

MINUTES
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
YOUNG SUBCOMMITTEE
Coronavirus Liability

DATE: Wednesday, January 27, 2021
TIME: 2:00 P.M.
PLACE: Room EW42
MEMBERS: Chairman Young, Representatives Troy, Marshall, Nate, Cannon, Skaug, Gannon, Ruchti
**ABSENT/
EXCUSED:** None
GUESTS: Leland Ley

Chairwoman Young called the meeting to order at 2:09 p.m.

Karen Echeverria, executive director of the Idaho School Boards Association (ISBA), stated that the state of Idaho is not out of the coronavirus pandemic, and that the sunset should be extended until at least July 1st of 2022. While it is believed that the school's are currently protected under statute, there would be no opposition to a broadening of the language used moving forward. Since the August special session, almost all Idaho school districts and charter schools are operating within some area of in-person learning. **H 6** has given charter schools and Idaho's school districts confidence that they can put measures in place that will allow them to operate in-person while having immunity of liability.

Debbie Critchfield, president of the Idaho State Board of Education (ISBE), stated that the priority of the board of education was to have as much in-person instruction as possible given the circumstances and abilities of the time. Concerns about liability have been a hindrance for education programs. As they spoke with their insurance providers on the issue, there have remained unanswered questions concerning liability. Parents have chosen a variety of ways to address potential health risks, and there are more families taking advantage of the different options they have for their children's educational opportunities. **H 6** should be extended on the basis that it is not known if these positive numbers will continue, and until that trend becomes a constant, it will be hard for school districts and other education institutes to feel more at ease about potential liability. The special session's passing of this legislation in August 2020 helped very much in getting students back into in-person learning and education.

Taylor Mossman-Fletcher, president of the Idaho Trial Lawyers Association (ITLA), opened up by mentioning that many businesses, churches, schools, and other organizations, were deeply concerned about potential liability for COVID-19 transmission. This has turned out not to be the case, with no lawsuits being brought forward within the state. Recently the ITLA reached out to over 400 lawyers across the state to ask if any of them were pursuing lawsuits for COVID-19 liability, and none of them mentioned doing so. **H 6** is no longer needed because there is already a process in place to address these kinds of issues. There needs to be proof that there was a duty, breach, or causation and the injured person sustained some kind of damages. There currently is a court system with jury trials in place to protect against meritless lawsuits. The people are meant to decide whether these lawsuits have merit or not.

Ken McClure, an attorney and representative of the Idaho Liability Reform Coalition (ILRC), mentioned that the ILRC had asked the legislature to adopt certain protections during the special session of August 2020. Without **H 6**, everyone is unable to get insurance that protects from claims of COVID-19 liability. Almost all commercial general liability policies exclude pandemics from their coverage. This piece of legislation allows for the state and the economy to function in as normal of a way as it can under the circumstances, and it should not be allowed to sunset just yet. **H 6** provides protection for claims of COVID-19 exposure or transmission. It does not provide any sort of protection at all for other claims that are the direct result of COVID-19 that are not based in transmission or exposure. There is still yet to be any sort of lawsuit brought forward on this issue, due in some part to scientific efforts to better understand the disease itself, but also in large part because this legislation has had the effect that it was hoped it would, which is to protect against the filing of such lawsuits. There are many lawsuits in other states, but none yet in Idaho.

Caroline Merritt, a representative of the Idaho Chamber Alliance (ICA), came forward to support the extension of **H 6** due to the need for liability protection against COVID-19 related lawsuits. The concern is focused less around losing a lawsuit, since currently it is difficult in most cases to prove transmission. Rather, the high cost to business owners both in time and money in defending themselves against this type of lawsuit. Business owners that the ICA has spoken to have expressed concern that general liability insurance before **H 6** was not enough to protect them from their lawsuits, and that there would be a spike in their insurance rates. There have already been more than 8,000 COVID-19 related lawsuits across the country, but none yet have occurred in Idaho. Many other states have taken similar measures to **H 6** to protect businesses from these litigations, and the federal government is currently considering taking these measures as well. Businesses are making a good-faith effort to comply with the laws and regulations that have been put in place. This piece of legislation has not authorized them in any way to engage in reckless behavior. **H 6** is not in use to enforce any sort of mask mandate or mandatory vaccination. Rather, it is focused on basic protections for business owners to provide for their communities and their families.

Jessica Marcu stated that **H 6** is meant to expire. This is an unconstitutional, communist act used to destroy small businesses. There is no way to prove in court where the virus came from. There is no pandemic. The hospitals are empty when we drive by; there is no one there. Why are this going on and destroying the economy? This is basically a crisis. People lose their jobs because they don't have way to pay. She asked the committee to please do the right thing and do not renew this unconstitutional immunity act.

Jeremiah Miller says that if liability protection is needed for persons, there must be a way to prove the existence of negligence. This ability does not exist. If this was a sexually transmitted disease, it could be proven more easily. **H 6** is being used to force private citizens to wear a mask. There are rumors that this bill or others like it can be used to mandate vaccination. This may not be against any of the written language of the State or the U.S. Constitution, but it is in violation of the spirit of both constitutions. It also violates our God-given rights. If this bill is not sunsetted or if the language is broadened further, it will compel citizens to give up those God-given rights. Where are the protections for private citizens who suffer physical, mental, and emotional damages due to Government policies that small businesses are expected to implement under this law?

Monica McKinley wants **H 6** to expire. The government must not be allowed to compel behavior through fear. This legislation does away with businesses that do not want to obey the government. This is not about protecting businesses. A company that doesn't want to be mentioned by name has been turned in when they have actually been in compliance the entire time. The code enforcement officers are just there taking the word of the person who is taddling. This is not okay. Liability protection for small businesses is completely unnecessary. Is this how every new virus will be treated moving forward? People have every right to sue companies if they think they've contracted the virus. This would be frivolous because there is absolutely no way to prove it. Every person should have that right. The government is using businesses as enforcement agencies or to basically taddle on the businesses.

Lee Joe said this is all unconstitutional. It says "no special immunities shall be granted to any person or entity in Idaho". This is treating a certain group different than another group. These special immunities for a special group are unconstitutional.

Casey Baker says according to the Pledge of Allegiance, which ends with "liberty and justice for all", no one should be denied justice or from the due process of law. This bill should have never been. Should have called a session to distribute the money to address damages to the Idaho economy rather than helping special interests. If it is also believed that we're one nation under God, we would keep Psalms 91 and this fear-mongering would not have any effect on our nation. End this House Bill today. This is a detriment to harmful behavior. Most people don't want the money, they just want to go back to work.

Margie Baker says we are all people of God and Children of God and so just want to have our voices heard. She expressed concern about the immunity which is unconstitutional. She said she lost her business, three businesses, and almost got evicted from her home. This has damaged many and she would not want to allow the government to have any control of who comes to her home. She said we are all going to die, God determines that.

Del Chapel stated this law is not needed, but Doug at Southwest District Health (SWDH) claimed to have 28 proven cases of student-to-parent transmissions of COVID-19. Businesses will be liable for transmission and government corruption if **H 6** is allowed to sunset. This is a protection. This ensures mandates are not pushed on people once the vaccine is ordered. That's the direction the world is going. We are not there yet, but is close. This is a slippery slope. This bill protects both the people and the businesses.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:27 p.m.

Representative Young
Chair

Jensen Thomas
Secretary