

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 Thayne** 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.

Senator Lakey
Chair

Linda Kambeitz
Secretary