

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
5:00 P.M.  
Room WW54  
Wednesday, August 26, 2020

Limited public seating will be available in the committee room. Committee meetings will be live streamed in designated overflow rooms throughout the Capitol.

Please wear a mask and maintain physical distancing while in the Capitol.

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">H 6</a>	Relating to the Coronavirus Limited Immunity Act	Representative Julianne Young

***If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lakey

Vice Chairman Lee

Sen Lodge

Sen Anthon

Sen Thayn

Sen Grow

Sen Cheatham

Sen Burgoyne

Sen Nye

COMMITTEE SECRETARY

Linda Kambeitz

Room: WW46

Phone: 332-1317

Email: [sjud@senate.idaho.gov](mailto:sjud@senate.idaho.gov)

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, August 26, 2020

**TIME:** 5:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, Burgoyne, and 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 Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 5:28 p.m. **Chairman Lakey** thanked everyone in the audience for attending and emphasized the need for decorum. He went over the rules for the meeting and asked that everyone be treated with respect. He noted some would be testifying remotely. He asked for those who did not testify in the House to be first. He stated testimony would be limited to 3 minutes.

**H 6** **Relating to the Coronavirus Limited Immunity Act. Representative Julianne Young** explained the definitions of terms in the bill. She noted the sunset date was July 2021, which would give the Legislature time to revisit the subject during the next session. This bill tries to strike a delicate balance and to address the concerns about lawsuits relating to the transmission of the Covid-19 virus. **Representative Young** highlighted the provisions in the bill. She pointed out the bill did not offer immunity to state or local agencies. The definition of a "person" was not an effort to put government above the course of justice or allow those who may intentionally cause harm to others to be above the law. **Representative Young** stated the bill addressed a real crisis of confidence and threats of a lawsuit.

**DISCUSSION:** **Senator Nye** and **Representative Young** discussed the Attorney General's opinion that indicated there was a conflict with statutes. They discussed possible exclusions. The bill would be revisited in January.

**TESTIMONY:** The following testified in support of the bill:

**Ken McClure**, Idaho Liability Reform Coalition, indicated the bill gave people the assurance to open schools and the economy. He stated many businesses, schools, and counties are concerned about how to return to normal without getting sued. Most general liability insurance policies do not provide coverage for viruses. **Chairman Lakey** and **Mr. McClure** discussed the Attorney General's opinion. **Mr. McClure** explained "willful or reckless conduct" was a concern and that this bill would apply immunity to other things in tort. He pointed out examples of tort in the bill and the application to cases for alleged damages for exposure to the virus.

**Pam Hemphill**, drug counselor, representing herself, said she supported this bill since she did not want to get sued.

**Peter Hearn**, representing himself, stated the state of emergency needed to end, which has violated the constitution. Less government is needed.

**Susan Lang**, representing herself, stated she wanted the emergency order to end

as people were losing trust in the government.

**Jessica Allison**, representing herself, indicated we should be responsible for ourselves.

**Del Chapel**, representing himself, stated this bill was a good compromise and would restore some faith in our system.

**Caroline Merritt**, representing the Idaho Chamber Alliance, testified remotely. She noted she was concerned about lawsuits and the non-coverage by insurance companies. Extending liability coverage would allow businesses to focus on rebounding.

**Casey Baker**, representing himself, noted there should be no division between anyone. He quoted phrases from the Pledge of Allegiance. He encouraged the Legislature to look at immunity for the citizens of Idaho.

**Margie Baker**, representing herself, stated she believed this bill would help to get some resolution. She stated she wanted to be able to go to the hospital to see her parents. Everyone should be held accountable.

**Monica McKinley**, business owner, stated the bill would give businesses and schools the confidence to open.

The following testified in opposition to the bill:

**Matthew Jensen**, representing District 17 Republicans, stated it was wrong to have a government entity not held liable.

**DISCUSSION:** **Senator Thayn** and **Mr. Jensen** discussed liability and tort.

**TESTIMONY:** **Lupe Wissel**, State Director, American Association of Retired Persons (AARP), testified remotely and submitted written testimony (Attachment 1) in opposition. **Charity Majors**, representing herself, stated she appreciated the changes made in the bill even though this bill was the best of the worst. She expressed concerns with the verbiage.

**Stephanie Persinger**, testified remotely on behalf of Amanda Scott, Idaho Commission on Aging and Long-Term Care Ombudsman, submitted written testimony (Attachment 2) in opposition.

**DISCUSSION:** **Senator Grow** and **Chairman Lakey** discussed inferred references to assisted living in the bill.

**TESTIMONY:** **Nikki Schumacher**, representing herself, stated she did not want civil unrest or civil war. She stated she felt there were some nerves boiling about immunity from lawsuits.

**Dana Clemenceaux**, representing herself, stated she did not believe in immunity. All needed to be accountable for their actions. Comfort cannot be legislated to open businesses.

