

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, November 17, 2021

TIME: 8:00 A.M.

PLACE:

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Guthrie(Guthrie), Senators Winder, Anthon, Harris, Lee, Heider, Stennett, and Burgoyne

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: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:00 a.m. and introduced Carol Guthrie as substitute for Senator Jim Guthrie.

H 414 **Relating to Religious Freedom** regarding a person's right to refuse medical treatment based on religious beliefs.

Senator Rice, District 10, stated **H 414** prohibits questioning the sincerity of religious beliefs in the case of a religious belief waiver for a vaccine. Under the Equal Employment Opportunity Commission (EEOC) guidance, individuals are recognized if they have a religious belief that differs from any organized religion. If the business realities requires a vaccination, like traveling to other countries requiring a vaccination, the religious exemption would not apply. The impact of this legislation is only that sincerity would not be questioned.

DISCUSSION: **Senator Lee** asked how this bill changes what is already on the books and suggested that conscientious objections may be missing. **Senator Rice** stated it does not diminish any religious exemption right that an individual currently has, it only states that sincerity will not be questioned and this bill doesn't affect conscientious objections.

Senator Stennett referred to the Attorney General's (AG's) opinion (see Attachment A) that indicates this legislation inverts the framework of what is already in existing statute because it no longer requires that a religious belief must be established. The legislation may require the employer to comply with Federal regulations while simultaneously required to recognize a religious exemption. **Senator Rice** stated this legislation allows the employer to question whether it is a religious belief or not, but not the sincerity of that belief. **Senator Stennett** said this is legislating sincerity; how is that determined. **Senator Rice** answered that the EEOC investigates claims of discrimination and there has always been a question about gauging sincerity.

Senator Burgoyne commented that it is unclear as to whether this will change the law or not; it differs from the wording in the Idaho Human Rights Act (IHRA) and in Title 7 of the Civil Rights Act of 1964 which are pretty clear. Different wording will be put into place that could raise questions about changes in the law. There is a potential to subject the private sector to paying legal costs associated with defining the law. **Senator Burgoyne** explained how it would affect small and large employers.

H 417 **Relating to Worker's Compensation** to provide that vaccine-related accidents or injuries shall be compensable.

Representative Jason Monks, District 22, explained if an individual is required to get a vaccination from an employer and are injured because of that requirement, he/she could file a worker's compensation claim. There is confusion as to whether or not they would be covered. If injuries occurred because of something that was required in the course of employment, it should be covered. It is not easy to prove an injury is related to the job if sickness occurs. This legislation is saying there is a presumption that the injury was associated with the vaccination. If vaccinations are covered, rates will go up for employers. **Representative Monks yielded** to Representative Skaug.

DISCUSSION: **Senator Burgoyne** referred to "vaccination" on line 13 in subsection 1. Does the term vaccination refer to the vaccine itself or the process of manufacturing, distributing, storing, or administering the vaccine. If a vaccine was handled incorrectly and became toxic, would it be a compensable injury. **Representative Monks** answered that anything associated with the vaccination would be covered. Workers compensation is set up as a no-fault system so whether the employer was at fault or not, the employee will be covered. Nothing in this bill constrains the employer from holding the provider responsible. **Senator Burgoyne** stated his concern about employers under a Federal contract requiring their employees to vaccinate resulting in an injury causing premiums to increase which, in effect, would impose a kind of tax.

Senator Stennett noted that the language is not specific so it must apply to all vaccinations. Currently, vaccinations are required for occupational purposes to keep the workplace safe and to protect employees. This legislation is not limited to COVID and it may put people in harms way by insinuating that other vaccinations required for safety purposes would be affected. **Representative Monks** responded if an injury occurred because of any vaccination, it should be covered. Vaccinations that have been around for years have shown no adverse reactions but if there are any, employees should be compensated.

Senator Winder stated vaccination is an operative word for receiving the vaccine but if the real cause of the problem is the vaccine and not the vaccination; is that a concern. **Representative Monks** stated that over the last year, the Center for Disease Control (CDC) has changed the definition of a vaccination. Instead of saying "preventing" it now is "lessening the severity of". If changing the definition continues, it could be a problem.

Representative Bruce Skaug, District 12, cosponsor of **H 417**, stated people injured from vaccines need help now. This bill only applies to employers who require that employees must have a vaccine. There could be lawsuits against a third party that caused the injury and that would then reimburse the workers compensation carrier that covered the damages.

