

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Wednesday, August 26, 2020

TIME: 8:45 A.M.

PLACE: Room EW42

MEMBERS: Chairman Chaney, Acting Vice Chairman Monks, Representatives Kerby, Amador, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Gannon, McCrostie, Wintrow, Davis

**ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheets will be retained and filed with the minutes in the Legislative Services Library.

Chairman Chaney called the meeting to order at 9:02 a.m.

Chairman Chaney requested the testimony be germane to **H 6**, the agenda item.

MOTION: **Rep. Scott** made a motion to **HOLD H 5** in committee.

MOTION: **Rep. Wintrow** made a motion for the previous question.

**ROLL CALL
VOTE:** A roll call vote was requested for the motion for the previous question. **Motion carried by a vote of 15 AYE, 3 NAY. Voting in favor of the motion: Reps. Monks, Kerby, Zito, Zollinger, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Young, McCrostie, Wintrow, Davis, Chaney. Voting in opposition to the motion: Reps. Amador, Troy, Gannon.**

**ROLL CALL
VOTE ON
ORIGINAL
MOTION:** A roll call vote was requested for the motion to **HOLD H 5** in committee. **Motion failed by a vote of 6 AYE, 12 NAY. Voting in favor of the motion: Reps. Zito, Zollinger, Scott, Young, Wintrow, Davis. Voting in opposition to the motion: Reps. Monks, Kerby, Amador, Ehardt, Goesling, Hartgen, Marshall, Ricks, Troy, Gannon, McCrostie, Chaney.**

Chairman Chaney put the committee at ease at 9:22 a.m. The meeting was called to order at 9:37 a.m.

H 6: **Rep. Julianne Young**, District 31, presented **H 6**, which is specific to coronavirus. The definition of person includes any individual, corporation, limited liability partnership, trust, association, church or religious organization, city, county, school district, college, university or institution of higher education, or other unit of local government. It does not include any Idaho public health district, the federal government or any of its agencies, the state of Idaho or any of its agencies, except colleges, universities, and other institutions of higher education, nor any foreign government or foreign jurisdiction.

The immunity is from injury or damages resulting from exposure to coronavirus. Qualifiers are listed and clearly defined in Idaho Code. Willful or reckless misconduct is conduct in which a person makes a conscious choice to do something which has a high probability of harm as an actual result. Stipulation is made to exclude workers compensation and any existing immunity or protection.

Rep. Young emphasized the legislation is not tied to an emergency declaration and has a sunset date of July 2021. It does not shield government agencies, federal government, or any other agencies from decisions made during COVID-19. This does not require businesses to become an enforcement state agency or arm of the health district. It addresses the confidence crisis within the business community and schools regarding filing of such lawsuits and associated financial impact as they attempt to return to normal practices.

Responding to committee questions, **Rep. Young** said an example of willful or reckless misconduct would be an individual, aware they have the coronavirus, going into a setting where they are exposing others to possible contraction. A conscious choice has been made to cause harm to others. Agencies and health districts already have enforcement mechanisms in place. This switches the burden of proof to the accuser in a court case. There is the inherent assumption schools will continue to take precautions to assure students are safe and have a good education.

MOTION: **Rep. Troy** made a motion to send **H 6** to the floor with a **DO PASS** recommendation.

Dr. Lynn Laird, Cheryl Sauer, Eva Selleck, Casey Baker, Margie Baker, Monica McKinley, Susan Berger, Mario Peria, Samatha Buffington, Dana Clemeaux, and David Pettinger testified in opposition to **H 6**. They shared concerns regarding the impact to persons with varying coronavirus beliefs, good faith differing between persons, legitimizing a nonexistent problem, inaccurate data, the lack of any legislative precedent, shielding a select group, using waivers instead, and personal responsibility.

Steven Keyser, Delbert Chapel, Jason Colwell, Nancy Georgeson, and Lonnie Caldwell testified in support of **H 6**. They stated this is the best legislation to pass, if something needs to be done. They did not want any inclusion of good faith, which would require enforcement, shared concern regarding the interpretation of willful misconduct, and questioned the need for any legislation of this nature.

Chairman Chaney put the committee at ease at 10:59 a.m. The meeting was called to order at 11:15 a.m.

Ken McClure, on behalf of the Idaho Liability Reform Coalition, testified in support of **H 6**. He clarified the enforcement of waivers does not occur in most courts and most insurance policies do not cover viral transmission or exposure. This legislation fills the hole in the law so the economy can get moving again.

Responding to committee questions, **Mr. McClure** said **H 6** assures a business can proceed without the fear of uninsured lawsuits. He clarified the tort liability is defined as acts or omissions for suits or liability. Negligence is one kind of tort. Escalating from negligence is recklessness and then intentional liability. If negligence was included, it would allow for gross negligence. Such inclusion is not reason enough to send **H 6** to General Orders.

MOTION: **Rep. Marshall** made a motion for the previous question.

ROLL CALL VOTE : A roll call vote was requested for the motion for the previous question. **Motion failed by a vote of 6 AYE, 11 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Kerby, Goesling, Hartgen, Marshall, Ricks, Troy. Voting in opposition** to the motion: **Reps. Monks, Amador, Zito, Ehardt, Scott, Young, Gannon, McCrostie, Wintrow, Davis, Chaney. Rep. Zollinger** was Absent/Excused.

SUBSTITUTE MOTION: **Rep. Gannon** made a substitute motion to send **H 6** to General Orders.

Chairman Chaney put the committee at ease. The meeting was called to order at 12:45 p.m.

Committee discussion regarding the substitute motion included amending **H 6** to address contracts, the Consumer Protection Act, gross negligence, harmful consequences, and the efficiency of sending it to General Orders.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

A roll call vote was requested on the substitute motion to send **H 6** to General Orders. **Substitute motion failed by a vote of 5 AYE, 12 NAY, 1 Absent/Excused.** **Voting in favor** of the motion: **Reps. Scott, Gannon, McCrostie, Wintrow, Davis.** **Voting in opposition** to the motion: **Reps. Monks, Kerby, Amador, Zito, Ehardt, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Chaney.** **Rep. Zollinger** was Absent/Excused.

**ROLL CALL
VOTE ON
ORIGINAL
MOTION:**

A roll call vote was requested on the motion to send **H 6** to the floor with a **DO PASS** recommendation. **Motion carried by a vote of 13 AYE, 4 NAY, 1 Absent/Excused.** **Voting in favor** of the motion: **Reps. Monks, Kerby, Amador, Zito, Ehardt, Scott, Goesling, Hartgen, Marshall, Ricks, Troy, Young, Chaney.** **Voting in opposition** to the motion: **Reps. Gannon, McCrostie, Wintrow, Davis.** **Rep. Zollinger** was Absent/Excused. **Rep. Young** will sponsor the bill on the floor.

Chairman Chaney and the committee thanked the Idaho State Police for their efforts during the Special Session to assist the committee and allow public participation in the legislative process.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 1:01 p.m.

Representative Chaney
Chair

Irene Moore
Secretary