**David Pettinger**, representing himself, expressed a concern about how difficult it was to communicate with legislators. He stated the outcome of the Extraordinary Session was already decided before the session began. He urged the special session end.

**DISCUSSION:** **Senator Grow** noted he had received hundreds if not thousands of emails, making it impossible to answer every one of them. He urged Mr. Pettinger to call him, leave a message, and he would return his call.

**TESTIMONY:** The following testified as to undecided or neutral on the bill:

**Ayla Gough**, representing herself, noted she was undecided on this bill. She was concerned about what may make anyone not liable and the unintended consequences.

**Dan Dawson**, business owner, stated he was concerned about why the bill was necessary. He discussed "willful misconduct." He noted if one did not have the liberty to make choices, immunity should not be lost.

**Fred Birnbaum**, Vice President, Idaho Freedom Foundation, submitted written testimony (Attachment 3) indicating a neutral stance.

**MOTION:** **Senator Thayne** moved to send **H 6** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

**DISCUSSION:** **Senator Thayne** thanked Representative Young for all her work on the bill. He acknowledged school districts were concerned about liability protection. This bill is an attempt to return Idahoans back to the way flu viruses were legally viewed prior to the pandemic. He emphasized he was very supportive of the bill.

**Vice Chairman Lee** remarked she had received several emails and phone calls as well. She explained by having a reasonable standard the Legislature wanted to reopen businesses and get families back together. She appreciated the work on the bill and looked forward to addressing these concerns at the next session.

**Senator Lodge** affirmed she appreciated all who had worked on the bill. She expressed a concern about the effect on children and teachers if schools did not open. She thanked all who texted and emailed but apologized it was impossible to answer every email and phone message. She pointed out she supported the legislation and small business. Businesses can now reopen without fear of a lawsuit.

**Senator Burgoyne** acknowledged he had received hundreds if not thousands of emails and had not been able to respond. He noted he had made it clear throughout the process that he did not favor liability immunity. He thanked Representative Young for pursuing legislation that was an improvement. He remarked he had a greater understanding about the importance of being a better listener. **Senator Grow** agreed with Senator Burgoyne. He pointed out he appreciated all who came to participate. He reported he was concerned about teachers being sued and was in support of the bill.

**Senator Nye** stated the bill was good, but he was concerned with the vague definitions. He stated he was worried about exclusions and immunity and it was a tough issue. He noted he opposed the bill.

**Chairman Lakey** remarked the process was difficult. He encouraged personal responsibility. He noted small businesses and schools were important. He indicated he wanted school districts to be open. He thought the bill was a good compromise with a sunset clause. He thanked all who had been involved.

**VOTE ON  
MOTION:**

The motion to send **H 6** to the floor with a **do pass** recommendation carried by **voice vote**. **Senators Burgoyne** and **Nye** voted nay.

**ADJOURNED:**

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 7:17 p.m.

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Senator Lakey  
Chair

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Linda Kambeitz  
Secretary

**Testimony to the Idaho Senate  
Judiciary Rules and Administration Committee  
Opposing RS 28049  
AARP Idaho  
Lupe Wissel, State Director**

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Mr. Chairman and members of the Committee, my name is Lupe Wissel, State Director for AARP Idaho. On behalf of our nearly 186,000 Idaho members and all older Idahoans, I am here to oppose RS 28049 regarding civil liability, related to actions during coronavirus-related pandemics or epidemics, for nursing homes, assisted living facilities, and other long-term care facilities.

Nursing homes and other LTC facilities play an important role in America's long-term services and supports system. They are unique from other businesses in that these are people's homes. It is not a relationship like one would have with a store or restaurant. Facility residents are heavily reliant on others to provide for their care. They deserve at least the current amount of protections and not less. We oppose this legislation for the following reasons:

**1. LTC facilities should be liable for negligence to long-term care facilities.**

During this time of pandemic, nursing homes and other residential care facilities face unprecedented challenges. While there may be some circumstances beyond facilities' control, it cannot be ignored that more than half of the COVID-19 deaths in Idaho are associated with LTC facilities. It is essential that long-term care providers remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

**2. During this pandemic, facility oversight has been minimal from the public, advocates, and regulatory personnel.**

Given that most inspections of nursing homes have been suspended, family in-person visits have been effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits have been similarly restricted, there have been fewer eyes observing what is happening in facilities.

**3. The ability to pursue action against a facility is already a difficult process.**

Pursuing a nursing home for neglect or abuse case in court is not easy to do. In Idaho, there are already many barriers to accessing the courts including stringent caps on damages that can be recovered for the neglect or death of a nursing home resident.

**4. Intent-based protections are very difficult to disprove.**

*Attachment 1  
H 6  
8/26/2020*

Language in the legislation states that those who have acted in a good faith to adapt or not to adapt their behavior in response to the pandemic would be immune. Unfortunately, lack of “good faith” is difficult to show.

I will offer an option for consideration to protect the safety of the most vulnerable adults:

- To specifically carve nursing and assisted living facilities out of the legislation. While many facilities performed admirably under tough conditions, other facilities endangered their residents. They should not escape culpability.

