

Attachment B

11-17-21

Written Testimony Submitted

## **Talking Points for Businesses Regarding Vaccine Legislation**

- Businesses strongly oppose any legislation that would step between an employer and their employees by creating new government mandates on how they operate.
- Idaho is a right-to-work state. Government should not be in the business of deciding who employers can hire and fire, and under what parameters. Government should especially not be in the business of creating new liability for employers who are working to keep their businesses open and their employees safe.
- The Biden Administration has already over-reached by federally mandating companies vaccinate their employees and subcontractors. The answer to the federal mandate is not conflicting state mandates. All of these types of mandates create uncertainty and liability for businesses and do nothing to help employers keep their doors open and contribute to the advancement of Idaho's economy.
- Any legislation likely to be considered in this Session is premature. Idaho has already joined two lawsuits to stop the federal orders creating vaccines mandates for many employers. The OSHA mandate has already been stayed. The US Supreme Court will ultimately decide this issue in the near future.
- Once we know the legal fate of the federal mandates, the best thing Idaho's government can do is to help businesses comply with any requirements left in place. This means not hamstringing local officials at hospitals and health departments from helping businesses trying to follow the law.
- Idaho businesses have worked tirelessly since the start of the pandemic to keep their doors open, and their employees safe. Many businesses have found new ways to operate that work for them and their employees. Many of the ideas being considered will have the effect of undoing these hard-fought gains.
- This is an economic issue for Idaho. Idaho's economy has been leading the country on the way out of the pandemic, largely because government has stayed out of the operation of private businesses. Idaho employers are already struggling with supply chain issues because of the pandemic. More harmful regulations from state government only weaken our efforts and damage our economy.



November 17, 2021

The Honorable Patti Anne Lodge  
Chair, Senate State Affairs  
Idaho State Senate  
Boise, Idaho 83704

*Via Email*

**Re: HB 414, Right to Refuse Medical Treatment Based on Medical Beliefs**

Dear Chairwoman Lodge and Members of the Committee:

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers, and promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA opposes HB 414 as a threat to the stability and functioning of the Idaho workers' compensation system.

HB 414 provides that "Any person may refuse *medical treatment of any kind* based on the person's religious beliefs." Emphasis added. Moreover, "no governmental entity, employer, or any other entity may question the sincerity of the religious beliefs claimed by a person."

The Idaho workers' compensation system depends on the injured worker submitting to an initial medical evaluation, subsequent medical treatment, and periodic medical evaluations to determine appropriate return to work and medical improvement. A law that provides a worker the right to refuse any medical treatment and medical evaluations based on a claimant's self-expressed "religious belief," a belief that may not be questioned by the employer, the insurer, or the government, directly undermines the entire basis of the workers' compensation system.

Idaho Code 72-434 currently recognizes the critical importance of the injured worker complying with medical treatment requirements and mandatory medical evaluations. Idaho Code 72-434 provides "If an injured employee unreasonably fails to submit to or in any way obstructs an examination by a physician or surgeon designated by the commission or the employer, the injured employee's right to take or

prosecute any proceedings under this law shall be suspended until such failure or obstruction ceases, and no compensation shall be payable for the period during which such failure or obstruction continues.”

Idaho Code 72-434's mandate that the injured worker comply with and submit to medical treatment and medical evaluations is absolutely critical to the functioning of the workers' compensation system. Unfortunately, HB 414, by creating a new right of a person to refuse any type of medical treatment on the mere allegation of a religious belief, an allegation that an employer or the government may not contest, appears to override Idaho Code 72-434's mandate and thereby threatens to destabilize Idaho's workers' compensation system.

Based on the foregoing, APCIA urges that HB 414 be defeated. Please let me know if I may provide additional information. Thank you for your consideration of this important policy matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lyn Darrington Elliott".

Lyn Darrington Elliott

Assistant Vice President, State Government Relations – Mountain Region  
American Property Casualty Insurance Association



November 17, 2021

The Honorable Patti Anne Lodge  
Chair, Senate State Affairs  
Idaho State Senate  
Boise, Idaho 83704

*Via Email*

**Re: HB 417, To Provide that Vaccine-Related Accidents or Injuries Shall be Compensable and to Provide for a Presumption in Favor of Compensation**

Dear Chairwoman Lodge and Members of the Committee:

The American Property Casualty Insurance Association (APCIA)<sup>1</sup> opposes HB 417 for creating a presumption of compensability under workers' compensation when an employee receives a vaccine in the course of employment and suffers an injury or accident that "may be related to the employee's receipt of such vaccine."