Senator Anthon said it is troubling to require someone to have a vaccination in order to earn a living without any remedy if there is an injury. He asked for an explanation of line 17 where it says it is an injury that is or may be related to the employee's receipt of the vaccine. **Representative Skaug** responded the language is there because it is not certain the vaccination caused the injury but if it makes sense, it should be covered. **Senator Anthon** asked if this kind of language is used in other places in code that applies to workers compensation claims. **Representative Skaug** did not have that information.

Senator Lee referred to section 3 and asked how this changes case law. **Representative Skaug** said this bill makes the presumption in favor of the employee. The language is already in workers compensation law. Section 3 is only advisory and shouldn't change any case law.

Senator Stennett noted that workers compensation laws are already working in accommodating injury. Even if vaccinations are not explicitly stated, it says injury so it is already covered. **Representative Skaug** answered that this makes it easier for the employee to get coverage.

H 419

Relating to Employment Contracts to provide that no person or entity shall require the disclosure of COVID-10 vaccination status as a condition of employment or continued employment.

Representative Ron Mendive, District 3, stated what is happening now with COVID is unconstitutional. There is a need to address the issues to support the constitutional rights of the citizens and of businesses. He outlined how the 5th and 14th amendments to the Constitution guarantying life, liberty, and property have been suspended.

DISCUSSION:

Representative Mendive noted, in answer to Chairwoman Lodge's comment, the emergency clause was inadvertently omitted but it would still go into effect in 60 days.

Senator Burgoyne asked if a consumer of medical services shouldn't have the right to request vaccination status when choosing a provider; how would one know if the provider was vaccinated if the facility could not ask the status of its employees; and, if the questions are not answered, can the employer take appropriate action. **Representative Mendive** said that it would be the consumer's choice to ask but it is also the providers choice to not provide that information.

Senator Stennett noted that the State has no penalties in place for this bill and inquired if the bill is timely due to the current multiple State and national issues. **Representative Mendive** said there is the right to ask and the right to refuse the answer – no penalties are required. The bill is timely because it specifies COVID-19.

Senator Lee inquired if the requirements of this bill are already in statute and noted that the issues it addresses will be settled in court; how does this bill provide more for Idaho citizens. **Representative Mendive** said it provides comfort that someone is protecting the Constitution.

Senator Burgoyne said that the three laws being proposed today can have good and bad consequences. When the law is cluttered with "feel good" language, it creates ambiguities and uncertainties. Comfort language should be in resolutions. **Representative Mendive** responded that the Idaho Health Freedom Act (IHFA) is already in code and nobody has been paying attention to it. This bill says action must take place.

Chairwoman Lodge commented that she was Chairman of the Health & Welfare Committee when the IHFA was passed and agreed that it has not been followed. Hopefully, the hearings this week have made people in Idaho more aware.

Senator Winder noted that the AG's office, the Governor's office, and the Legislature did not wait to get involved. They have been involved with cases in the 5th and 6th Districts since prior to the Occupational Safety & Health Administration (OSHA) rules which are currently stayed.

Representative Mendive closed by emphasizing the importance of standing by the Constitution stating there are more serious issues than COVID involved.

TESTIMONY:

Following are those testifying on one or more of **H 414**, **H 417** and **H 419**.

-**Christine Nuoff**, Sr. Vice President, St. Luke's Heath System, opposes **H 414**.

Senator Stennett noted that it is not uncommon to require vaccinations as part of the hiring process; other vaccinations are required. **Ms. Nuoff** gave a brief

overview of the vaccinations required for the health care workers.

Senator Burgoyne asked if **H 414** would interfere with drug testing. **Ms. Nuoff** stated that has yet to be determined.

Senator Anthon asked what current legal standing is being used to determine the validity of the religious exemption request. **Ms. Nuoff** outlined St. Luke's process.

-**Alex LaBeau**, President of Idaho Commerce and Industry, opposes all of the bills.

-**Katheryn Whitney**, District 11, representing family, supports **H 419**.

-**Mike Cane**, American Property & Casualty Insurance Association, opposes **H 414** and **H 417**.

Senator Anthon asked if **H 417** was dealing with litigation. **Mr. Cane** confirmed that it creates a civil rights action to require someone to get any medical treatment of any kind. **Senator Anthon** asked if medical treatment is the same thing as medical examination. **Mr. Cane** responded that would not be known until it is litigated. He asked that an exemption be put in the bill. He believes that **H 414** would allow a mentally disturbed prisoner to refuse psychiatric care while in jail.

Senator Burgoyne asked for clarification that a religious exemption could be used to avoid psychiatric treatment. **Mr. Cane** concurred.

-**Quinton Pike**, District 14, supports all three bills.

-**Neena Beesley**, Rathburn, ID., representing family, opposes all three bills.

-**Elizabeth Criner**, on behalf of JR Simplot Company, opposes **H 414** and **H 419**.

