

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 02, 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 meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Johnson** moved to approve the Minutes of February 8, 2016. **Senator Souza** seconded the motion. The motion carried by **voice vote**.
Senator Nonini moved to approve the Minutes of February 12, 2016. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

RS 24625 **Sandra Evans**, Idaho Board of Nursing introduced the legislation by number.

MOTION: **Senator Davis** moved that **RS 24625** be printed. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

RS 24646 **Michael Kane**, Idaho Sheriff's Association, reported that, at the request of the Committee, he met with individuals who had concerns about this bill and with other stakeholders. All items of concern have been deleted. This legislation is the result of those changes, and the bill text now includes the following crimes: terrorism, human trafficking, hijacking and supplying arms to a criminal gang.

MOTION: **Senator Nonini** moved that **RS 24646** be printed. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

S 1361 **Senator Todd Lakey** pointed out that this bill clarifies which funds can be used by counties to pay for their public defenders. The three funds counties can use are the justice fund, their current expense fund and their indigent fund, or any combination thereof. This provides them with flexibility.

MOTION: **Senator Anthon** moved to send **S 1361** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. Motion carried by **voice vote**.

S 1362 **Senator Davis** explained that this bill simply corrects an overlooked sentence in Idaho Code § 10-1111 passed last year that increased the enforceability of judgments from five years to ten years.

MOTION: **Senator Nonini** moved to send **S 1362** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 491

Representative Ryan Kerby stated that this bill involves non-consensual liens, an obscure type of lien familiar to only a few individuals. It is a type of lien by which a person who becomes angry with another can victimize that person by putting a lien on the victim's property. The victim can be completely unaware of the lien until he or she tries to sell or refinance the property. He detailed the steps involved in filing this lien, pointing out that it is quick and inexpensive for the complainant, but time consuming and costly for the victim. **Representative Kerby** explained that a large group of stakeholders were involved in writing this bill that repeals Idaho Code, Chapter 17, Title 45, and adds a new section, Idaho Code § 45-811. The new section defines non-consensual liens, prohibits the use of this kind of lien, advises how to remove the lien if one is initiated, offers remedies for the victims and provides that the complainant is liable for damages suffered by the victim. The legislation also holds a clerk who inadvertently accepts and files the lien free of liability.

Senator Souza asked if it costs money for the complainant to put a lien against a house. **Representative Kerby** replied that it costs only \$35, less than the normal amount for filing a lien.

Senator Burgoyne expressed concern regarding the possibility of eliminating the use of some legitimate liens that may be needed in the future. He also felt that some of the language was unclear.

Representative Kerby introduced Stacy Pittman, Attorney at Law, who had such a lien placed on her. **Ms. Pittman** shared her story and the difficulties, expense and frustration that the situation presented.

During the discussion, it was disclosed that this type of lien cannot be filed against a public figure. **Senator Souza** asked why public figures are exempt but ordinary citizens are not. **Senator Kerby** explained that it was originally set up to protect police officers, firemen and trial lawyers who were the main targets. This bill will extend the protections to all citizens.

An extensive discussion ensued, with **Senator Davis** explaining the history of this legislation. Attention was also given to the protection of the clerk.

MOTION:

Senator Souza moved to send **H 491** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

H 429

Michael Henderson, Legal Counsel for the Idaho Supreme Court, advised the Committee that this legislation is recommended by the Supreme Court and originated with judges who preside over problem-solving courts, particularly drug courts. The purpose is to amend the withheld judgment provisions of Idaho Code § 37-2738(4) as they apply to participants in problem-solving court programs and to graduates of those programs. **Mr. Henderson** explained what withheld judgments are and that they are used as an option to imposing a judgment of conviction. The factors a court considers in deciding whether to grant a withheld judgment are:

1. the facts and circumstances of the offense;
2. whether the defendant is a first offender;
3. the previous actions and character of the defendant;
4. whether the defendant might reasonably be expected to be rehabilitated;
5. whether it reasonably appears that the defendant will abide by the terms of the probation;

6. interests of society in being protected from possible future criminal conduct by the defendant; and
7. the impact a record of a criminal conviction would have upon the defendant's future development and/or employment status.

Mr. Henderson identified additional requirements for those seeking a withheld judgment for controlled substance abuse, explaining that some of those requirements are very difficult to meet and they ignore the maturation process by granting no second chances. Idaho Code § 37-2738 was enacted in 1989 and some parts are not congruent with current programs. In view of the present use of problem-solving courts, and the emphasis on rehabilitation and returning to the community, the amendments in this bill would provide added motivation to offenders to engage in treatment and to maintain a sustainable recovery. They could also assist in making employment and educational opportunities available to offenders. **Mr. Henderson** detailed the process involved in enacting a withheld judgment for controlled substance abuse offenders and the conditions that must be met for the withheld judgment to be granted.

Senator Burgoyne asked if withheld judgements are a matter of public record. **Mr. Henderson** replied that they are. **Senator Burgoyne** inquired why the courts would not narrow the list of criteria for receiving a withheld judgment. **Mr. Henderson** stated that if they were to retain some of the requirements, but narrow them, some offenders who would benefit from a withheld judgment might be disqualified.

MOTION: **Senator Nonini** moved to send **H 429** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

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

Senator Patti Anne Lodge
Chairman

Carol Cornwall
Secretary