

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 29, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Vice Chairman Nonini

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 of the Senate Judiciary and Rules Committee (Committee) to order at 1:34 p.m. and thanked those in attendance.

RS 24538C1 **Senator Grant Burgoyne**, District 16, introduced co-sponsor Representative Lance Clow, District 24. **Senator Burgoyne** explained that the legislation permits a victim of malicious harassment, stalking or telephone harassment to file a civil petition in court seeking a protective order on behalf of himself, his children or his ward. The court may grant the petition and issue a protective order if it is shown that such conduct occurred within 90 days immediately preceding the filing of the petition and that such conduct is likely to occur in the future thereby causing irreparable injury. The protective order may not exceed one year. The respondent may be directed to refrain from such conduct or from contact with the protected person. Respondent may also be required to maintain a distance of up to 1,500 feet from the protected person. Other provisions may include renewal of such an order in one-year increments, waiver of court filing fees to ensure that Idaho continues to receive federal victim services funding and making it a misdemeanor to violate a protective order.

Senator Burgoyne indicated that it is not possible to determine the number of petitions that might be filed and the impact to the General Fund. Several factors that may impact the fiscal note include processing petitions by judges and other court personnel, entering orders into the Idaho law enforcement telecommunications data base (ILETS), possible legal proceedings resulting from arrests and the waiver of the \$166 court filing fee.

Senator Davis asked why the spouse or other occupants of the petitioner's residence were excluded from the legislation. **Senator Burgoyne** responded that a spouse or other adult member of the household could protect themselves by either joining the petitioner or bringing their own petition. **Senator Jordan** stated that although there may be increased costs, there may also be some increased savings. She appreciated the hard work on this bill and recognized the need for it.

MOTION: **Senator Jordan** moved that **RS 24538C1** be sent to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 24544

Robert L. Aldridge, Trust and Estate Professionals of Idaho, stated that over the last several years the use of the Delegation of Powers by Parent or Guardian has expanded, especially in situations where a parent hands over their child to another family member for a temporary time period. Reasons for its use range from military deployment to parental substance abuse. This legislation would allow letters of guardianship to be obtained under limited circumstances. A nomination of that person can be prepared prior to an occurrence when the nomination is required. If a determination of incapacity is made, the person nominated can take the delegation to the courts, file it with their written acceptance and copies of adjudication or physician's statement, and the court will issue letters of guardianship. Letters will remain in effect as long as the parent is incapacitated. This would avoid an expensive guardianship process.

Senator Davis questioned whether the court would trust the judgement of the parent making the nomination. **Mr. Aldridge** stated that they would. A discussion was held concerning putting a time limit on the nomination. **Mr. Aldridge** stated that if an interested person saw a problem with a nominee, he/she could still intercede and a child protection agency could get involved as well. **Senator Davis** expressed concern that there was nothing in this bill stating that any child protection agency has exclusive jurisdiction over guardianship of any child who comes before them.

MOTION:

Senator Davis moved to send **RS 24544** to print. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

RS 24545

Mr. Aldridge stated that there are times when an immediate delegation of a minor child is required. The bill adds the ability to create a springing power that is triggered by a specific event. The legislation clearly specifies covering minor children and people with developmental disabilities. The added language will also reflect time limits depending on the situation and/or the person delegated. The events that are covered in this bill are incapacity of the parent, incarceration of the parent or certification by the parent that the delegation should become effective. There are clear details on the procedures to be followed and the time periods for which the delegation is effective. The bill reflects that any interested person can bring a formal guardianship proceeding, which gives protection if the delegation is not to an appropriate person.

Senator Anthon questioned whether conservatorship or guardianship is appropriate in these situations. **Mr. Aldridge** stated that a conservatorship is more important because of the amount of money sometimes involved. If a change is involved in a conservatorship, it should be brought before the court and may result in time delays. He indicated that emergency temporary appointments were set up to accommodate those circumstances.

MOTION:

Senator Anthon moved to send **RS 24545** to print. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

Senator Davis indicated he saw an inconsistency in this bill and **RS 24544** regarding whether the physicians need to be "licensed." **Mr. Aldridge** said he would check to see if "licensed" needed to be added to this bill.

S 1300

Mr. Aldridge stated that **S 1300** amends Idaho Code 15-2-802. The legislation affects how divorce relates to various documents, planning methods and beneficiary designations. Idaho law has a very limited automatic effect of divorce on various matters that should be taken care of in the aftermath of a divorce. Divorces are often now handled by parties themselves without using legal advice. The "checklist" of things that need to be done after a divorce is often missed. This bill covers some changes made in terminology. It also adds new subsection 15-2-804, which provides detailed coverage of when probate and non-probate transfers may be revoked by a divorce (see attachment 1).

Senator Davis asked if the language being used was the final approved language by the Uniform Law Commission. **Mr. Aldridge** responded that it was. **Senator Davis** asked Mr. Aldridge to explain what was meant by "nullification of the divorce or annulment." **Mr. Aldridge** stated that if either the divorce decree or the annulment is later over turned, nullification is the general term used for that. **Senator Davis** said that he was concerned with the use of "nullification of the divorce or annulment" being added into the statute.

MOTION: **Senator Davis** moved to send **S 1300** to the 14th Order for amendment. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

Chairman Lodge indicated that Mr. Aldridge and Senator Anthon would work out the details of this bill.

S 1301 **Mr. Aldridge** stated that the effect of this bill covers depositing community property into an account that may not have the names of both married individuals. This legislation would make it clear that depositing community property in an account, however titled, does not in and of itself alter the community property character of the property or the community rights of the property. The second part of the bill protects third parties such as banks or stock companies by providing that rights of survivorship between married individuals that arise from the express terms of the account cannot be altered by the provisions of a Will.

Senator Johnson stated that the word "will" is not consistently capitalized throughout the bill and the statement of purpose. **Mr. Aldridge** said the Legislative Services Office has rules to follow for capitalization and it is not capitalized.

MOTION: **Senator Burgoyne** moved to send **S 1301** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

S 1302 **Senator Davis** stated that this bill strikes the words "family allowance" from the Probate Code and simply removes old language.

MOTION: **Senator Davis** moved to send **S 1302** to the floor with a **do pass** recommendation and that it be put on the Consent Calendar. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

S 1303 **Mr. Aldridge** stated that this bill deals with digital assets and access to them. The legislation balances the need for fiduciaries to have access to digital assets, the need for the privacy of the account to be kept unless the holder is willing to have the account be available and protection for the providers of the accounts. By adding a "designated recipient," this legislation will allow such person to have access to the user's digital assets or to direct the custodian to delete the user's digital assets in the case of death or incapacity (see attachment 2).

Senator Davis stated that there needs to be a way for others to manage digital assets upon the death or incapacitation of the user and this statute addresses that. It provides protection against both federal and State laws of privacy so that the information can be accessed and administered and yet provide privacy protection. It complies with federal copyright laws.

Chairman Lodge said she would make sure the Committee gets a copy of the amendments brought by Mr. Aldridge.

MOTION: **Senator Burgoyne** moved to send **S 1303** to the 14th Order for possible amendment. **Senator Davis** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:50 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Asst. Secretary