

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Tuesday, November 16, 2021

TIME: 8:30 A.M.

PLACE: Room EW42

MEMBERS: Chairman Chaney, Vice Chairman Hartgen, Representatives Kerby, Amador, Ehardt, Scott, Marshall, Troy, Young, Nate, Cannon, Erickson, Skaug, Gannon, McCrostie, Ruchti, Nash

**ABSENT/
EXCUSED:** Representative(s) Ehardt

GUESTS: Sara Walton Brady, self; Lynn Laird, self; Lorna Mitson, self; Darrell Shipp, self; Alicia Abbott, Idaho 97% Project

Chairman Chaney called the meeting to order at 8:30am.

H 417: **Rep. Monks**, District 22, stated this legislation is a continuation of work he started earlier in this year's Legislative Session with **H 301**. Since that time, he worked with **Rep. Skaug** to better understand when Workman's Compensation (WC) applies if injuries occur as a result of being vaccinated. Rep. Monks explained, **H 417** clarifies that injuries arising from employer-mandated vaccinations shall be compensable under the Idaho Worker's Compensation laws.

MOTION: **Rep. Gannon** made a motion to send **H 417** to the floor with a **DO PASS** recommendation, stating if an employer requires a vaccination, then they should be responsible for any injuries associated with that vaccine.

SUBSTITUTE MOTION: **Rep. Troy** made a substitute motion to **HOLD H 417** in committee, stating that any change to WC at this time without sufficient input from various employers is premature and will change the whole paradigm.

Committee discussion ensued regarding **H 417**, the motions before the committee, and WC. In response to committee questions, **Rep. Monks** explained the term "experience rating" within WC is how various companies' claims for injuries are determined. In other words, a company's actual incurred loss of work due to injuries from certain activities is used in comparison to the average injury loss of similar activities. The company's loss history then determines its WC premium.

Rep. Ruchti explained the term "course of employment" in WC, stating in order to receive compensation, an injury must occur in the course of employment. He gave the following example: if an employee chooses to use their lunch break to leave the work place to get a vaccine and gets hurt while away from the worksite, that injury is not compensable under WC, because it was their choice to leave. But if that same employee was directed by their employer to leave the work place on company time to get vaccinated, and while doing so gets injured, that injury would be covered under WC. Rep. Ruchti explained **H 417** would provide WC coverage for the employee if an injury occurs due to receiving a required vaccination.

Rep. Skaug clarified **H 417** only applies to Idaho's WC, not to the military or federal employees. Additionally, he remarked he was in contact with members of the Industrial Commission and many attorneys regarding the wording of **H 417** relative to WC, and stated this legislation is designed to make it easier for employees to be covered by WC when injuries occur as a result of vaccines. **H 417** would cover any and all company mandates; for example, private company vaccine mandates as well as federal vaccine mandates.

Lynn Laird, representing herself, stated she is not quite sure how to testify on **H 417**. She had several concerns, one of them being the phrase "substantial evidence" stated on line 18 requiring employees to prove their injuries are the result of a vaccine. Another of her concerns is there is no discussion regarding adequate compensation for a life altering incident or consequences as the result of a vaccine.

Lorna Mitson, representing herself, stated she is **in support** of the spirit of the bill. She indicated if employers are going to mandate vaccines and those vaccines cause harm, then the employer should be held responsible.

Brian Whitlock, Chair, Industrial Commission Advisory Board, stated **Rep. Skaug** did a great job of reaching out and getting input from members of the Board. He stated the consensus of the Board is the WC laws already protect employees when vaccines are a condition of employment, and that **H 417** is redundant. In response to questions, Mr. Whitlock remarked proving an injury is related to a vaccine is no more difficult than other injuries, and that there are already documented cases of claims being paid out from injuries associated with vaccines. He further clarified employees do not need to prove causation of claims at the onset, but rather only file the claim; the burden of proof lies with the employer.

Chairman Chaney and Rep. Cannon declared Rule 80.

Rep. Monks stood and closed. He stated it doesn't matter who requires the vaccine; the bottom line is the employee should be covered by WC. He remarked it would be better if there were not any mandates, but if there are, then employees should be protected.

Although **Rep. Troy** agrees with the spirit of **H 417**, she stated she still has concerns Idaho will become more litigated, impacting the ability to have a free and open market. She is also concerned this will impact every business in Idaho, and because employers and insurance companies were not at the table during earlier discussions, to consider bringing this bill back later after more discussions can take place.

**VOTE ON
SUBSTITUTE
MOTION:**

Chairman Chaney called for a vote on the substitute motion to **HOLD H 417** in committee. **Motion failed by voice vote.**

**VOTE ON
ORIGINAL
MOTION:**

Chairman Chaney called for a vote on the original motion to send **H 417** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Monks and Skaug** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 9:28am.

Representative Chaney
Chair

Tracey McDonnell
Secretary