

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Thursday, March 10, 2022

TIME: 9:00 A.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Senators Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: Vice Chairman Ricks, Senator Lodge

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 Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 9:03 a.m.

RS 29777 **Senator Anthon** explained **RS 29777** was a result of discussions between leadership of the majority parties of both the House and Senate. After promulgation of a temporary rule, this proposed legislation would require a negotiated rule making process.

MOTION: **Senator Lee** moved to send **RS 29777** to print. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

S 1340 **Pam Eaton, President and CEO, Idaho Retailers Association**, stated this legislation is in response to an Idaho Supreme Court case that determined that a person who "buys" goods from a seller based upon fraudulent intent and false promises to pay, becomes the "owner of those goods" upon receipt. The act may be fraud, but it is not theft. The ruling was based on the definition of "owner" as being the person who has superior possessory rights. The ruling determined no theft could occur because the person committing the fraud would be considered the "owner" of the fraudulently obtained goods. **Ms. Eaton** explained the ruling appeared contrary to the intent of the theft law. **S 1340** needed to clarify the taking of goods by false promises or fraud does not convey ownership and cannot be considered theft. There were no changes to the Uniform Commercial Code relating to "good faith purchasers." This legislation would protect Idaho businesses from persons engaging in fraud.

DISCUSSION: Jeff White was in attendance to help with questions if needed. **Senator Wintrow** asked how one would prove "fraudulent intent." **Senator Anthon** responded a factor in any kind of fraud case is the intent. What is being referred to is someone intended to defraud someone with never an intent to pay.

MOTION: **Senator Thayn** moved to send **S 1340** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

S 1381

Senator Winder explained **S 1381** relates to coronavirus and the coronavirus vaccines and the situation that had been going on in our country. A decision to have a vaccine is a personal choice. This bill puts a one year hold on vaccinations under certain circumstances as they relate to the coronavirus. There are constitutional protections of employer contract rights in both the state and U.S. Constitutions, and laws can not be passed that would interfere with those rights. Idaho is a right-to-work state and that language is made very clear. **Senator Winder** pointed out some of the specific definitions used in the legislation. Coronavirus and any subsequent identified mutation, modification or strain of severe acute respiratory syndrome is included in the definition of coronavirus. Vaccination, in this context, means the introduction of a coronavirus vaccine into the human body. Foreign jurisdiction means any state, commonwealth, country or nation outside the State of Idaho. When employees have to travel internationally and are required to be vaccinated for admission to other countries, they can still be required to be vaccinated. This legislation also had broad application in the public venue. A business entity in Idaho shall not refuse to provide any service, product, admission to a venue or transportation of a person because that person had or had not received a coronavirus vaccination. Any business entity receiving Medicare or Medicaid funding shall be exempt from **S 1381** requirements as will anyone providing health care in a hospital or care facility. The legislation was a safeguard against discrimination of people based on their vaccination status. **Senator Winder** explained there was a provision that provided for one-time incentives to receive the vaccine. The enforcement action of the bill is a fine of up to \$1,000 per employee who was unlawfully required to receive a vaccination. Attorney fees could be awarded to a plaintiff in case of termination according to the severability clause. The sunset clause on this legislation starts one year after termination or expiration of all state emergencies related to coronavirus in Idaho. An emergency provision was included stating the bill would be in full force and effect upon passage.

DISCUSSION: **Senator Wintrow** asked questions relating to how **S 1381** would affect small businesses and general hiring practices. **Senator Winder** stated that vaccination status can not be the reason you hire or do not hire someone. Small firms and businesses tend to voluntarily get vaccinations and this legislation does not prevent anyone from being voluntarily vaccinated. **Senator Burgoyne** questioned the definition of "business entity," **Senator Winder** asked Chairman Lakey to answer the legal questions. **Chairman Lakey** responded that sole proprietorships would be included in "business entity."

TESTIMONY: **Max Brown** testifying in his own behalf. **Mr. Brown** spoke from his experiences with people who, for one reason or another, could not be vaccinated. Mr. Brown's opinion is anyone vaccinated or unvaccinated could spread the disease, and anyone vaccinated or unvaccinated could get the disease. He stated we cannot discriminate against people because their health would not permit them to be vaccinated. **Mr. Brown** continued that even though some people think the legislation does not do enough, he thinks it lets people know that everyone should be treated with respect and dignity. He encouraged passage of **S 1381**.

TESTIMONY: **Jason Kreizenbeck, representing Micron Semiconductor**, asked the Committee to send the legislation to the amending order to change the enactment date to May 1, 2022 to give large companies 30 days to prepare changes related to how they work with employees. **Mr. Kreizenbeck** suggested exempting federal contractors if the OSHA appeal would go forward as opposed to just referring to federal law. **Senator Wintrow** asked if Micron supported the legislation. **Mr. Kreizenbeck** hesitated and responded that he was not given the authority to speak to that question.

TESTIMONY: **Liza Leonard, Director of Public Affairs, Ball Ventures representing CEO, Courtney Liddiard,** stated that she was testifying in opposition to **S 1381**. Her concern was about the potential long term impacts it could have on at will employment in Idaho. Ball Ventures does not support the legislation considering the bill expanded regulations on how employers operate their businesses. **Ms. Leonard** encouraged Idaho to stay business friendly and allow businesses to make the best decisions for their employees.

TESTIMONY: **Representative Ben Adams** stated he was in favor of passage of **S 1381**. He clarified this bill does not create a special class. It puts all Idahoans into the same bar. There was no defining factor in how anyone was treated related to vaccination status. **Senator Wintrow** asked if this legislation would cause people to be supportive of other precautions such as masks. **Representative Adams** responded the legislation did not address anything but the coronavirus vaccine. He reiterated that receiving the vaccine was not a term of employment.

DISCUSSION: **Senator Winder** concluded stating the requested changes were not required to happen over night, but employees did need to be made aware of them. He recognized there were concerns from those who saw this as undue interference in businesses. In writing the legislation, an effort was made to acknowledge contract rights and to recognize there were employees that needed to be vaccinated to do their jobs, to travel and to go into certain types of customer areas. The legislature did recognize those concerns because of the importance of those industries to Idaho and the relationships with the people involved. **Senator Winder** stated he felt a total balance was not realistic but **S 1381** would help close the gap.

DISCUSSION: **Senator Burgoyne** made a Rule 39 (H) disclosure due to unique factors related to his mediation business. **Senator Burgoyne** discussed several issues of concern in the legislation. He indicated the legality of asking if his clients had or had not been vaccinated for covid was unclear. The definition of "business entity" and the lack of a definition of "person" were concerning to him. He stated **S 1381** did create two disfavored classes. It protects everyone except those individuals who are vaccinated or vulnerable people who need to be protected with a vaccine. He was concerned that sole proprietors were not aware of the law and what the boundaries were and the potential for breaking the law. **Senator Burgoyne** was also concerned about the long term impact on the Idaho business community and their at will status. He stated he was opposed to this legislation. **Senator Wintrow** did not support the bill because the use of vaccination status as discrimination is not in line with the complaints she received from constituents. This legislature has resisted adding the words sexual orientation and gender identity to the human rights act and that is true discrimination.

MOTION: **Senator Thayn** moved to send **S 1381** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Senator Burgoyne** and **Senator Wintrow** asked to be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 10:10 a.m.

Senator Lakey
Chair

Sharon Pennington
Secretary