By creating a presumption of coverage that a workers' vaccination was in the course of employment and a subsequent accident or injury was the result of the vaccination, HB 417 overturns a century of workers' compensation bedrock principles that a claimant may recover only upon the claimant offering sufficient proof that the accident occurred in the course and scope of employment and the accident or injury was work-related.

Workers' compensation is a no-fault system where the employer provides the injured worker with indemnity benefits and unlimited first dollar medical benefits (without any deductibles or co-pays) *even in the absence of fault by the employer* for all workplace accidents and injuries. Such a no-fault system can survive only if claimants are required to provide sufficient proof that there is a medical injury and that the injury arose in the scope and course of employment.

HB 417, however, dispenses with any requirement that the claimant offer sufficient proof that any alleged accident or injury arose in the scope and course of employment or sufficient medical proof that the alleged injury is a result of a workplace event. Instead, HB 417 shifts the burden on the employer to prove "by a

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<sup>1</sup> APCIA represents nearly 60 percent of the U.S. property casualty insurance market and the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

substantial certainty" that the alleged injury was not related to the workplace. A "substantial certainty" standard is an extremely high standard to meet, and the employer should not have the standard of proof in any event. The burden of proof that an alleged injury is compensable under the workers' compensation act should always rest on the claimant seeking benefits under a no-fault system.

To eliminate the long-established bedrock principle that a claimant first must prove a compensable injury taking place in the scope and course of employment will open the no-fault system to claims entirely unrelated to the workplace. Indeed, HB 417 by its terms authorizes application of the presumption merely upon an allegation an injury "*may be related to the employee's receipt of such vaccine.*" Emphasis added. Creating a presumption of compensability, that can be defeated only upon the high standard of "substantial certainty" to the contrary, merely because an alleged injury or disease "may be related to a vaccine" will only authorize compensability to a host of illnesses and injuries that are not in any way related to the workplace. A no-fault system that pays indemnity benefits and unlimited medical benefits even in the absence of employer fault should not be required to pay for illnesses or diseases without any proof that such illnesses or diseases were in any way work-related.

Based on the foregoing reasons, APCIA requests that HB 417 be defeated.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. A. Bennett', with a long horizontal flourish extending to the right.

Steven A. Bennett  
Assistant Vice President, Workers Compensation Programs & Counsel  
American Property Casualty Insurance Association

## Twyla Melton

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**From:** LaRae Wilson <laraewilson@gmail.com>  
**Sent:** Wednesday, November 17, 2021 12:05 PM  
**To:** Twyla Melton; Senator Patti Anne Lodge  
**Subject:** Today's Committee Hearing

Madam Chair and Members of the Senate State Affairs Committee,

I am LaRae Wilson from Boise, Idaho District 18. I am a member of MWEG-Idaho (Mormon Women for Ethical Government), but am writing to you today as a private citizen in lieu of my remote testimony that I had hoped to share, but there was simply no more time.

Thank you for your reasoned consideration of all testimony today. I watched the entire session online. I learned a great deal.

I think that these bills could have waited for the 2022 Legislative session, but instead urgency cited by the House leadership and supported by the majority party members in that body resulted in the Idaho Constitution being suspended to rush these bills through without proper review, debate, or citizen input. And listening to the discussion in committee this morning, each of these bills would have benefitted from additional review, oversight, and input. Moreover, redundant legislation taken in a hurry is not an appropriate remedy for violation of individual rights and employment laws, examples of which we heard today.

Bills 414 and 419 nfringe on the self-governance of individuals and entities, like school districts and businesses and nonprofits, to allow other individuals an expansion of their rights as they see them.

Most of the bills that came out of the House on November 16 are an example of government overreach seen regularly in recent legislation in Idaho. I wish to see less paternalistic legislation that seeks to impose a point of view on the entire citizenry of our state and more legislation that is born of good policy after strong research, clear data, and committee oversight.

Thank you for pushing back on legislative redundancy and overreach by insisting on more discussion from all parties involved and needed editing and amending. Thank you for not passing any of these bills through your committee to the Senate floor at this time.

