

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 16, 2022

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairwoman Lodge, Vice Chairman 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:** **Vice Chairman Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:03 a.m.

**GUBERNATORIAL APPOINTMENT:** **THE GUBERNATORIAL REAPPOINTMENT** of Jerry Aldape to the Idaho Endowment Fund Investment Board (IEFIB).

**Mr. Aldape** introduced himself to the Committee. He provided a brief overview of his professional experience and IEFIB accomplishments during his first term of service.

**Vice Chairman Guthrie** announced the Committee would vote on Mr. Aldape's reappointment at its next meeting.

**MINUTES APPROVAL:** **Senator Harris** moved to approve the Minutes of February 4, 2022. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**S 1263** **RELATING TO HOMEOWNER'S ASSOCIATIONS** - to amend existing law to provide certain exceptions regarding the imposition of fines for certain violations for notification of meetings.

**Senator Heider** presented the bill to waive the 30-day notice requirement for a homeowner's association (HOA) to address a violation involving endangerment to the public or destruction of another's property. He provided examples of situations when the legislation would apply and why it was needed.

**DISCUSSION:** **Senator Stennett** asked about the bill's effect on a non-resident homeowner or an issue involving a short-term renter. She suggested contacting law enforcement for endangerment or property damage matters. **Senator Heider** answered that the bill would allow an HOA to take more expeditious action. He clarified that the HOA would need to address the matter with the homeowner even if law enforcement was immediately involved.

**Senator Harris** commented that law enforcement should address this type of issue and not the HOA. **Senator Heider** agreed that sometimes law enforcement should be contacted. He said an HOA was better equipped to handle certain problems.

**Senator Burgoyne** recommended adding a requirement that the HOA attempt to give notice to the homeowner prior to taking action. He observed that he had heard of HOAs that use fines to impose personal justice. **Senator Heider** responded that the bill was intended to address an immediate situation without waiting 30 days for a hearing.

**Senator Lee** asked if an HOA could establish rules for handling emergencies that would provide due process to homeowners. She expressed concern that a small group of neighbors could take an action outside of the normal process. **Senator Heider** answered that the notice requirement would not be changed. He said waiting 30 days could result in serious safety or property damage issues.

**Senator Stennett** inquired if a homeowner could immediately address a situation on his own without involvement of the HOA. **Senator Heider** answered yes. He added that an HOA's options were limited under current law.

**TESTIMONY:** **Burt Willie**, Community Association Institute (CAI), testified in support of **S 1263** because it would achieve a balance between the HOA's needs and the homeowner's rights. He said some situations were inappropriate for law enforcement involvement. He provided examples of when the 30-day notice requirement was problematic.

**DISCUSSION:** **Senator Winder** asked why an association manager couldn't respond quickly to address issues without calling a meeting. **Mr. Willie** responded that some homeowners acted in bad faith and ignored issues because of the 30-day notice requirement in Idaho Code. He stated the provision worked for some issues but created a hardship other times.

**TESTIMONY:** **Brindee Collins**, attorney and member of the CAI, testified in support of **S 1263**. She said the law would not affect the majority of HOAs in Idaho because most did not have fining authority in their governing documents. She advised the bill further limited the waiver to four specific situations.

**DISCUSSION:** **Senator Burgoyne** asked why the bill should not include an attempt to give notice. **Ms. Collins** described the appeal process in Utah law for HOA violations and suggested it would be a good model for Idaho. She noted the proposed law change limited waiver of the 30-day notice requirement to four circumstances. She added that this section of Idaho Code also applied to condominiums where situations often required more immediate attention.

**Senator Anthon** asked about due process and an owner's legal recourse when a fine was imposed. **Ms. Collins** responded that the process varied. She said the hearing process in current law was ineffective in addressing homeowner issues. **Ms. Collins** explained a homeowner's options to respond to imposition of a fine. She noted the bill was intended to address one-time situations rather than ongoing violations.

**Senator Winder** commented that he was unsure this bill was the correct solution to the problem. He suggested adding a requirement to attempt notice and the appeal provisions of the Utah law.

**Senator Burgoyne** observed that the immediate imposition of a fine would not truly address the issue of endangerment or property damage. He stated an HOA could take immediate action without a law change. He suggested either holding the bill in Committee or sending it to the 14th Order of Business.

**MOTION:** **Senator Lee** moved to send **S 1263** to the 14th Order of Business for possible amendment. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Guthrie passed the gavel to Chairwoman Lodge.

**S 1308** **RELATING TO ALCOHOLIC BEVERAGES** - to amend existing law revising age restrictions for persons allowed to serve beer, wine, or other alcoholic liquor.

**Pam Eaton**, Idaho Retailers Association and Idaho Lodging and Restaurant Association, introduced herself to the Committee. **Ms. Eaton** advised the bill was brought to help businesses address a labor shortage, increase opportunities for teens, and assist consumers. She noted the bill would allow employees at age 17 or 18 to stock alcoholic beverages, ring up a purchase at the register, or carry a drink to a customer's table. **Ms. Eaton** reviewed the various sections of Idaho Code that would be revised. She added that the bill would not change an employer's rights or obligations under the liquor laws.

**MOTION:** **Senator Harris** moved to send **S 1308** to the floor with a **do pass** recommendation. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**.

**S 1309** **RELATING TO THE FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT** - to amend existing law to revise the prohibitions, penalties, and causes of action of the Fetal Heartbeat Preborn Child Protection Act.

**Blaine Konzatti**, President, Idaho Family Policy Center, introduced himself to the Committee. **Mr. Konzatti** stated the bill would add a private enforcement mechanism to the 2021 "heartbeat" law. He reported the bill was modeled after Texas legislation that had withstood several legal challenges. **Mr. Konzatti** advised the bill limited standing to family members of the preborn baby. He explained the bill did not address matters of venue or jurisdiction. He described two changes for a future trailer bill to prevent frivolous lawsuits: the addition of language to allow a prevailing defendant an award of costs and attorney's fees if the defendant complied with the other provisions of the law; and the elimination of section five regarding affirmative defenses. **Mr. Konzatti** reported that the Texas law did not result in numerous lawsuits. He noted there had been voluntary compliance in Texas. **Mr. Konzatti** reminded the Committee that pregnant women had multiple support resources available statewide. He stated that a fetal heartbeat is a reliable indicator that viable life exists. He declared that life begins at conception.

**TESTIMONY:** The Committee heard testimony in support of and in opposition to **S 1309** from the persons listed on Attachment A.

Those in support of **S 1309** provided the following reasons: life with a unique genetic code begins at conception; many babies' lives would be saved; abortion was damaging to a woman's mental health; family members also grieved over loss of a baby's life; many social and economic support resources were available to a pregnant woman; the bill would uphold the Idaho Constitution; the rights of the unborn who cannot speak for themselves must be protected; every life deserved the right to live and pursue happiness; abortion was wrong and contrary to God's law; the bill was not new but merely made modifications to the existing Idaho "heartbeat" law; and it was the State's duty to protect a woman and her unborn child.

Reasons given in opposition to **S 1309** included: the bill was unconstitutional; a woman should have the right to make decisions about her own body; it violated a woman's right to privacy; restricting reproductive autonomy was undue government interference; unwanted pregnancies prevented women from reaching their full economic potential; an abortion ban would increase pregnancy related deaths and disproportionately impact underrepresented populations; the bill would encourage spying and family member lawsuits for financial gain; it would exacerbate intimate partner violence and reproductive coercion; abortion providers would be intimidated and harassed; banning abortions was the wrong way to reduce unwanted pregnancies; it interfered with the relationship between a woman and her health care provider; this tactic could be used to restrict other constitutional rights; the bill shifted the burden to a doctor and offered no recourse

to someone who had done nothing wrong; most women did not regret having had an abortion; and a woman would be forced to carry a dead child.

The Committee received written testimony in support of and in opposition to **S 1309** (see Attachment B).

**DISCUSSION:**

**Senator Stennett** commented that the bill provided more protection for embryonic life than for live birth children and permitted extended family members to insert themselves into a woman's health care. She asked Mistie DelliCarpini-Tolman if the bill would allow an abusive family member to file suit. **Ms. Tolman** said the bill would allow family members of an abusive partner to sue for up to four years after an abortion.

**Senator Stennett** asked Linda Thomas if Stanton Health Care actively sought adoption placements for unwanted children. **Ms. Thomas** replied that her organization provided resources to pregnant women and did not handle adoptions. She noted the specifics of an adoption were between a woman and the attorney or adoption agency.

**Senator Stennett** inquired of Tai Simpson how the ability of a family member to file suit would affect women who experienced intimate partner violence. **Ms. Simpson** said that navigating a lawsuit in response to rape or coerced sex would further traumatize and victimize women enduring abuse.

**Senator Stennett** remarked that some babies developed inside the mother but could not live on their own due to a severe birth defect. She asked Tammy Payne if a mother should carry to term a non-viable baby without a heartbeat. **Ms. Payne** replied that 95 percent of children with a heartbeat were viable to birth. She said severe birth defects were heartbreaking but life was ordained by God.

**Senator Stennett** asked Lauren Bramwell if a family member outside of Idaho would have the right to sue for an Idaho abortion. **Ms. Bramwell** said she did not know the answer to that question.

**Senator Stennett** inquired of Susan Low how she would have managed if this bill had been in effect, when two family members had opposite opinions about whether she should keep her baby. **Ms. Low** replied that she would have had to live with herself and reconcile with her mother. She added that her mother did not understand the process of a baby's development at the time.

**Chairwoman Lodge** asked Ken McClure to restate his proposed changes to Section 4 on page 4 of the bill. **Mr. McClure** explained that language should be added to allow for attorney's fees to be awarded to a defendant who complied with the law. He advised that Section 5 on page 4 should be deleted.

**Senator Burgoyne** asked Ken McClure about the legal standards set forth in the current law. He added that the burden of proof seemed to rest on the wrong party. **Mr. McClure** responded that making the proposed changes would shift the burden of proof to the plaintiff. He reported that the Idaho Medical Association would be neutral on the legislation with the addition of the trailer bill. **Senator Burgoyne** declared that the word "unless" would leave the burden of proof resting on the defendant. He urged Mr. McClure to consider different verbiage.

**Mr. Conzatti** confirmed he would soon present a trailer bill to make changes to Sections 4 and 5 in accordance with Mr. McClure's suggestions.

**Senator Lee** suggested that Mr. Conzatti should rewrite **S 1309** rather than pass it and bring a subsequent trailer bill. **Mr. Conzatti** stated it would be simpler to proceed with a separate trailer bill. He added he was certain the trailer bill would pass. **Chairwoman Lodge** said it would be up to the Committee whether to proceed with **S 1309**.

**Mr. Conzatti** responded to testimony and previous discussion by noting that the lawsuits filed against the State of Texas were dismissed. Also, the bill contained exceptions for rape and incest and fetal demise.

**MOTION:** **Senator Harris** moved to send **S 1309** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

**DISCUSSION:** **Senator Burgoyne** provided an Attorney General's opinion stating that the bill would likely violate the equal protection clause and due process clause of the United States Constitution and the Idaho Constitution (see Attachment C). He further explained that the bill would be an unconstitutional delegation of executive branch powers to private citizens and violate the separation of powers of the Idaho Constitution. **Senator Burgoyne** stated the United States Supreme Court could not review the constitutionality of the Texas law until its next term. However, the Idaho Supreme Court would be able to review the law more quickly. He observed the Attorney General did not see problems with the jurisdiction and venue provisions of the bill. However, there was a question regarding a plaintiff's standing to sue. **Senator Burgoyne** stated it was unclear whether the statutory damages would reflect an actual injury or a penalty. He said the bill was unconstitutional on its face. He predicted the State would incur an expensive lawsuit over the bill's constitutionality.

**VOICE VOTE:** The motion to send **S 1309** to the floor with a **do pass** recommendation carried by **voice vote**. **Senator Burgoyne** and **Senator Stennett** requested that they be recorded as voting nay.

**ADJOURNED:** There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 10:28 a.m.

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Senator Lodge  
Chair

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Twyla Melton  
Secretary

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Jeanne Jackson-Heim  
Assistant Secretary