

**MINUTES OF THE
HOUSE JUDICIARY STANDING COMMITTEE MEETING
Room 20, West Office Building
February 14, 2012**

MEMBERS PRESENT: Rep. Kay McIff, Chair
Rep. LaVar Christensen, Vice Chair
Rep. Derek Brown
Rep. Fred Cox
Rep. Brian Doughty
Rep. Chris Herrod
Rep. Ken Ivory
Rep. Brian King
Rep. V. Lowry Snow
Rep. Mark A. Wheatley
Rep. Brad Wilson

MEMBERS ABSENT: Rep. Eric Hutchings
Rep. Paul Ray

STAFF PRESENT: Mr. Jerry D. Howe, Policy Analyst
Ms. Linda Black, Committee Secretary

NOTE: A list of visitors and a copy of handouts are filed with the committee minutes.

Rep. McIff called the meeting to order at 2:05 p.m.

MOTION: Rep. Wheatley moved to approve the minutes of February 10, 2012. The motion passed unanimously, with Rep. Brown, Rep. Herrod, and Rep. King absent for the vote.

H.B. 405 **Jury Service Amendments** (*Rep. C. Watkins*)

Rep. Watkins presented the bill to the committee.

MOTION: Rep. Cox moved to pass the bill out favorably. The motion passed unanimously. Rep. Brown was absent for the vote.

H.B. 141 **State Sovereignty and Rights of Set-off** (*Rep. L. Christensen*)

Rep. Christensen presented the bill to the committee.

MOTION: Rep. Wilson moved to amend the bill.

SUBSTITUTE

MOTION: Rep. King moved to amend the bill as follows:

1. Page 1, Lines 16 through 21:

16 ▶ reserves all rights of the state to claim a credit or set-off for any amount
 inequitably or unlawfully claimed by the federal government. { ~~the~~
 state
17 ~~may incur due to the loss or wrongful withholding of its public lands or for the~~
18 ~~incarceration of illegal aliens that are not reimbursed by the federal government~~
19 ~~against any amount that the state is claimed to owe the federal government; and~~
20 ~~—▶ provides that the state is relieved of all liability for the payment of funds~~
 owed to
21 ~~the federal government for which the state exercises its rights of set-off.~~ }

2. Page 2, Lines 38 through 47:

38 the State of Utah against any amounts it claims to have been inequitably or
unlawfully imposed by the federal government. { ~~the state may be~~
~~unlawfully claimed to owe the federal government.~~
(2) The state may exercise and apply as a credit, any amounts the state incurs due to
the
40 violation of the state's sovereign powers or other acts and omissions of the federal
government;
41 including:
42 —(a) all costs and damages sustained by the state due to the loss or wrongful
withholding
43 of its public lands; and
44 —(b) all costs of incarceration of illegal aliens for crimes committed in the state if
and to
45 such extent as those costs are not fully reimbursed by the federal government.
46 —(3) The state is not liable for any amounts or federal claims which are subject
to this
47 section or other legal and equitable protections of the state's interests. }

The motion passed unanimously with Rep. Brown absent for the vote.

MOTION: Rep. Wilson moved to pass the bill out favorably as amended. The motion passed. Rep. Wilson was absent for the vote.

H.B. 107 Joint Custody Modifications (*Rep. G. Froerer*)

Rep. Froerer presented the bill to the committee.

MOTION: Rep. Wilson moved to replace H.B. 107 with 1st Substitute H.B. 107. The motion passed unanimously. Rep. Brown was absent for the vote.

MOTION: Rep. McIff moved to amend the bill as follows:

1. *Page 2, Line 45 through Page 3, Line 58:*

45 (b) [~~The court shall, in every case, consider joint custody but may award any form~~
46 ~~of~~
46 ~~custody which is determined to be~~] There shall be a rebuttable presumption that joint
47 legal
47 custody, as defined in Section 30-3-10.1, is in the best interest of the child[-], so long as
48 the
48 party who desires joint legal custody files a proposed parenting plan in accordance with
49 Sections 30-3-10.8 and 30-3-10.9. The presumption may be rebutted by a showing by a
50 preponderance of the evidence that the following circumstances exist:
51 { ~~(i) the parents were not married to each other;~~
52 { ~~(i)~~ (i) domestic violence in the home or in the presence of the child;
53 { ~~(ii)~~ (ii) special physical or mental needs of a parent or child, making
54 joint legal custody
54 unreasonable;
55 { ~~(iv)~~ (iii) physical distance between the residences of the parents, making
56 joint decision
56 making impractical in certain circumstances; or
57 { ~~(v)~~ (iv) any other factor the court considers relevant, including those
58 listed in Section
30-3-10.2.

The motion passed unanimously. Rep. Brown was absent for the vote.

Chair McIff relinquished the gavel to Vice Chair Christensen at 3:15 p.m.

Spoke in favor of the bill: Mr. Justin Traver, citizen
Mr. Jeff Rifleman, citizen

Ms. Jackie de Gaston, citizen
Mr. Dan Duell, Weber Co. Nine-Eleven Project
Mr. Eric Durtschi, citizen
Mr. Grant Durtschi, citizen
Ms. Mary Durtschi, citizen
Mr. Eric Johnson, citizen
Mr. Stewart Ralphs, Legal Aid Society of Salt Lake City

Spoke to the bill: Mr. Todd Stone, citizen

Chair McIff resumed the chair at 3:40 p.m.

MOTION: Rep. Christensen moved to amend the bill as follows:

1. *Page 2, Line 45 through Page 3, Line 58:*

45 (b) [~~The court shall, in every case, consider joint custody but may award any form~~
of
46 ~~custody which is determined to be~~] There shall be a rebuttable presumption that joint
legal
47 custody, as defined in Section 30-3-10.1, is in the best interest of the child[-], so long as
the
48 party who desires joint legal custody files a proposed parenting plan in accordance with
49 Sections 30-3-10.8 and 30-3-10.9. The presumption may be rebutted by a showing by a
50 preponderance of the evidence that the following circumstances exist:
51 { ~~(i) the parents were not married to each other;~~
52 { ~~(i)~~ (i) domestic violence in the home or in the presence of the child;
53 { ~~(ii)~~ (ii) special physical or mental needs of a parent or child, making
joint legal custody
54 unreasonable;
55 { ~~(i)~~ (iii) physical distance between the residences of the parents, making
joint decision
56 making impractical in certain circumstances; or
57 { ~~(iv)~~ (iv) any other factor the court considers relevant, including those
listed in Section
58 30-3-10.2.

The motion passed unanimously.

MOTION: Rep. Wilson moved to pass the bill out favorably as amended. The motion passed unanimously.

The following bills were not heard:

H.B. 130 **Custodial Interference Amendments** (*Rep. G. Froerer*)

H.B. 235 **Offer of Judgment in Civil Cases** (*Rep. K. Ivory*)

H.B. 236 **Alimony Modifications** (*Rep. S. Sandstrom*)

MOTION: Rep. Ivory moved adjourn the meeting. The motion passed unanimously.

Chair McIff adjourned the meeting at 3:55 p.m.

Rep. Kay McIff, Chair