

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 06, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, Nye

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 1:30 p.m.

MINUTES APPROVAL: **Senator Nye** moved to approve the Minutes of February 13, 2017. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

S 1120 **Senator Lakey** District 12, stated that this legislation is a result of a situation that arose in Nampa, Idaho. He indicated that Tiffany Hales, the attorney who represented the property owners, would outline the circumstances.

Tiffany Hales, attorney from Bryan Webb Legal, **Ms. Hales** stated that she represented Brian and Renae Prindle from Nampa, Idaho in the situation which resulted in this legislation. The Prindles put their house on the market in the fall of 2015, decided to move in with Renae's parents, and received an offer to sell their house contingent upon the buyer of their house selling her home in California. During this time they drove by often to check on the property. In March of 2016 they found a vehicle in the driveway, children running around and the front door open. A woman named Debbra Smith identified herself to Brian as the renter of the house, stating that she had found the house on Craigslist, paid a man \$1,500 for rent, and presented a contract which Brian had never seen before. Brian told her he was the owner of the home and was going to call the police. The police arrived, Debbra produced the contract, and Nampa Police Department (NPD) determined this was a civil matter and would not get involved.

The next day Brian had a discussion with Debbra telling her that the house was for sale, and had a buyer ready to close within 30 days. She agreed to move out two days later. When the Prindles returned two days later, they found that the locks had been changed and they were unable to enter. They were able to enter the house through a sliding door in the back. They found the house dirty, holes in the wall, and the house smelled of marijuana. They also found pipes used for marijuana and a zip lock baggie that appeared to have marijuana residue in it. Debbra returned to the house and found that the Prindles had the locks changed to allow their entrance, and that she could no longer get in. She called NPD. They called the Prindles and required them to give Debbra keys to the home and told them they could not have the utilities turned off.

Ms. Hales told the Prindles that she knew Debbra Smith because she had evicted her approximately 3 days before she began occupancy of the Prindles' property. She indicated to the Prindles that if Debbra had \$1,500.00 to give to someone when she "rented" their home, she would have had \$1,500.00 to stay in the previous property.

Ms. Hales reviewed the law to determine how to evict a squatter. She determined from her research that there was a hole in Idaho's eviction statute that needs to be fixed in order to protect individuals who find themselves in the position of the Prindles (see attachment 1).

Senator Hagedorn stated that he had a similar problem and the police officers didn't have an issue charging the people with trespass. He asked why the same rules couldn't apply in this situation. **Ms. Hales** indicated that since Debbra presented the contract, the Nampa Police concluded that it was a civil matter to be addressed by the courts.

Senator Foreman asked if anyone determined whether the contract was fraudulent. **Ms. Hales** responded that since the situation was resolved, no judge viewed the contract.

Senator Nye asked what was meant in reference to "treble damages" referenced in the new legislation. **Senator Lakey** responded that the intent was to provide additional protection. If a landlord used this as an opportunity to evict someone more quickly who had a legitimate lease and tried to use the forcible detainer to get them out sooner, it would be brought in bad faith. In that case the renter could be awarded treble damages against the owner for bringing the claim in bad faith.

Senator Lakey stated what the bill proposes. He indicated that it would modify the definition of forcible detainer, taking out the old reference to night time, so it applies to someone who unlawfully enters the residence day or night. If they refuse to leave on demand, and there is no lease agreement in place, this gives the landlord (property owner) the ability to utilize the forcible detainer expedited eviction process. There must still be a complaint filed and all items contained on page two of the legislation must be met. An address of the property must be given. The defendant must be in possession of the premises. They must meet the definition of forcible detainer. There must be no lease or other agreement in place for that individual and that the plaintiff's are entitled to the premises. The court has to schedule a trial within 72 hours, not evict the person within 72 hours. The individual has to be served at least 24 hours prior to the trial setting.

Senator Burgoyne questioned the meaning of "schedule a trial within 72 hours."

