family Support Act.

On September 18, 2014, Congress passed the Preventing Sex Trafficking and Strengthening Families Act which includes the requirement for all states to enact the 2008 Amendments to the Uniform Interstate Family Support Act, also known as UIFSA, during their 2015 legislative session.

These amendments incorporate provisions of the 2007 Hague Convention on International Recovery of Child Support and Family Maintenance, and are intended to improve the enforcement of American child support orders abroad. In addition, the amendments include some minor technical corrections and changes to reflect advancements in technology that can be utilized to increase access to the courts.

UIFSA 2008 constitutes a limited revision of the act. It adds a definition of record to allow for electronic transmission of testimony, and allows telephonic or other electronic testimony to non-resident parties. Other changes include replacing “under oath” with “under penalty of perjury” for documents and affidavits, and allowing the child support enforcement program to redirect payment of orders when no party lives in the order issuing state.

With regard to international casework, it is designed to integrate the Convention into state law by adding the term foreign country. In prior versions of UIFSA, foreign countries were equated with states.

Finally, sections 46-59 of the amendment constitute a stand-alone procedure to direct a “tribunal of this state” on the dos and don’ts unique to Convention support orders, and are only applicable under the convention.

All 50 states must enact UIFSA 2008 in a verbatim manner for the United States to participate and obtain the benefits of the Hague Convention. Currently 32 other countries have ratified.

This amendment is required for continued receipt of federal funds supporting the child support program which is a required Program under the TANF block grant.

This amendment is designed to help children residing in Idaho receive the financial support due from parents, wherever those parents may reside.

These amendments were drafted and are endorsed by the Uniform Law Commission and I have worked closely with the Idaho members which includes Mike Brassey, Senator Davis, Rex Blackburn, and Dale Higer, to ensure Idaho is aligning with the requirements.

I ask you to send Senate Bill 1067 to the floor with a due pass recommendation and I stand for questions.

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OUTLINE OF SB 1054
RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS

This bill is to help with a major existing problem in decision-making documents, most commonly financial and medical powers of attorney. Every State has its own forms, especially for medical powers of attorney and related medical documents. The Uniform Statutory Power of Attorney Act for financial powers, enacted in Idaho in 2008 in Sections 15-12-101 through 403, has been adopted in a number of other states and is continuing to be enacted in more states, which has helped recognition of financial power documents from other states, but only from those which have also enacted that Uniform Act. There is no true national Uniform Act on medical powers.

A summary of the background and the need for the Act:

- Statutes in all United States jurisdictions permit individuals to delegate substitute decision-making authority. The majority of these statutes, however, do not have portability provisions to recognize the validity of a substitute decision-making document created in another jurisdiction, nor do many have provisions to protect good faith reliance on a substitute decision-making document. Lack of recognition and acceptance of a substitute decision-making document defeats the purpose of a substitute decision-making plan. Once an individual has lost capacity, rejection of a substitute decision-making document often results in guardianship, which burdens judicial resources and undermines the individual's self-determination interests. This bill is intended to promote the portability and usefulness of substitute decision-making documents.
- The term substitute decision-making document is intended to be an broad designation for a document created by an individual to delegate authority over the individual's property, health care, or personal care to a substitute decision maker. Jurisdictions use different nomenclature for a substitute decision-making document. Common terms include power of attorney, proxy, and representation agreement. In some jurisdictions, delegated authority over property, health care, and personal care may be granted in one document. More commonly, as in Idaho, separate delegations are made with respect to property decisions and those affecting health care and personal care.
- The Act does not apply to documents that merely provide advance directions for future decisions such as living will declarations and do-not-resuscitate orders. The critical distinction for this Act is that the document must contain a delegation of authority to a specific decision maker. So in Idaho, the Act would apply to a Durable Power of Attorney For Health Care or a financial power of attorney, but would not apply to a Living Will or to a Physicians Order For Scope of Treatment (POST), Do Not Resuscitate order, or Do Not Intubate order, and so forth.