Sincerely,  
LaRae Wilson

LaRae Wilson  
Legislative Co-Lead, Idaho Chapter  
Mormon Women for Ethical Government (MWEG)



## Robert Anderst

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**From:** COREY SURBER <Corey.Surber@saintalphonsus.org>  
**Sent:** Tuesday, November 16, 2021 10:53 PM  
**To:** plodge@senate.idaho.gov; jguthrie@senate.idaho.gov; 'cwindler@senate.idaho.gov'; kanthon@senate.idaho.gov; mharris@senate.idaho.gov; alee@senate.idaho.gov; lheiderr@senate.idaho.gov; mstennett@senate.idaho.gov; gburgoyne@senate.idaho.gov  
**Cc:** Robert Anderst  
**Subject:** Please Oppose HB 414 and HB 419

Dear Senate State Affairs Committee Members:

Thank you for the opportunity to provide input regarding legislation that will be before your committee tomorrow morning. Before I get into specifics on these bills, I'll just express some frustration at the frantic speed at which these bills are moving through the legislature, without adequate time for review, analysis and discussion of potential unintended consequences of these proposals. With the regular legislative session coming up in just a few weeks, it would be far preferable to be going through the deliberative process that the legislature should, to ensure adequate opportunity for input from all sides of an issue and for proper consideration of possible ramifications before passing into law. But I'm sure some of you agree with me on that, so I'll get to specific concerns related to a couple of the bills on your agenda.

**House Bill 414**, with its broad approach to expanding religious exemptions for all medical procedures (when the likely target was vaccination) and banning employers from asking clarifying questions about deeply held beliefs that support religious exemptions, creates concern about an employer's ability to comply with federal requirements. While the OSHA federal vaccine requirement on employers with >100 employees is currently held up in the court system, there is nothing to prevent implementation of the CMS vaccine requirement for healthcare workers, which our organization must comply with if implemented as scheduled in the very near future. It would be premature for the state legislature to pass a law that places employers between a rock and a hard place, and the federal requirement would supersede the state requirement.

Since this bill is also crafted so broadly referring to medical procedures in general, I was also wondering about an unintended consequence such as an employer asking a new hire or existing colleague for a drug test, and that employee refusing on the basis of religious exemption without the employer being able to inquire further. With so little time to review this bill and get input from our team, it's difficult to say what other challenges it might create. The fact is that we do grant religious exemptions to the COVID-19 vaccine requirement for our colleagues who request accommodation and are able to establish that their request is based on a sincerely held belief. **Given the uncertainty around impacts of this legislation and uncertainty/confusion it would create in the midst of an evolving situation with the federal vaccine requirements, we ask that you vote to hold HB 414 in committee.**

**House Bill 419** also causes us great concern due to conflict with federal vaccine requirements. As stated in an AG opinion obtained today, "if HB419 went into effect, a private CMS funded employer would be put in a difficult position where the employer would be unable to comply with HB419 and maintain CMS federal funding." While Idaho is currently part of a legal challenge to the CMS regulations, there is currently nothing stopping implementation from moving forward, and Idaho's healthcare employers must comply or face devastating loss of Medicare and Medicaid funds. **We ask that you vote to hold HB 419 in committee, given the conflict with current federal regulations.**

Again, thank you for the opportunity to share our thoughts on these bills before your committee. I would have come to testify in person, but have a prior commitment moderating a behavioral health panel at Leadership Boise so am unable to be there. If you have any questions, please feel free to send me a message and I will try to get you a quick response, but I think others may be in attendance who can speak to questions just as well, maybe better.



Madam Chair and Committee,

Good morning, My name is Cindi Bennett, I am from Nampa Idaho District 12. I would like to say that I do support this bill 419. I am a nurse with 16 years of experience, and I also have my master's degree in Nursing Population Health, Additionally I'm an internationally board-certified lactation consultant I had the privilege of designing several programs within the largest hospital system in the state of Idaho. I left my job 4 weeks ago this Friday rather than being fired.

This bill will allow myself and others to obtain employment and not be discriminated against whether we have received the COVID shot or not. I showed up to work every day working through the COVID crisis. I came to work when there wasn't enough PPEs supposedly which is (**Personal protective equipment**). I've taken care of COVID positive patients and never once have I asked a patient have you received the COVID shot.