-**Leah Henry**, Caldwell, representing self, supports **H 419**.

-**Sheri Trovinger**, District 14, representing self, supports all three bills.

Dr. Lynn Laird, District 20, supports all three bills with an amendment to **H 419** to add an emergency clause.

Senator Winder stated there are court cases in progress and currently there is a stay on the OSHA rules which also defends the Constitution.

Senator Burgoyne asked if he had the right to ask a live-in nurse if they have been vaccinated for COVID-19. **Dr. Laird** responded no; if sick don't show up to work.

-**Amy Henry**, District 13, representing self, supports **H 414** and **H 419**.

-**Adam Zent**, District 20, representing self, supports **H 419** with an added emergency clause.

Senator Lee said that when signing an employment agreement, it applies to the employer origination state and not to the state the employee is actually located in.

Senator Burgoyne asked if Mr. Zent interacted with individuals or travel in his line of work. **Mr. Zent** said he does but a large majority of his current job is remote based from his home. Most of his travel is in the state of Idaho.

-**Tim Young**, District 14, representing self, supports **H 419**.

-**Ken McClure**, District 16, Idaho Medical Association, opposes **H 414** and **H 419**.

Senator Anthon noted that once a person has received the COVID-19 vaccine, COVID can still be transmitted. **Mr. McClure** concurred. The risk of transmission is significantly different between vaccinated and the unvaccinated population.

Senator Burgoyne commented that some vulnerable people can take vaccines and some cannot. Those people have two needs: the need not to take the vaccine and the need for those around them who can take the vaccine to be vaccinated. The risk of those vaccinated is a lot less likely to transmit the disease. **Mr. McClure** said there are personal rights involved on both sides. Rights go with responsibility.

-**Brian Whitlock**, President, Idaho Hospital Association, opposes **H 414** and **H 419**. **Senator Anthon** voiced his concern about medicare and medicaid funds being affected. He asked for an explanation of medical treatment being interpreted as drug testing. **Mr. Whitlock** said that the medical treatment definition is unclear. It isn't in code as far as he knows. Adding this particular section to the Idaho Human Rights Act where medical treatment is not defined potentially creates conflict.

Senator Winder noted that since mandates occurred, communication was initiated with major health care providers to determine a way to get a balance between the health care worker on the front line versus someone in a desk job in other locations. How can the rights of the majority of the citizens be met and will the health care providers work with the legislature to find a solution. **Mr. Whitlock** responded that the lawsuits going through the court system will bring balance and understanding to these issues. He agreed that they should work together to ensure the constituents, patients, and employees needs are met and balanced so that a safe hospital environment will exist. **Senator Winder** referred to the informational hearings held on November 16th in this Committee and stated that this engagement needs to continue so when the session starts, some of the issues will have been resolved. With both employers and the general public providing information at these hearings, it has allowed everyone to better understand the issues of balancing the job requirements and the contractual relationship between employer and employee and how all would best be served.

Senator Burgoyne observed that there is a feeling all across America and particularly in Idaho, that current laws are not providing protection. The various health care providers were not authorized to put in the mandates they chose to put in place as the appropriate thing to do with respect to their employees. There are a lot of ways under current Idaho and Federal law to attack what those employers did that were not exercised. Is vaccination the only way to contain transmission in those facilities or are there other ways to take on that issue that science would support short of requiring vaccinations. Legislation must be crafted that protects people on both sides. There is freedom at stake on both sides of this equation.

-**Max Brown**, District 14, supports **H 414** and **H 419**.

Senator Lee asked how passing additional laws creates a better remedy for the rights of the individual. Enforcement is through the courts. **Mr. Brown** said if existing statutes were enough, we wouldn't be here today. Federal mandates are forcing people to lose their jobs; they need an attorney to write exemptions for them because employees cannot write them for themselves and they are being denied.

Senator Lee said our laws are being tested and it is not clear that adding this additional piece will further those clarifications. She stated her expectation that the stay will continue and the bills can be strengthened but the result may be different than expected.

Senator Stennett asked if the laws are not being applied because of lack of enforcement and if other bills are passed will lack of enforcement continue.

Mr. Brown stated the reason this issue exists is that Federal mandates were created that do not protect our Constitution. There are issues with the ways the current statutes are being applied. This session is to address the issues and raise awareness to resolve the conflicts that do exist. That is why these discussions are urgent.

-**Aspen Whitney**, District 11, spoke in support of all three bills.

-**Colette Costello**, representing self, supports all three bills.

-**Dr. Howard Bowers**, General Surgeon, representing self, supports **H 414**.

