

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 10, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

**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 Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

GUBERNATORIAL APPOINTMENT: **Senator Anthon** moved to send the Gubernatorial re-appointment of Mike H. Matthews to the Commission of Pardons and Parole to the floor with the recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 24208 **Robert Aldridge**, Trust and Estate Professionals of Idaho, stated that the Delegation of Powers by Parent or Guardian had been used in various circumstances where a parent hands over their child to another family, often a grandparent, for a temporary period of time. Some reasons for using the delegation are deployment, changes in school districts, substance abuse or other problems of the parent. The use of this privilege is quick and inexpensive. It doesn't preclude an interested person from bringing a formal proceeding, which can happen if the person receiving the delegation is not appropriate to care for the minor. Guardianship proceedings may follow, and they can be expensive and time consuming, ultimately causing a delay in taking care of the minor. Idaho law currently allows a procedure in probate cases for a nomination of a guardian through a will, requiring only acceptance of the nomination to be filed in the probate case by the nominated individual. This bill parallels that law for situations in which the delegating parent is not deceased but has become incapacitated or unable to care for the minor. The existing statute contains provisions for situations where another person has parental rights and also allows an interested person to bring a formal proceeding. Such might happen if the person nominated is not an appropriate person to care for the minor. This bill allows an inexpensive and flexible alternative to more expensive court proceedings but does not preclude such proceedings when appropriate.

Please note that Mr. Aldridge said he decided to pull the RS to work on it further.

RS 24209 **Mr. Aldridge** said that the background for this bill is the same as for **RS 24208**, but it addresses the issue of only an immediate delegation. There have been several requests to allow a parent or parents to make that delegation or guardianship to the person(s) they have chosen, but to have it go into effect only if certain events come to pass. This bill allows a springing delegation, similar to financial powers of attorney. Events associated with this delegation are listed as either incapacity of the parent, incarceration of the parent or certification by the parent that the delegation should become effective. This allows an inexpensive and flexible alternative to more expensive court proceedings, but does not preclude such proceedings when appropriate.

Senator Davis discussed several areas where the language could be confusing. One example is differentiating between "nominating" parent and "delegating" parent. **Mr. Aldridge** conceded that the designation should be changed to "delegating" parent. Other concerns were expressed by Senator Burgoyne, Senator Lee and Senator Anthon.

MOTION:

Senator Davis moved that the bill be returned to the sponsor for additional work. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

RS 24220

Mr. Aldridge explained that Idaho law provides for certain effects of divorce on wills, but a number of situations are not covered by existing law. Such situations can present difficult problems if the divorcing spouses are not aware of the need to make changes. This bill creates a default provision for revocation of certain designations in the event of a divorce. It does not preclude court orders overriding such default provisions, nor spouses agreeing to a continuation of the designations. Section 1 corrects some technical problems in Idaho Code § 15-2-802. Under the Idaho Uniform Probate Code (Code), "person" is a very wide group of not just individuals but entities as well. The proper term in this Code section should be "individual." Also the provisions of (b)(2) properly only apply to an invalid decree of divorce. This section is from the Code, adopted in Idaho in 1972, and these changes have been made in an updated version of the Code. Section 2 adds a new section, also contained in the updated Code, expanding the effects of a divorce past existing provisions and severing Joint Tenancy With Right of Survivorship ownership into equal tenancies in common.

Senator Davis suggested that "person" be changed to "individual." **Mr. Aldridge** agreed. **Senator Davis** asked if it is possible for someone to stipulate that their spouse still get benefits in the event of a divorce with this bill. **Mr. Aldridge** indicated that it was. One would just so specify in a divorce decree or property settlement, or it could be stated in the will itself by specifying that they are to be included even if they are not currently a spouse. There are other types of transactions that this bill also needs to address.

Senator Jordan suggested that "man and wife or husband and wife" need to be neutral.

MOTION:

Senator Davis moved to print **RS 24220**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 24221

Mr. Aldridge stated that many financial institutions in Idaho have not authorized the Community Property with Right of Survivorship (CPROS) option for ownership of Idaho accounts. They are only offered Joint Tenancy with Right of Survivorship (JTROS). This causes problems for basis step-up at the first death of a married couple, since CPROS receives a stepped-up basis on both halves of the asset, while JTROS property receives a step-up on only half of the property. This unfairly penalizes couples who have community property but cannot properly designate their account. This bill solves that problem by stating the community property does not lose its community property status by being deposited into an account, however entitled. This also covers the situation where only one name appears on the account, but the property deposited was community. This bill sets the default provision absent such agreement. The second part of the bill makes it clear a right of survivorship arising from a CPROS designation on an account cannot be changed by a will. A change must be made at the financial institution level. This bill clarifies some existing questions in the law and conforms to the general practice in the State for the questions addressed.

Senator Burgoyne asked what was meant by "provisions of this chapter" found on line 11 of the bill. **Mr. Aldridge** stated that the provisions were the tests on whether something is really a survivorship account to eliminate standards as opposed to a convenience account. The banks want the protection of knowing there can't be something in a will that could be probated 2-3 years later that says it is not a survivorship account. They do not want to be held liable. By not allowing alterations to a will, it gives protection to the person who is named on the joint account. This will protect both the banks and the people whose names are on the documents.

Senator Davis briefly described methods used to avoid probate. He focused on the fact that right of survivorship should not apply only to real estate but to personal property as well. Inheritances, under Idaho law, are the property of the named party. If a divorce occurs after an inheritance, the unnamed party cannot make a claim to it. If those funds are put into a joint checking account, they become community property.

MOTION: **Senator Davis** moved to print **RS 24221**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 24255 **Mr. Aldridge**, Trust and Estate Professionals of Idaho, stated that this bill removes cross references to the term "family allowance" from the probate provisions of the Code.

MOTION: **Senator Lee** moved to print **RS 24255**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

RS 24256 **Mr. Aldridge** described digital assets and their place in today's society. He indicated that this bill is a result of national dialogue and cooperation, including the major players in the digital asset industry and privacy interests. It allows access to the digital assets by a fiduciary and gives account holders control by allowing them to specify whether their digital assets should be preserved, distributed to heirs or destroyed. The fiduciary must provide proof of authority by a certified document. A custodian of a digital asset that complies with the fiduciary's request is immune from liability if they are reasonable and in good faith. Since digital assets travel across state lines nearly instantaneously, and people relocate, it is desirable to have a uniform law in as many jurisdictions as possible.

MOTION: **Senator Burgoyne** moved to print **RS 24256**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:45 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Asst. Secretary