Mr. Chairman, there are more than 4100 nursing home residents in the state. We all need to remember that these facilities are their place of residence. We all have control of who and what comes into our own homes – residents of nursing home, assisted living facilities and other LTC do not.

We hear from families from across the state regarding their loved ones in facilities. Some are reporting that the facility their loved one is in is doing a great job trying to deal with the situation. They communicate. They take the needed precautions. They care for the residents of their facility the best that they can. Others are reporting the opposite.

Idaho should not strip away the rights and protections of residents. Long-term care facilities should know they will continue to be responsible and accountable for providing the level of quality care that is required of them, and for which they are being compensated. This accountability also incentivizes facilities to self-correct by addressing problems to improve care.

I appreciate your time and ask for a no vote on RS 28049.



## Idaho Commission on Aging

Brad Little, Governor

Judy B. Taylor, Director

Amanda Scott, State Long Term Care Ombudsman

August 25, 2020

Dear Chairman and Co-chair:

The State Long Term Care Ombudsman Program, on behalf of Idaho's residents in long term care facilities and all older Idahoans, urges you to reject proposals to grant immunity related to COVID-19 for nursing homes, assisted living facilities, and other long-term care facilities as you hold your special legislative session, relating to the Coronavirus Limited Immunity Act; amending Idaho Code.

Prior to Covid-19, nursing home residents were visited by their families and friends, who kept a vigilant eye on the care their loved ones were receiving and the environment they were living in. Residents were visited and assisted by the advocacy of long-term care Ombudsmen who provided education, mediation and resolved complaints to the resident's satisfaction. In response to COVID-19, these necessary protections are not operating at optimal capacity to ensure resident safety. Due to lockdowns, residents are living and dying in long term care facilities isolated from their families with very little oversight. In truth, very few people, other than staff, know what is happening in nursing homes and assisted living facilities. Essentially, the only means available for a resident to hold facilities responsible for substandard care is judicial recourse. By removing this civil liberty, long term care facilities will have limited accountability for their actions or inactions.

I would encourage you to look at the Department of Health and Welfare website:

<https://healthandwelfare.idaho.gov/Medical/LicensingCertification/FacilityStandards/LTCSurveyResults/tabid/315/Default.aspx>) which provides to the public details of long-term care facility surveys prior to making a decision to support these amendments to Idaho code. A review of even some of these facilities would emphasize the necessity to allow residents and families to pursue legal action during good times, let alone at this remarkably challenging time. Issues of lack of care, poor medication management, facility acquired wounds, dehydration, weight loss, elopement, falls with injury and even death,

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attachment 2  
8/26/2020



just to name a few. While some circumstances may be beyond the facilities' control, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions that fail to protect the health and lives of residents.

The pandemic has put residents' health, safety, welfare and quality of care at unprecedented risk, as reflected by the nations loss of life of residents residing in long term care facilities. The State Long Term Care Ombudsman Program adamantly urges you to protect the safety of residents, including by maintaining the rights of residents and their families to seek legal recourse to hold facilities accountable when residents are harmed, neglected, or abused.

Amanda Scott  
State Long Term Care Ombudsman  
Idaho Commission on Aging  
6305 W. Overland Rd, Suite 110  
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Boise, Idaho 83720  
(208)577-2855  
[Amanda.Scott@aging.idaho.gov](mailto:Amanda.Scott@aging.idaho.gov)

**Linda Kambeitz**

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**From:** Soren Jacobsen  
**Sent:** Wednesday, August 26, 2020 5:01 PM  
**To:** Linda Kambeitz  
**Subject:** FW: Written testimony for H6

See below...

<p>Soren B. Jacobsen Sr. IT Specialist Idaho State Legislature Legislative Services Office (208) 334-4848 sjacobsen@lso.idaho.gov legislature.idaho.gov</p>	
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**From:** Fred Birnbaum <fred@idahofreedom.net>  
**Sent:** Wednesday, August 26, 2020 4:59 PM  
**To:** Soren Jacobsen <sjacobsen@lso.idaho.gov>  
**Subject:** Written testimony for H6

I would request that the following be submitted in lieu of verbal testimony.

The Idaho Freedom Foundation has rated House Bill 6 with a neutral rating, a zero. However we believe it is the best alternative on offer for immunity legislation.

Fred Birnbaum  
Vice President, Idaho Freedom Foundation and Idaho Freedom Action  
802 W. Bannock Street, Suite 405  
Boise, ID 83702  
208-258-2280, ext. 1020

*Attachment 3  
H6  
8/26/2020*

**Testimony to the Idaho Senate  
Judiciary Rules and Administration Committee  
Opposing RS 28049  
AARP Idaho  
Lupe Wissel, State Director**

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*HG*  
*attachment 2*  
*8/26/2020*

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Vice President, Idaho Freedom Foundation and Idaho Freedom Action  
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*Attachment 3  
H6  
8/26/2020*