Senator Anthon inquired if, as a doctor, at what point do you tell someone they can't be at work because they might infect the patients. **Dr. Bowers** responded

when that person is sick. **Senator Anthon** said there has been a carve out in medical or related facilities where it is legally allowed to require vaccinations for communicable diseases happening inside that institution. Those facilities are allowed to take precautionary steps that are reasonable and they can inquire if an employee has had the required vaccination so the risks are known. **Dr. Bowers** agreed that was true for all vaccines prior to the COVID-19 medical gene therapy because messenger RNA technology is new and the efficacy was not originally known. The CDC had to change the definition of what a vaccine does. **Dr. Bowers** stated his support of vaccinations for all kinds of reasons but this vaccine, as it is defined today, does not prevent the spread of disease.

Senator Burgoyne asked if he had the right to know if his provider was fully capable to provide a medical service. **Dr. Bowers** stated, as a surgeon, he has never had anyone ask for his vaccination or injury status. Private medical information should be just that.

-Kelly Williamson, District 19, representing family, supports all three bills.

Senator Lee stated she sees penalties for employers who do not follow the current law. If an employer were facing penalties, fines, or additional sanctions, how would this change what is currently happening; in any case, you would probably still have to engage an attorney. **Ms. Williamson** said that meeting today and passing this legislation sends a message; what is currently happening doesn't work.

-Maggie Goff, District 13, representing self, supports all three bills..

-April Arzen, District 18, Sr. Vice President, Human Resources-Micron, opposes **H 419**.

Chairwoman Lodge asked for confirmation that they have honored medical and religious accommodations. **Ms. Arzen** responded that all accommodations have been honored for people who have completed the interactive process. She provided the statistics of how many are working, accommodations, and some with COVID who are on temporary unpaid leave but can return to work.

Senator Burgoyne asked if **H 419** was to be enacted into law in Idaho, would Ms. Arzen view that as incentivizing or disincentivizing Micron operations to remain in Idaho considering the global reach of the company and the need of the employees to move in and out of Idaho to foreign countries where there may be vaccination mandates. **Ms. Arzen** answered they need to ensure they have the ability to maintain their operations in Idaho successfully. It is important that decisions are made in the best interest of the company and all employees.

-Teresa Haldorson, District 22, a nurse representing herself, supports all three bills.

-Miste Karlfeldt, District 20, Health Freedom Idaho, opposes **H 414** and **H 417**.

-Alicia Abbott, District 1, Sandpoint, ID, representing self, also Field Organizer for the Idaho 97 Project, opposes all three bills.

Senator Burgoyne questioned the Strict Scrutiny Standard (SSS) with respect to the issue of religious freedom. He asked if Ms. Abbott was saying the claim for religious exemption is subject to SSS as opposed to the employers denial being subject to a SSS analysis. **Ms. Abbott** said she was referred to the SSS from private business to question that claim.

-Yvonne Sandmire, District 19, representing self, opposes all three bills.

-Representative Brent Crane, District 13, supports **H 414**.

Senator Lee stated a law is already on the books that people are not following. If this bill were to pass, and if a business continued to do what you were describing, what is the remedy for the employee. **Representative Crane** answered the concerns of the employees is they don't understand 1) the legislative process, and 2) the legal process. Also, a lot of them don't have the means to address this in court. The Legislative branch needs to tell businesses what you are doing is wrong.

Representative Crane advocates respect for someone's individual religious rights. **Senator Lee** said the objective is to ensure the citizens of Idaho understand that if an employer violates this law, the remedy is not with the Legislature; that employee still must go through the court system.

Senator Burgoyne commented that the issue is employers receiving claims for exemption from vaccination requirements on the basis of religious belief and the sincerity of the belief. The only reasons for denial under the law is that you can't reasonably accommodate the religious belief or it creates an undue hardship. It is important to understand the law does not ignore a person's religious rights.

Representative Crane agreed. There is a legal remedy but these individuals do not have the financial resources to go against a corporation and they don't want to, they just want to work. Idaho respects First Amendment rights and businesses are expected to do that as well.

Chairwoman Lodge asked if the information coming out of this hearing will bring the various groups together to be able to solve some of the issues over the next seven weeks. **Representative Crane** said dialogue is always important. A deadline is approaching where people will lose their jobs so legislation does need to move forward. Businesses have tough issues to deal with and to dismiss and discount those would be a discredit to those businesses. However, the First Amendment gives the right to practice your religion. A statement must be sent out to the public that the Legislature stands with them on first amendment rights.