A summary of the provisions of the Act:

- The Act has a three-part approach to portability, modeled after the Uniform Power of Attorney Act, and therefore already recognized in Idaho for financial powers:
 - First, similar to Section 15-12-106, Idaho Code, Section 3 of the Act recognizes the validity of substitute decision-making documents created under the law of another jurisdiction. The term "jurisdiction" is intended to be read in its broadest sense to include any country or governmental subdivision that permits individuals to delegate substitute decision-making authority.
 - Second, like Section 15-12-107, Idaho Code, Section 4 of the Act preserves the meaning and effect of a substitute decision-making document as defined by the law under which it was created.
 - Third, Sections 5 and 6 of the Act protect good faith acceptance or rejection of a substitute decision-making document without regard to whether the document was created under the law of another jurisdiction or the law of the enacting jurisdiction. Under Section 6(c), refusals in violation of the Act are subject to a court order mandating acceptance and to liability for reasonable attorney's fees and costs. Sections 15-12-119 and 15-12-120, Idaho Code, contain similar provisions.
- The remedies under this Act are not exclusive and do not abrogate any other right or remedy in Idaho, and the bill contains cross-references to such rights and remedies.
- The Act is designed to complement existing statutes that do not adequately address portability and recognition of substitute decision-making documents. Because Idaho has already adopted the Uniform Statutory Power of Attorney Act, most of the provisions of this bill will apply to medical powers of attorney.

Specific provisions of the Act:

- 15-15-102 contains definitions. One important one is “Good faith”, which means “honesty in fact”. This will come up in later portions of the Act. The rest of the definitions are very standard, including that “person” includes entities.
- 15-15-103 provides for when a substitute decision-making document executed outside of Idaho is valid. For financial powers, it must comply with the law of the jurisdiction which is stated in the document, or if none, in which it was created. For medical powers, it must comply with either the law of the other jurisdiction or the law of Idaho. And, copies, including electronic copies, are treated as originals.
- As mentioned above, 15-15-104 states that the meaning and effect of the document is determined by the law of the jurisdiction in which it was created or which is referenced in the document.
- 15-15-105 provides for reliance on substitute decision-making documents. Since Idaho already has the Statutory Power of Attorney Act, and has the Medical Consent and Natural Death Act, cross-reference is made to the applicable sections of those two existing statutes, so that this Act does not change those provisions. Subject to those existing sections:
 - A person that accepts a document in good faith, without actual knowledge that the document is void, invalid, or terminated, or that the authority of the decision-maker is void, invalid or terminated, can assume, without inquiry, that the document is genuine, valid, and still in effect, and that the authority of the decision-maker is genuine, valid, and still in effect. Especially in medical situations, decisions must be made quickly, without delay, and this allows medical personnel to rely on documents produced to them when there is no time, and no effective method, to inquire into the document and the decision-maker.
 - The person asked to accept the document can request, and can rely upon without further investigation:
 - The decision-maker’s assertion of a fact about the individual for whom the decision will be made, or about the decision-maker, or about the document;
 - A translation of the document if some or all is not in English; and,
 - An opinion of counsel as to any matter of law about the document if the person provides in a record the reason for the request.

These all parallel what is in the Idaho Statutory Power of Attorney Act, but add additional protections for medical powers.

- 15-15-106 sets out the obligations to accept the document.
 - The obligation is subject to other provisions of the act and other provisions of Idaho law, including 15-12-120(2)(b), in the Idaho Statutory Power of Attorney Act.

- The person has to accept within a reasonable time if the document purportedly meets the validity requirements in 15-15-103, above. The person cannot require an additional or different document.
- The person is not required to accept the document if:
 - The person would not be required to act if requested directly by the individual who executed the document;
 - The person has actual knowledge that the document, or the authority of the decision-maker, has been terminated;
 - A request for a translation or opinion has been refused;
 - The person in good faith believes that the document is not valid or the decision-maker does not have the authority to request a particular transaction or action;
 - The person makes, or has knowledge that another person has made, a report to adult protection stating a belief that the individual may be subject to abuse, neglect, exploitation, or abandonment by the decision-maker or by a person acting for or with the decision-maker;
- A person who refuses to accept a document in violation of the Act is subject to:
 - A court order mandating acceptance;
 - Liability for reasonable attorney fees and costs in an action or proceeding to mandate acceptance.
- 15-15-107 makes clear that all other remedies under Idaho law still are in place and are not negated by this Act.
- 15-15-109 has been standard in all Uniform Acts since about 1999. It simply complies this Act with various federal electronic acts.
- 15-15-110 makes the Act applicable to all substitute decision-making documents, whether created before, on, or after the effective date of the Act.