I made a medical freedom decision just like many others and we should not be denied the opportunity to continue to work and I'm especially saying this in the nursing field we are losing nurses at a huge rate as shared earlier (the NICU nurse with several years of experience), pleasure of working with her.

Please take note that travel nurses are NOT required to have to take the COVID shot.

I don't know about you but I do know if I am in the hospital setting and need medical attention for myself or my family I want a competent seasoned well educated nurse taking care of me or my family and these same well educated seasoned nurses are the ones we need to keep in this community because these same well-educated seasoned nurses are needed to precept new nurses.

Thank you for allowing me this time to share.

In the Grip of Grace,  
Cindi Faith Bennett

## Twyla Melton

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**From:** Twyla Melton  
**Sent:** Thursday, November 18, 2021 2:22 PM  
**To:** SenateStateAffairs  
**Subject:** FW: Our testimony on bills H 414, H 417, and H 419

Katherine Dawes requested that her testimony be sent to you. As her message said, she appreciates it that the bills were held in Committee.

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**From:** Katherine P. Dawes <kdawes208@gmail.com>  
**Sent:** Thursday, November 18, 2021 12:25 PM  
**To:** Twyla Melton <sstaf@senate.idaho.gov>  
**Subject:** Our testimony on bills H 414, H 417, and H 419

Ms. Melton,

I had signed up to testify yesterday in the State Affairs Committee but was unable to do so because of time constraints. I would greatly appreciate it if you would send this message to all the members of the committee. Thank you so much.

Sincerely,  
Kathy Dawes

Chair Lodge and members of the Senate State Affairs Committee,

Although I had signed up the night before the hearings to testify remotely on behalf of myself and my husband, I was not called upon, due to time constraints. We greatly appreciate that the committee chose to hold all three bills, since we oppose them. However, we would greatly appreciate it if you could read the following testimony that I had planned to give in order to understand our rationale. Thank you.

Kathy and Dana Dawes  
Moscow, ID

### **H 414 – Religious Exemptions**

This bill is too broad and allows the words “religious exemption” to be used by anyone, without question, for any reason, and actually cheapens the meaning and intent of the term. This bill allows virtually anyone to avoid getting vaccinated and also allows them to work without taking any responsibility at all for taking any measures to protect themselves or others, no matter what the circumstances.

**H 417 – Workers Compensation:** This bill is totally unnecessary. There is already a mechanism for compensation for the unlikely event someone experiences a serious injury from numerous vaccinations, including COVID. The federal Countermeasures Injury Compensation Program (CICP) was created for this very reason. A countermeasure is a vaccination, medication, device, or other item recommended to diagnose, prevent or treat a declared pandemic, epidemic or security threat.

In addition, if you want to allow people to be compensated by workers comp for "an accident or injury that is or may be related to the employee's receipt of such vaccine" then you should also allow similar compensation for work-related COVID cases that happen due to the fact that the employer did not take adequate safety measures to assure their employee's health. Both of these would require some investigation to determine if the 'injury' was directly due to work-

related events, but if you are going to allow compensation for one, then you must also allow compensation for the other.

Senator Burgoyne suggested that workers comp claims for vaccine injury could be paid using federal COVID funds, which makes a lot of sense to us, but if you do that, we also feel that claims for illness due to COVID as we described above should also be included.

**HB419 Vaccination Status (COVID) cannot be disclosed as a condition of employment:**

Our major concern with this bill is that hospitals and other health care facilities are included in this bill and could therefore not require their employees to prove their vaccination status. Already, many healthcare workers are required to have proof of several other vaccinations. Why separate COVID from these, when these workers are in direct contact with patients who could get COVID from them? Whose rights should come first, the worker's or the patient's?

Mandatory vaccines have been required for health care workers for a long time. Nursing students must show proof of childhood vaccines or show developed immunity prior to being allowed into the clinical setting and ultimately obtain a license. Currently, an annual flu shot is usually required. Some facilities may allow employees to opt out of the vaccine and wear a face mask during the flu season.

It is not only realistic but essential for health care workers to be required to disclose to their employer their vaccination status, especially for such an extremely transmissible agent like COVID-19. It is not fair or reasonable for this bill to specifically single out the COVID-19 vaccine.