The following are comments in support of the bills:

H 414: Employers are not recognizing religious exemptions. Small print in employers paperwork states workers religious exemptions will be shared. The only person who can tell the true level of sincerity is that individual. No time or money to fight a global company when a religious exemption is not approved. The First Amendment right needs to be protected by employers in the State of Idaho.

H 417: Injuries are not being compensated through workers compensation. The presumption is, an injury was caused by the vaccine.

H 419: Add an emergency clause to this bill and add penalties if necessary. Citizens have a fundamental right to medical privacy. Employees have the right of choice for disclosure of medical issues. Unable to receive needed medical cure because of injuries sustained in military and cannot wear a mask or take vaccine. Currently employers are requiring information on vaccinations.

General comments: Lawsuits can take months or years. If current laws were enough, job losses would not be imminent. Employers are asking workers to take the risk of the vaccine in order to get a job. Can't force people to take something that is under emergency approval. The Idaho Constitution and IHCA are being ignored. Federal employers clearly state that legal proceedings and stays do not affect them. Vaccine can make someone deathly ill. The COVID vaccine is not proven and it is not the same as other vaccines. Every individual needs their personal rights protected. Vaccination injuries have been occurring for a long time and tabling any of this issues will bring more injuries due to the COVID vaccination. Those private organizations who are pushing the vaccine mandates are funded, at least in part, by private pharmaceutical companies who also produce the data people hear about. Vaccinated status is no one's business. This is an ethical issue; individual rights versus the greater good. Non-medical people are mandating that a vaccine is given to people for a virus that has a 99.97 percent recovery rate.

The following are comments in opposition to the bills:

H 414: It is specific to religious exemptions. Violates privacy and creates more divide. Large employers can only use this for vaccinations and sometimes drug testing. Doesn't require a basis for religious exemptions. Prevents employers and institutions from obtaining independent medical evaluations.

H 417: Because State and Federal government employers or any entity does not have the power to require or regulate an employees medical treatment. This bill violates the fundamental rights to privacy and bodily autonomy and gives the illusion that businesses can act outside of the Constitution and require medical treatment for employment. The presumption is that the injury was caused by the vaccination. Worker's Compensation experience rating can be adjusted if claims arise as opposed to claims settled. Specifies exemptions are for employers but there are many types of entities it would also affect.

H 419: Change of language to reflect that no entity shall require disclosure of vaccination status unless international travel to a country or state requiring that information is involved. Difficulty for employer to keep a safe working environment particularly in health care. How can an accommodation be made if the employer can't require the information. As an employer, using many resources to keep employees safe. Vaccines have been the most effective tool to avoid infections and decrease severe illness. Removes the ability to keep people safe. Medical and religious accommodations have been given to all who applied. Add emergency clause.

General comments: All vaccinations have caused harm and damage. Whether vaccinated or not, COVID can still be transmitted. Employers have pressures from demands related to regulations and employees with different requirements or beliefs plus customer demands. The way bills will be implemented will place mandates and limitations on businesses. This is not a novel virus but because of it, the country is losing its system of government in this process. There could be unintended consequences to current laws in place. Laws shouldn't be passed that are not great. Majority of Idahoans want a safe workplace, safe businesses to patronize, and safe health care facilities.

MOTION : **Senator Anthon** moved to send **H 414** to the Senate floor with a **do pass** recommendation. There being no second, **H 414** will be held in the office of the Senate State Affairs Committee.

MOTION: **Senator Lee** moved to hold **H 417** in Committee. **Senator Heider** seconded the motion.

Senator Lee noted that this is an important bill but that some work is required to get the bill to a place that will protect Idahoans. There has been some suggested language for amendments. There is not time to do this during this session. She encouraged working together to get language that everyone can approve and do this at the very beginning of the upcoming session.

Senator Anthon stated he will be opposing the motion because we are underrepresented in our ability to pursue normal courses of recourse in the courts because of the immunity provided to pharmaceutical companies. To the extent the motion succeeds he would be happy to work with the sponsors and others on the Committee.

Senator Burgoyne said he will be supporting the motion. He sincerely believes in the intent of this bill. There is a concern with subsection 4, financial burdens should not be imposed on Idaho employers for Federal mandates. Instead, that potential financial burden for increased premium costs and experience rating related costs should be paid for from the Federal COVID funds that Idaho has received. **Senator Burgoyne** pledged that he would provide help with this bill and he would like to see it at the beginning of the next session with appropriate amendment(s).

VOTE: The motion carried by **voice vote**. **Senator Anthon** was recorded as voting nay.

MOTION: **H 419** will be held in the Senate State Affairs Committee for lack of a motion.

ADJOURNED: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 11:50 a.m.

Senator Lodge
Chair

Twyla Melton
Secretary