Senator Lakey explained that the intent is that they set the date for the trial within 72 hours (excluding weekends and holidays) of the complaint and summons being filed thus expediting the process.

Senator Lee asked how the courts felt about the process in regard to lead time.

Senator Lakey stated that they originally started out with a 48 hour time limit and extended it to 72 hours excluding weekends and holidays.

Senator Hagedorn asked why this type of action would not fall under Idaho Code Title 18 Chapter 70? **Senator Lakey** indicated that in this particular case, he believes that when the Nampa Police Department saw the contract she showed them, they were concerned about becoming involved in a civil issue.

Senator Nye asked if this legislation would allow treble damages for intentional infliction of emotional distress. **Senator Lakey** responded that this legislation is talking about actual damages not causes of action.

Senator Davis asked why a property owner whose renter has not paid rent and has made meth on the property has to wait 12 days for a trial but for a squatter it is only 72 hours. **Senator Lakey** stated that there is a more expedited process for making meth and nonpayment of rent or other areas in which the agreement has been violated. Idaho Code § 6-310 is only an action for possession. **Senator Burgoyne** asked if Idaho Code § 6-310 is only an action for possession, then what are the damages? **Senator Lakey** stated that damages would be considered after the person was removed. **Senator Burgoyne** asked if one could be awarded damages under the language of Idaho Code § 6-310. **Senator Lakey** stated that Subsection 5 relates to bad faith action that would be raised by a landlord if there was a landlord/tenant relationship. **Senator Burgoyne** commented that when a statute is amended, there is always the question of the whether the amendment has to own the original statute as well as the amendment.

Wendy Chapman represented the National Association of Residential Property Managers (NARPM) and is the owner of 208 Houses Property Management, LLC. She stated that NARPM is an association designed for real estate professionals who know first-hand the unique challenges of managing single family and small residential properties. NARPM promotes a high standard of business ethics, professionalism and fair housing practices. **Ms. Tanner** testified in support of **S 1120** stating that it would add clarification and protection of the rights and privileges of property owners without infringing on the rights of legal tenants in the State. This bill would allow property managers to assist property owners in reclaiming possession of their property more quickly which would allow them to generate rental income and avoid longer periods of loss (see attachment 2).

Cory Tanner, testified as a board member of NARPM and an individual property manager. He currently has several commercial properties and over 500 residential units under management. **Mr. Tanner** stated that he had dealt with several evictions and in each case the property owner was the loser in the end. He supported this legislation to help reduce the burden carried by property owners and maintain control of their investments.

Senator Davis suggested sending this legislation to the 14th Order for an addition of an emergency clause. **Senator Lakey** stated that there were not any imminent situations so he would prefer a normal effective date on the legislation.

MOTION:

Senator Davis moved to send **S 1120** to the floor with a do pass recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

S 1125

Senator Grant Burgoyne, District 16, stated that this legislation amends Idaho Code § 1-1624. This bill will permit the Idaho Supreme Court to seize taxpayers tax refunds and credits when they have delinquent debts owing to the courts. Debts include fines, court costs, surcharges, penalties, fees, restitution, the cost of indigent defense services and other charges in criminal or civil case judgments or payment agreements. The reason for the bill is that administrative and accounting issues have arisen regarding the agreements signed by convicted criminal defendants for the payments of said costs. Payment agreements typically require monthly payments and court practice has been to seize tax refunds for delinquencies when no payments have been made for two months preceding the seizure decision. Issues have arisen about whether there is a delinquency when the total amount paid equals or exceeds the total amount due to that point in time under the agreement even if the two months most recent have been skipped. While some of the costs of supervision agreements are enforced through tax refund seizures, some such as parole through the Idaho Department of Corrections (IDOC), are not. On page 1 line 29 the reference to civil actions is removed because the courts were not aware of tax refund seizures being used for civil cases, nor does it seem like civil cases would give rise to the "any debts of the courts" language. Beginning on page 1 line 34, the statute is amended to require that payment agreements

