

MINUTES
HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 23, 2021
TIME: 1:30 P.M.
PLACE: Room EW05
MEMBERS: Chairman Holtzclaw, Vice Chairman Syme, Representatives Harris, Kingsley, Christensen, Giddings, Wisniewski, Horman, Hanks, von Ehlinger, Weber, Chew, Necochea, Toone
**ABSENT/
EXCUSED:** Representative(s) Christensen
GUESTS: Brett DeLange, Idaho Attorney General's Office; Russ Hendricks, Farm Bureau; Suzanne Budge, IPM & CSA

Chairman Holtzclaw called the meeting to order at 1:30 PM.

S 1041: **Rep. Palmer** introduced **S 1041** and **Jeremy Chou**, Petroleum Marketers, to give a more detailed description of the legislation. Mr. Chou stated in the last year an investigation was conducted by the Attorney General's office to see if gas companies were price gouging during the pandemic, despite gas prices statewide having gone down. He defined price gouging as knowingly taking advantage of people during an emergency then stated the Attorney General had interpreted a rise in the margin between wholesale and resale prices as price gouging. Mr. Chou quoted current Idaho Code stating "Excessive and unjustified price increases" are price gouging, but an increase in margins while prices drop is simply good business. He stated while Idaho Code allows the Attorney General's office to investigate instances of price gouging, nothing in code allows the Attorney General's office to police business margins. This legislation simply defines price gouging further by clarifying it only occurs when prices rise.

Brett DeLange, Deputy Attorney General, testified **in opposition to S 1041**. He questioned the timing of legislation to change the definition of price gouging during a pandemic and stated citizens have no recourse to address price gouging on their own. The Attorney General's office is their only avenue for addressing these issues. He stated Idaho Code addressing price gouging covers food, fuel, pharmaceuticals or water for human consumption. He gave a detailed description of the case which inspired this legislation; and concluded while retail prices did go down, the wholesale prices dropped nearly three times more which lead to a large increase in profit for the companies under investigation. He stated the Attorney General isn't trying to police margins or profit, they simply want to prevent price gouging and margins are an easily understood place to start looking. He also explained margins are something the Attorney General's office looks at in regards to price gouging because the current statute directs them to do so. He stated concern about circular logic contained in the legislation. He stated the Idaho supreme court upholds the law as written and so the law should be written as clearly as possible. Most of the time price gouging is in fact a price increase, but there are other methods of price gouging. This legislation would only make it easier for companies to price gouge in the future.

In response to Committee questions **Mr. DeLange** stated the Attorney General's office has a statutory responsibility to investigate cases of alleged price gouging as they are the only recourse for the public to address this concern. He also gave a more detailed explanation of the data the Attorney General's office investigates, stated the average turnaround time for a gallon of gas, and affirmed the lag is also taken into account during an investigation. He also addressed some concerns about legislative intent, stating the Attorney General's office respects legislative intent as well as the legislature's ability to make policy. He added legislative intent for current statute has nothing to do with price increases and directs the Attorney General's office to examine instances where prices become exorbitant as well as examine margins. In response to further questions he stated the case which inspired this legislation is not a typical case of price gouging because the supply of the product remained steady rather than going down. He expressed concern that the language proposed in this legislation would be too restrictive of the Attorney General's ability to investigate cases of alleged price gouging in the future, especially in cases where price margins remain steady. He also further clarified that the Attorney General's office did look into allegations of price gouging on other essential goods, but some goods were reported which are not defined essential such as canning jars or toilet paper. Without policy change these goods cannot be the subject of a price gouging investigation.

Russ Hendricks, Idaho Farm Bureau, and **Matt Berry**, President, Idaho Petroleum Marketers, testified in support of **S 1041**. Mr. Hendricks stated he was puzzled by an assertion made by the Attorney General's office stating the current price gouging statute is protecting farmers. He stated pricing changes are a signal to producers that they need to produce more as well as a signal to consumers to save up and use less. He stated empty shelves may have been a result of protections against price gouging. Prices were unable to adjust to availability and demand which may have led to the panic buying. He stated concern there is currently too much intervention in regards to price gouging and believes less intervention in the market in general is better for everyone. Mr. Berry stated gas stations are critical for communities, especially in very remote areas where they may also serve as the community grocery store. He detailed extra costs many businesses took on for staffing and protective equipment and stated gas sales plummeted at the beginning of the stay home order while business costs increased. He stated despite Idaho having historically low gas prices they were investigated for an increased margin and stated in his opinion this seems too close to price fixing. He stated **S 1041** maintains all the consumer protections currently in statute but adds protections for businesses and considers any additional prices they have to pay which allows the market to work as intended.

