

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, March 21, 2016

TIME: 1:30 PM or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Dayley, Representatives Luker, McMillan, Perry, Sims, Malek, Trujillo, McDonald, Cheatham, Kerby, Nate, Scott, Gannon, McCrostie, Nye, Wintrow

**ABSENT/
EXCUSED:** Representative(s) Perry

GUESTS: None.

Chairman Wills called the meeting to order at 4:01 PM.

HR 2: **Rep. Crane** presented **HR 2**. This legislation pertains to public information requests and allows members of the House of Representatives to give authority to the Legislative Services Office (LSO) to process a public information request on their behalf. The member is not giving up their right to respond to the request personally. The fiscal note is for the purpose of hiring a employee for the duration of the legislative session to handle the influx of requests.

MOTION: **Rep. Nye** made a motion to send **HR 2** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Crane** will sponsor the bill on the floor.

S 1300aa: **Robert Aldridge**, TEPI presented **S 1300aa**. This bill concerns the effect of a decree of divorce on various documents, planning methods such as rights of survivorship, and beneficiary designations. Existing 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 proceeding. Divorce proceedings, used to be handled almost entirely by attorneys, are now very often handled by the parties themselves without any legal advice, using pre-made forms. Therefore, the checklist of matters to take care of after or during a divorce proceeding is often missed. This can result in assets passing at the death of one of the parties totally contrary to the actual wishes of the decedent. The parties are not aware of the need for the changes. This issue has been recognized nationally and the Uniform Probate Code, used in Idaho, has been updated to cover those situations, protecting persons who do "pro se" divorce on their own.

MOTION: **Rep. McCrostie** made a motion to send **S 1300aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. McCrostie** will sponsor the bill on the floor.

S 1301: **Robert Aldridge**, TEPI presented **S 1301**. This bill covers the effect of depositing community property into an account that may not have the names of both of the married individuals on the account. This can result in several issues. First, the Idaho Legislature created Community Property With Right of Survivorship for all assets, including not only real estate, but all other assets, including bank accounts and stock accounts. However, many financial institutions are not offering that option and instead allow only Joint Tenancy With Right of Survivorship. This can create tax and other problems. Second, married individuals may have accounts in only one name for convenience, without any actual intent to change the character of the property in that account from community to separate property. Either of these situations can create problems when one of the two individuals either dies

or becomes incapacitated or the parties get divorced. This is especially true in blended families where there are children from prior marriages.

This bill makes 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 in the property. The parties can always, by separate documents, agree to a different result, for example agreeing sums in a bank account will be the separate property of the person whose name is on the account even if the funds were originally community. The second part of the bill protects third parties such as banks or stock companies by providing rights of survivorship between married individuals arising from the express terms of the account cannot be altered by the provisions of a will. Wills may not be probated for years after the death of the person and third parties need to be able to rely on the clear terms of the account without worrying about a future probate suddenly altering those terms.

MOTION: **Rep. Sims** made a motion to send **S 1301** to the floor with a **DO PASS** recommendation.

In response to a question from the committee, **Mr. Aldridge** stated educational seminars will be set up to educate the public regarding what must be included in their wills, especially if they are not utilizing a lawyer to prepare their will. A banker, lawyer or accountant may be aware of these rules and could educate their clients. If a decision were made today in regard to community property, this is likely the conclusion the courts would make. This legislation specifically covers community property as it pertains to bank accounts.

VOTE ON MOTION: **Rep. McCrostie** requested a roll call vote on **S 1301**. **Motion carried by a vote of 15 AYE, 0 NAY, 2 EXCUSED. Reps. Perry and Malek were excused. Rep. Sims** will sponsor the bill on the floor.

SCR 151: **Rep. Luker** presented **SCR 151**. This Concurrent Resolution is the result of information found in a study prepared by the Office of Performance Evaluations titled "Risk of Bias in Administrative Hearings." Data from the study indicates 52% of the various types of contested cases present moderate to high risk of bias. One of the study's recommendations was the Legislature consider establishing an interim committee to study possible contested case changes. This Resolution states the Legislature finds the level of risk of bias unacceptable and authorizes the Legislative Council to appoint an interim committee to undertake and complete a study of potential approaches to mitigate this bias risk.

Sen. Burgoyne testified in support of **SCR 151**. It is important to note, this study was released by the Office of Performance Evaluations on February 22, 2016 and the Office recommended the interim committee.

MOTION: **Rep. Dayley** made a motion to send **SCR 151** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

S 1360: **Sen. Rice** presented **S 1360**. This legislation amends the requirements on information given to the Legislature for rules review to require a brief written summary of substantive changes previously incorporated by reference of revised substantive differences. Often the changes are presented as a simple update from one manual to another and the substantive changes are not explained.

MOTION: **Rep. Trujillo** made a motion to send **S 1360** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Trujillo** will sponsor the bill on the floor.

MOTION: **Rep. Wintrow** made a motion to approve the minutes of the March 15, 2016, meeting. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:41 PM.

Representative Wills
Chair

Katie Butcher
Secretary