enforced by tax refund seizures: 1.) be filed with the court and placed in the court's case file; 2.) be approved by the court; 3.) provide that all payments shall be made to the clerk of the court; 4.) notify taxpayers of payment due dates, the statute's seizure remedy for enforcing payment and the statutory right to object to seizure. Changes are important to assure that the clerk knows what is required to be paid, what is paid, so delinquency can be determined accurately. Changes further assure that the debtor knows of the tax remedy for noncompliance, and that there is a right to object if a mistake is made. Nothing in these changes will require any cost of supervision agreement to be filed with the court or for payments to be made through the court. The IDOC can keep on doing its cost of supervision agreements with its parolees as it chooses to do. Changes mean that in order for a cost of supervision agreement to be enforced through tax refund seizures, the new provisions will not be followed. The IDOC does not enforce their cost of supervision agreements with tax refund seizures. The definition of "delinquent" is changed to make clear that those who skip some monthly payments after previously paying ahead but whose aggregate payments still equal or exceed the total amount of required payments will no longer be regarded as delinquent. The current statute says a debtor can seek a waiver of the tax refund seizure. The waiver says the seizure was valid but the court may forego it anyway. "Waiver" was changed to "objection" to make clear that the only seizures that will be foregone are those which were inappropriate for some reason. There were some issues at the Supreme Court with the transition of ISTARs to Odyssey. The bottom line is that the fiscal impacts are minimal and are not expected to result in increased appropriations at either the State or local level. The amendments were created to provide a more uniform system across the State so the Supreme Court knows when it requests a tax refund seizure that it is appropriate.

Senator Davis asked how this would be done with a credit. **Senator Burgoyne** stated that he wasn't aware of a credit being used. There may be a credit such as a grocery tax credit where a person may not have paid any advance payment on taxes but by filing the return they get a "credit." That could be seized to satisfy the court debt. **Senator Davis** asked about exemptions. **Senator Burgoyne** said that tax exemptions paid over and above what one has paid through the year sounded like a refund.

Michael Henderson, legal counsel with the Idaho Supreme Court, stated that he didn't know the answer to Senator Davis's question.

Senator Lee voiced concern about the consequences of taking out the ability to assess any civil fines in court cases. **Mr. Henderson** stated that the Supreme Court was aware that it was possible to owe in a civil case, but had not seen that actually happen. **Senator Lee** asked for the difference between the proposed language and what is currently called a "court judgment" to be explained. **Mr. Henderson** stated that under the statute as it is currently written, there is no requirement that "court judgments" be in a court case file and the court approval is not required.

Jim Harris, retired prosecutor, stated that he became aware of the problems with this statute when he represented a client who lost a substantial amount of money being seized pursuant to this statute. The Canyon County Clerk determined that the person on probation had been victimized because she had paid substantially more under the contract she made with the probation officer than was due at that time according to the contract. She had paid based on the schedule established by the probation officer. It was determined that there was confusion among county clerks as to how this seizure was supposed to operate. Based on the misinterpretation or misunderstanding of the statute, the county clerk's offices were violating the terms of the contracts based on their interpretation. An Attorney General's opinion was obtained on the proper interpretation and was issued in June or July of 2016.

Senator Lee stated that Chairman Lodge had left and asked for any questions.

Senator Davis, Mr. Harris, Senator Burgoyne, and Senator Anthon had a short discussion about how unpaid taxes may impact this legislation. They determined that advice would need to be obtained from an individual trained in that area.

MOTION: **Senator Anthon** moved to send **S 1125** to the floor with a do pass recommendation. **Senator Davis** seconded the motion. Motion passed by **voice vote**.

ADJOURNED: There being no further business, **Senator Lee** adjourned the Committee at 2:44 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant Secretary