In response to Committee questions **Mr. Hendricks** stated farmers could be disproportionately affected by policing of margins as their margins fluctuate all the time. He also stated that farmers do not typically raise prices exorbitantly to begin with as they wouldn't be able to sell their products if they did.

Mr. Chou closed by stating nobody was caught price gouging because there was no price gouging. He addressed the situation which inspired this legislation stating it was a business consideration to spend money on price reductions for consumers rather than on litigation. Under the Consumer Protection Act the Attorney General has the authority to ask for a very large amount of information while conducting investigations and it would be overbearingly difficult and expensive to do this. He stated this bill takes into account the previous legislative intent as well as current intent and simply makes Idaho law consistent with other states.

MOTION:

Rep. von Ehlinger made a motion to send **S 1041** to the floor with a **DO PASS** recommendation.

In discussion of the motion Committee members urged their colleagues to look closely at the language contained in this legislation. Members stated concern with the assertion price gouging cannot exist if prices go down, especially in the case of pharmaceuticals. With this language in place the wholesale prices for medications could drop dramatically due to a variety of reasons but pharmacies couldn't be penalized if they refuse to lower their retail prices accordingly. Committee members stated the top priority should be how best to protect Idahoans, not companies which can afford lobbyists. Other Committee members stated they could only imagine the pain and heartache of trying to keep employees paid and keep doors open when demand is dramatically down. They also stated concern with the focus on business margins when prices for gas went down. They further reminded the Committee of the large difference between a limited commodity with a run on it and a small increase in business margins.

SUBSTITUTE MOTION:

Rep. Toone made a substitute motion to **HOLD S 1041** for a time certain of March 1, 2021 at 1:30 PM.

In discussion of the substitute motion Committee members commented this legislation has been available for reading for weeks, so additional time for consideration is not an issue.

VOTE ON SUBSTITUTE MOTION:

Substitute motion failed by voice vote.

VOTE ON ORIGINAL MOTION:

Motion carried by voice vote. Rep. Necochea requested to be recorded as voting **NAY. Rep. Palmer** will sponsor the bill on the floor.

DOCKET NO. 59-0101-2001:

Don Drum, Executive Director, PERSI, presented **Docket No. 59-0101-2001** to the Committee stating the purpose of the change is to delete sections which no longer apply and bring the state rules into alignment with federal rules. The adoption of a new section of code requires deletion of some sections of rule because the language in those sections is no longer used in code. He listed specific language which was changed or deleted and re-stated the last change is to come into alignment with Federal code.

MOTION:

Rep. Syme made a motion to approve **Docket No. 59-0101-2001. Motion carried by voice vote.**

DOCKET NO. 17-0000-2000F:

Sonnet Robinson, Industrial Commission, presented **Docket No. 17-0000-2000F** to the Committee stating one chapter in this omnibus rule was reviewed and changed consistent with Red Tape Reduction Act. There were no substantive changes to this chapter.

MOTION:

Rep. Harris made a motion to approve **Docket No. 17-0000-2000F. Motion carried by voice vote.**

DOCKET NO. 21-0000-2000F:

Kevin Wallior, Management Assistant, Idaho Division of Veterans Services, presented **Docket No. 21-0000-2000F** to the Committee stating it was an omnibus rule, and two chapters were reviewed and changed consistent with the Red Tape Reduction Act. This reduced redundancy and unnecessary requirements, but made no substantive changes.

In response to Committee questions **Mr. Wallior** explained the rule prohibiting the consumption of alcoholic beverages in the Idaho State Veterans Cemetery comes from a section of federal law regarding veteran cemeteries.

MOTION:

Rep. Syme made a motion to approve **Docket No. 21-0000-2000F. Motion carried by voice vote.**

ADJOURN: There being no further business to come before the Committee the meeting adjourned at 2:51 PM.

Representative Holtzclaw
Chair

Emma Wall
Secretary