



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

April 21, 2015

The Honorable Luke Malek
Idaho State House
721 N. 8th Street
Coeur d'Alene, Idaho 83814

Re: Senate Bill 1067

Dear Representative Malek:

This office has reviewed the document you provided entitled *Concerns Regarding Idaho State Legislature Senate Bill 1067*. We will address each of the six points set forth in the document. At the outset, it is important to point out all of the references to the bill contained in the document that raises concerns about the amendment related **to the existing provisions of Title 7 Chapter 10 already in effect in Idaho and applicable to foreign countries under Idaho's current law where the existing definition of state includes foreign countries**. In sum, the concerns raised have little to do with the proposed amendments in SB 1067, but primarily focus on current law. With that backdrop, the following responses to the concerns raised are offered.

- 1) The first issue claims that the purpose of the bill was to include specific acceptance of foreign court rulings and asserts that the bill did not contain any specific language protecting against child support orders that might contradict Idaho law. This claim is the opposite of the intent of the legislation. The purpose of the amendments is to enact a uniform mechanism for dealing with support orders from foreign jurisdictions so that Idaho treats an order from a foreign country the same as Montana, or Utah or Wisconsin, and so that an Idaho order is treated the same by any of the foreign jurisdictions that participate in the Convention. It is further the opinion of the Office of the Attorney General, and which has been reinforced through discussions with attorneys from the US Justice Department that the amendment, particularly the provisions found on page 28 of SB 1067 greatly increased protections against oppressive orders or orders that would contradict Idaho laws. This provision insures that an Idaho order will be given full force

and effect in another state or country and that local law will not be substituted in place of Idaho law.

- 2) The second issue that the author of the document takes is with the choice of law provision found on page 20 of SB 1067. Once again we would point out that this provision is already in existing code and already applies to any foreign countries meeting the definition of "state" set forth in 7-1002(21). The author quotes a portion of the provision but fails to acknowledge the limitations that follow. The choice of law provision may apply foreign law, but that application is strictly limited within the statute to specific conditions. The author goes on to state that nothing in the bill reserves the ability for an Idaho court to refuse to honor a foreign order that violates the constitutional rights of a party. This statement is false. The Idaho statutes expressly permit an Idaho court to refuse to honor a foreign order that is manifestly incompatible with Idaho public policy that is set forth in the proposed new section 7-1066 found on page 28 of SB 1067 and the corresponding provision which is set forth in the Convention itself.
- 3) The third point attempts to make the argument that the bill was introduced very late in the session. This is also false. As I believe you have previously pointed out the bill was introduced in the Senate on February 12, reported out of Senate Judiciary & Rules Committee "Do Pass" on March 11, was passed by the Senate 34-0-1 on March 20, and was referred to House Judiciary & Rules on March 23. You may or may not be aware that representatives from the Department and from our Office were asked to meet with Representative Luker and other individuals on April 1, and again on April 8 (although no actual discussions took place on this date). Any delay in the advancement of this legislation is due to the legislative process and not at the request of the Executive branch.
- 4) The fourth point seems to focus on a question of why the Office of the Attorney General is involved in establishing reciprocity agreements. The simple answer is that reciprocity agreements are essentially international contracts regarding how foreign countries and the State of Idaho will handle child support cases across their borders. As the legal counsel for the State it falls to the Office of the Attorney General to negotiate and determine the sufficiency of any state specific reciprocity agreements. Again this is not a new section and continues in Idaho Code even without the legislation having been passed. This provision is consistent with how cross border joint powers agreements are entered into throughout Idaho. See Idaho Code § 67-2329 (Attorney General approves as to Constitutionality and consistency with Idaho Law).
- 5) This point focuses on the inclusion of the term quasi-judicial entity within the definition of foreign tribunal. Although the language quoted is a new section it is a restatement of the definition of tribunal which is currently set forth in Idaho Code § 7-1002(24) (Current definition contains "quasi-judicial" and currently includes foreign countries under the definition of "State" under § 7-1002(21). This section also includes a lot of discussion regarding custody issues, but custody issues are not controlled or evaluated under the provisions of this legislation. Finally, as has been repeatedly discussed the legislation contains the public policy and fairness allowance set forth in the proposed § 7-1066 to

allow an Idaho court to refuse to recognize a foreign order if that order is contrary to Idaho public policy.

- 6) The final point is an accurate statement that Idaho does not have a stand-alone law prohibiting Idaho courts from applying foreign laws. The general hierarchy of legal application by Idaho Courts is:

1. U.S. Constitution;
2. Idaho Constitution;
3. Idaho Statutes;
4. Idaho Case law; and
5. If no law, the common law of England (Idaho Code § 73-116).

In sum, the only time an Idaho court will get to foreign law is if none of the above were to apply in a specific case. These provisions specifically operate to prevent an Idaho court from having to apply foreign law. Idaho courts would not be applying foreign laws under the statute rather they would be agreeing to honor a court order from a foreign jurisdiction if they determine that recognition is appropriate.

I hope this analysis is helpful to you. This letter is an informal and unofficial expression of the views of this Office based upon the research of the author.

Very truly yours,



M. Scott Keim
Deputy Attorney General

MSK/plm