

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 13, 2023

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

**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:** **Chairman Lakey** called the meeting of the Senate Judiciary & Rules Committee (Committee) to order at 1:30 p.m.

**RS 30125C1:** **Relating to the Ability of Public and Private Entities to Impose a Requirement that Individuals receive a Coronavirus Vaccination. Senator Ben Adams** explained that this legislation was similar to legislation passed by both houses in the 2022 session. The primary change was an adjustment made from a criminal penalty to a civil penalty with a dollar amount for statutory damages. This bill would not have a one-year sunset clause and would be the prerogative of the state of Idaho. **Senator Adams** added that this legislation ensured the people of Idaho would not be discriminated against if they have or have not had the coronavirus vaccine. The same applies to Idaho businesses.

**MOTION:** **Senator Ricks** moved to send **RS 30125C1** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**RS 30196** **Relating to Child Abuse Cases against a Governmental Entity or its Employee in the State of Idaho. Senator Ruchti** stated this legislation would extend the amount of time a minor who is a victim of sex abuse had to file an at work claim notice against the government for those cases where the government or its employee caused the abuse. He explained that when a claim for an injury against the government was made, there was a separate set of statutes that applied and required certain information provided within a specified amount of time. Failure to comply would result in the claim being dismissed permanently. This legislation would change claims against the government for child sex abuse cases and the amount of time those claims had to be brought. **Chairman Lakey** asked if the legislation would modify the Idaho Tort Claims Act as it applied to other governmental entities. **Senator Ruchti** responded that it did. He added that for children the statute was being modified allowing children to have six years from the date the claim arose or 180 days after the child turned 18, whichever was earlier. It was basically a statute of limitations change.

**MOTION:** **Senator Foreman** moved to send **RS 30196** to print. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

**RS 30275** **Relating to Law Enforcement being allowed to destroy Computers and Associated Equipment used in the Commission of Crimes against Children.** **Senator Okuniewicz** explained this legislation dealt with asset forfeiture related to crimes against children. It was very similar to drug crime forfeitures but with a focus on crimes against children. **Senator Foreman** questioned if there was input from the Attorney General's office. **Senator Okuniewicz** responded that they were in favor of the bill. He stated that the police departments were required to find storage for the devices used in these types of crimes. When the crime had been served, the items were purged and returned to the convicted criminals. This resulted in costs to taxpayers and extra efforts for the police departments.

**MOTION:** **Senator Lee** moved to send **RS 30275** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**RS 30294** **Relating to bringing Transparency and Clarity to the Rental Application Process for Residential Rentals.** **Senator Ruchti** introduced **RS 30294** by explaining two aspects of the process. One was the discussions that happened or the information that was given to the renter before the renter entered into the contract with the landlord. The other was this only applied to rental companies, and to landlords that charge an application fee. **Senator Ruchti** stated not only did this bill provide transparency for consumers, but it forces everyone to meet and gather the information they need so a family could look at what their options were and what they could afford. Landlords were well served to make sure their tenants know what was expected of them so they did not get candidates for their rentals that cannot afford to pay.

**MOTION:** **Senator Wintrow** moved to send **RS 30294** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Chairman Lakey passed the gavel to Vice Chairman Foreman.

**S 1051** **Outfitters and Guides.** Amends existing law to revise provisions regarding the liability of outfitters and guides. **Chairman Lakey** introduced **S 1051** by sharing what a good place Idaho was for outdoor activities. Idaho's wilderness was what Idaho was known for. We do these things and go these places because that was part of the fun, but they did come with inherent risks. If you choose to engage in these activities, you should be responsible for the choices you made. Liability protection was provided because of the nature of the activities and the protections must be provided or these companies would go out of business. This legislation would make two code sections, the ski resorts section and the outfitters and guides section, more equal. Both involve inherently dangerous and discretionary activities where operators should be protected and participants should accept the risks. The bill protects those outfitters and guides that meet licensing requirements. Those who did not, did not receive the protection, and they must be participating in the scope of their employment to be covered. There was still liability for negligent, reckless, or intentional conduct, and there was no duty to eliminate, alter or control the inherent risky nature of the activity. This bill clarified that waiver and enforceability applied here.

**TESTIMONY:** **Jeff Bitton**, President, Idaho Outfitters and Guides Association, testified in support of **S 1051**.

**Aaron Lieberman**, Executive Director, Idaho Outfitters and Guides Association, voiced his support for the legislation and highlighted that the purpose of this bill. He clarified that outfitters and guides, like other comparable industries in Idaho, notably ski areas, had certain protection under law from claims against liability unless they were reckless or negligent. The policy of the State of Idaho, as with similar industries, was liability releases were enforceable. There were risks inherent to the activities provided that cannot be controlled, lessened or eliminated. **Senator Ricks** asked for examples of activities where incidents occurred where inherent risks arose. **Mr. Lieberman** shared some examples. He identified situations where negligence had taken place, reckless or not, were things they could not control were more numerous than the things they could. **Mr. Lieberman** reiterated that the goal of this legislation was to hold the guides and outfitters responsible for the things they could control. They did not feel it was appropriate to be held responsible for the things they cannot control. **Senator Anthon** was concerned that the scope of the legislation was going further than intended. **Mr. Lieberman** assured him that the language in the bill would not be a carte blanche excuse for engaging in recklessness.

**Leah Corrigan** attorney, Victor, Idaho, testified in support of **S 1051**. She stated this legislation made clear that liability waivers were meant to be enforceable just as they were for other businesses in Idaho. It also clarified that these outdoor activities were not without inherent risks and that by participating, one agreed to assume the risk involved. **Senator Ruchti** declared Rule 39(H) indicating that he practiced this type of law. He stated his concern being this legislation would eliminate, alter, control or lessen the risks inherent with the activity over which there was no control. **Ms. Corrigan** explained that after significant research where states had similar case law, an inherent risk was a question for a jury. The result was that outfitters were not required to do what was impossible or uncontrollable to eliminate risks that could be eliminated. **Senator Wintrow** questioned which negligence claims could be waived. **Ms. Corrigan** stated that in Idaho any industry other than Idaho Outfitters and Guides could sign a liability waiver waiving the right to sue if negligence occurred. This legislation asks that waivers be enforceable to the same extent they were in other industries.

**Leslie Frazee**, CBIZ Insurance Service, Lewiston, Idaho, representing the recreation insurance industry sector testified in favor of **S 1051**. **Ms. Frazee** stated it was the industry standard to allow activity releases. The recreation industry was at a disadvantage when an application was presented to an underwriter without a release. The insurance companies would not underwrite an account without a release or waiver. **Ms. Frazee** indicated she had seen a 175 percent increase in rates since 2016. The options for insurance coverage for outfitters and guides were very limited. Passing of this legislation would improve the enforceability of the liability release and would help slow and stabilize the rate of premium increases and improve the availability to outfitters and guides for insurance.

**Erik Weiseth**, Managing Partner, Orange Torpedo Trips, McCall, Idaho, testified in favor of **S 1051** (see Attachment 1).

**Kenneth Long**, representing Cascade Raft and Kayak, spoke in support of **S 1051**. **Mr. Long** explained that this was a family owned business, and he was a second generation outfitter and would love to have his children and grandchildren be third and fourth generation outfitters.

**Caitlin O'Brien**, Attorney, Smith Malek, Dalton Gardens, Idaho, spoke in favor of **S 1051**. **Ms. O'Brien** explained that this legislation was not asking to remove all liability on outfitters. It was about basic negligence or simple errors. She stated that this would level the playing field with other like industries in the state.

**Chris Gerono**, representing Boise River Guides, Boise, Idaho, spoke in favor of **S 1051**.

**TESTIMONY:**

**Wyatt Johnson**, member, Idaho Trial Lawyers Association, Meridian, Idaho, spoke against **S 1051**. **Mr. Johnson** testified that he and his organization did not believe this bill would do what the authors and supporters said it would. He stated that the bill took away the rules that govern the outfitters and guides. He believed the waivers removed all negligence and it was a get out of jail free card.

**Chairman Lakey** closed the discussion by reminding the Committee that there were inherently dangerous aspects to activities involving guides and outfitters. This legislation was only effective as to negligence. It was not effective as to gross negligence and the subsets of reckless and intentional. The choice to participate in these activities and the waivers they sign was theirs.

**MOTION:**

**Senator Lee** moved to send **S 1051** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**. **Senator Ruchti** and **Senator Wintrow** asked to be recorded as voting nay.

**Senator Ruchti** voiced concern that this legislation would open doors for people to waive reckless behavior, get injured, and go to court to be compensated for it. The court would then have to tell them no because they waived this reckless behavior.

**PASSED THE GAVEL:**

Vice Chairman Foreman passed the gavel back to Chairman Lakey.

**RS 30348**

**Relating to the Uniform Partition of Heirs Property Act.**

**RS 30349**

**Relating to the Uniform Electronic Wills Act.**

**Senator Ricks** moved to send **RS 30348** and **30349** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:00 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary