

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, March 24, 2023

TIME: 7:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, 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 Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 7:00 a.m.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Anthon** moved to send the Gubernatorial Reappointment of George Eskridge of Dover, ID to the Idaho Energy Resources Authority to the floor with the recommendation that he be confirmed. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

Senator Harris moved to send the Gubernatorial Reappointment of Bud Tracy of Malta, ID to the State Building Authority to the floor with the recommendation that he be confirmed. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1187 **MINORS - Amends and adds to existing law to revise an affirmative defense regarding disseminating material harmful to minors and to provide for the establishment of provisions regarding policies to protect minors from harmful materials. No further testimony will be taken.**

Senator Winder commended the efforts to foster better communication between the public, public libraries, their boards, and public schools. He acknowledged some difficulty getting through to library officials about perceived problems. While officials denied issues, parents provided samples of materials that second and third grade children were getting off library shelves. He urged better communication and involvement between the community and the boards, which were elected officials. **Senator Winder** stated **S 1187**, **S 1188**, and **H 314** were about resolving matters related to protecting minors from harmful material. He indicated a significant issue he heard from the Committee was the inclusion of colleges and universities. He acknowledged those libraries were not as accessible to the general public and maybe did not have as many minors to be considered. He was agreeable to amending the college matter and moving the bill out of Committee.

MOTION: **Senator Lee** moved to send **S 1187** to the floor with a recommendation it be referred to the 14th Order of Business for possible amendments. **Senator Harris** seconded the motion.

DISCUSSION: **Senator Wintrow** appreciated willingness to remove colleges, universities, and museums from the language, but she still had concerns. She referenced page 3, section 5, where it said, "The citizens will determine if changes will be made in policy to evaluate which materials should be included in the collection." After hearing from librarians, that created a conflict for her. **Senator Wintrow's** concern was members of a board that were not trained on First Amendment and Constitutional amendments when it came to libraries. Another problem was in section 4, where the make up of the board had law enforcement and the religious community. She questioned the need for law enforcement officers on the board and said it was a conflict of the establishment clause to include a religious community member on a board like that since there were many religions to consider. Lastly, **Senator Wintrow** asked librarians how they adapted to complaints. She was provided a list of actions she deemed responsible. She also heard there were times a parent asked for a book to be removed. A librarian could not remove a book without following a review process. One librarian told her about a sexual health education book that a parent asked to be included in the collection, and another parent wanted the same book removed. According to **Senator Wintrow**, these materials were protected under the Constitution and she believed libraries segregated adult sections from children sections so she failed to see the necessity for these bills. She denied there was pornography in the library, but acknowledged there was material some people considered harmful that other people did not. She asked that the legislature not encroach on libraries and to allow librarians to incorporate their processes.

VOICE VOTE: The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** requested to be recorded as voting no.

S 1188 **MINORS - Amends existing law to provide that certain institutions may be enjoined for selling, distributing, or promoting materials harmful to minors and to provide for the abrogation of existing ordinances, rules, and regulations.** **Senator Winder** said this bill implemented policies in **H 314** and **S 1187** to establish procedures for injunctive relief within State district courts. The language related to entities that received public funds and allowed a quick response from the courts to enjoin material and provide a quick hearing on whether or not material was obscene. He considered it more simple than it looked and advised it contained a lot of repeated sections.

TESTIMONY: **Jeff Kohler**, an elected trustee of a library board, opposed **S 1188**. He cited undefined terms like promoted, distributed, and harmful to minors. The bill called out material obscene or harmful to minors. If it stopped with the word obscene, he had no problems because obscenity had a definition. Because the bill said obscene or harmful to minors, he questioned the term harmful. He stated there was no category in law for minors zero to six, seven to 13, or 13 to 17; they were all minors. Courts applied harmful to minors statutes with consideration to the oldest of minors, so if material was valuable to a 17 year old, it could not be removed simply because it was age inappropriate to a five year old. He claimed the remedy was to direct the seizure and destruction of certain books, which sounded like book burning to him.

Senator Wintrow asked what Mr. Kohler was afraid of by this law being passed. **Mr. Kohler** responded, if these laws passed he would recommend board members rescind library cards for minors zero to 17 and only allow children in the library if accompanied by parents. He stated libraries could not risk the legal liability.

Senator Winder noted materials harmful to minors was already in Idaho Code § 18-1520. It was not an amendment or addition to this bill.

Lance McGrath, President of the Idaho Library Association, spoke in opposition. He said proposed changes to existing law allowed district courts to file injunctions prohibiting the vaguely defined term "material harmful to minors" against a wide variety of public institutions that received public funds/rebates within the last five years. He stated it was an example of draconian government overreach prefaced to deal with a problem by a small, dissatisfied group of people. **Mr. McGrath** likened it to a sledge hammer being wielded to smash a mosquito. He noted **S 1188** also granted prosecuting attorneys expansive powers to bring injunctions against the same organizations without bearing any cost associated with the injunction or its finding. Members of the Idaho Library Association did not deserve to be subjected to such disrespectful, demeaning treatment at the hands of Idaho's government. He declared the libraries carefully and dutifully provided services to the community and, as bound by the First Amendment, could not censor material.

Steven Keyser spoke in support of **S 1188**. He believed legislative action was required in this matter. He stated many individuals were offended by certain materials and he did not believe people were being attacked for limited, questionable material. He felt the government had to be responsible and intervene in extreme cases. He understood the measure to be a prevailing standard, not just a prudish person's complaint. He saw some material that was highly offensive. It was those kinds of materials that would offend a prosecuting attorney sufficiently enough to want to proceed with an injunction.

Bonnie Shuster opposed the bill. She felt it was abusing public institutions to suggest injunctions and the seizure and destruction of materials disseminated by colleges, museums, public health entities, and libraries. This was on top of other provisions that advanced as related to libraries, including costly civil causes of action, potential criminal charges, and additional requirements for training and policies. In contrast, a bill introduced that did not advance in the House Education Committee, provided for policies concerning access to materials and segregation thereof, and for robust citizen involvement, would have accomplished the goal of protecting minors. By advancing this bill, a barrage of weapons was trained against public institutions.

Pamela Murray, a leader and teacher at the Boise Unitarian Fellowship (BUF), said BUF provided a renowned sexual orientation program called "Our Whole Lives (OWL)." She said the program's materials were peer reviewed, vetted, and updated regularly to meet the needs of children, who were at a vulnerable time in their development. Materials were provided in a safe environment by highly trained program facilitators. **S 1188** concerned her because she received tax rebates, which put her under its jurisdiction and possible court involvement to defend her congregation's educational program.

Senator Wintrow asked if Ms. Murray referred to page 1, lines 16-19 when she referenced her tax rebate. **Ms. Murray** responded affirmatively. As she read the bill, it enjoined her into litigation.

Lynn Laird supported the bill. She shared there were concerns about concessions made with various libraries. Her experience had been running up against a brick wall with the Meridian Library District. She said there was a petition before the Ada County Commissioners to dissolve the library only because people had no recourse. Under current law, a person could file an injunction against a person, firm, or corporation, but no publicly funded entities. That provided no equality in the equal application of the law. This bill made more equal access for the people to redress grievances.

Erin Kennedy, Intellectual Freedom Chair for the Idaho Library Association, opposed the bill. She was tired defending her profession. She stated libraries took great pains to ensure material selected for minors was not obscene and aligned with the standards set forth in the Miller Test. She believed the intent of this legislation was to intimidate library boards and staff into self-censoring constitutionally protected materials for fear of facing costly legal defense. The pressure of this bill was heightened by the fact the prosecuting attorney would not bear any costs relative to the injunction, even if the library prevailed. **Ms. Kennedy** stated many books presented to legislators as obscene had been on the shelves for years with no public outrage or claims of irreparable harm done. Challenges to materials in the past were sporadic, usually for one title and most often resolved through thoughtful and civil conversations with librarians, teachers, and trustees. She claimed it was only in the last few years that libraries and staff were subjected to ire and harassment. She asked the Committee to stop the attacks and vote no on this bill.

Senator Winder contended the Committee would not be here if there was ongoing communication between the parties involved. He recognized library material differed from when he was growing up. He admitted not taking this as seriously until confronted at a grandchild's birthday party last year. A parent showed Senator Winder a book her son brought home from the library. **Senator Winder** said the content of the book was age inappropriate. He repeated, something was different about books shelved in today's library. He expressed willingness to avoid conflict by addressing the college/university wording and asked that the bill be advanced to the 14th Order of Business to remove the institutions.

MOTION: **Senator Lee** moved to send **S 1188** to the floor with the recommendation it be referred to the 14th Order of Business for possible amendments. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Ruchti** opined this was about a loud, angry group of citizens who were not getting the results they wanted. Our system of government allowed redress and processes for hearing complaints, not a guaranteed answer. He noted the group continued to be angry and argue issues were not being resolved, but librarians claimed that was not the case. **Senator Ruchti** reported meeting with librarians who walked him through the processes, which he found fair and provided due process. He concluded some people would not take no for an answer and the legislature would not tell them no. He advised injunction hearings brought everything to a halt in the court system because of short time frames for responses. He claimed the local control system worked and urged that the court system not be expanded to deal with these issues.

Senator Wintrow also opposed the motion. She recognized the hard work librarians did and said a list of books she was given for removal or reconsideration included many books about being gay. She declared none of the books were pornographic, but rather, different ideas from mainstream culture. She feared moving toward censorship was dangerous. She saw some of the books as opportunities for parents to talk with their children. She saw an underlining theme about being gay or a person of color, which was shrouded as pornography and obscenity.

VOICE VOTE: The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** requested to be recorded as voting no.

HJM 2

ABORTION - States findings of the Legislature and calls on Congress to restrict the jurisdiction of the federal courts from hearing cases regarding state legislative authority to legislate on abortion. **Senator Hart** advised this legislation related to the Dobbs decision, which overturned Roe v. Wade. He read from the head notes of the Dobbs decision, "The Constitution does not confer a right to abortion. Roe and Casey are overruled and the authority to regulate abortion is returned to the people and their elected representatives." He explained the statement did not get rid of the issue of abortion. The Supreme Court ruled in the Dobbs decision (June 2022) that abortion was now a state issue. The decision mentioned over and over that the abortion issue belonged in the states. He read from the memorial, "Our decision returns the issue of abortion to those legislative bodies, and allows women on both sides of the abortion issue to seek to effect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office." **Senator Hart** claimed this memorial acknowledged abortion was a state issue and requested that our Congressional delegation work with other members of Congress and limit the jurisdiction of the lower federal courts from hearing cases that related to state legislative authority on the abortion issue. His example of federal courts doing that was the 2011 bill on the proliferation of wolves. The issue was perpetually tied up in court and Idaho went from being told it would have 100 wolves to having thousands of wolves. His and Representative Boyle's wolf emergency bill went through both houses of legislature, but before it got to the Governor's desk, Congress took wolves off the endangered species list and restricted the jurisdiction of the federal courts from hearing cases that objected to what Congress did. **Senator Hart** recalled cases were filed that were thrown out of court for lack of jurisdiction. A year ago a case was filed that effected all the lower 48 states on the wolf issue, except Idaho was carved out. He stated Congress had the ability to restrict the jurisdiction of the federal court. This memorial asked Congress to do that again on the abortion issue so Idaho could legislate on abortion. When cases proceeded to court, it would be State courts, not federal court.

Senator Wintrow claimed Idaho's was the strictest abortion ban in the country. She stated the Dobbs decision was issued by the federal court system so she was confused about why he would want to limit the same federal court system that gave the decision he wanted. **Senator Hart** said the memorial quoted the Dobbs decision several times. He found it in line with the arguments and logic of the Dobbs decision where it stated repeatedly that it was a state issue. He hoped to limit lawsuits regarding legislative authority to state issues. He thought it would get to the results the Dobbs decision desired and not tying it up in federal court.

Senator Winder repeated, the Dobbs decision declared this was a state matter. He thought if it was a state matter, this would not change the law. It was a request for Congress to consider limiting the authority of all the different district courts in the United States.

MOTION:

Senator Winder moved to send **HJM 2** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion.

Senator Wintrow stated she would not support the memorial. Dobbs was about a right to privacy and nothing else. She was at a loss at how many more abortion bills the legislature would bring. She noted every year she was in the legislature, there were abortion bills and now Idaho had the strictest bans on women's bodies in the country and here we go again.

VOICE VOTE:

The motion carried by **voice vote**. **Senators Wintrow** and **Ruchti** requested to be recorded as voting no.

STATE GOVERNMENT - Adds to existing law to prohibit a public entity from entering into certain contracts with companies owned or operated by the government of China. **Representative Hill** believed the Chinese Communist Party (CCP) was at war with the United States (U.S.). He said the battle space was information and technology. This bill would prohibit Idaho public entities from entering into certain contracts with companies owned or operated by the CCP, to include technology, software, and applications. He described this as a preventative, preemptive bill. He stated semi conductors made in China and pieces of Chinese equipment were compromised as a surveillance device. He emphasized any semi conductor was a threat, regardless of what appliance it was on, a spy chip was insidious and could cause malware to occur. He informed the scenario happened onboard a ship in the Navy's weapon system. The National Defense Authorization Act developed a procedure (889) to review all technology for risks. He said Idaho spent \$33 million in buying compromised equipment from China. The risk was the technology could be a surveillance mechanism. This bill would give procurement officers guidance to assess equipment for spyware. He warned Idaho was vulnerable since much of our manufacturing was sent overseas. He urged replacing compromised equipment with American equipment to avoid potential cybersecurity attacks.

Senator Lee acknowledged the importance of this topic. She referenced line 18 where it said a company was not owned or operated by the government, but the fiscal note had no number. She read, "All future State technology contracts will require vendors without any Chinese origin or connection..." and asked how we function without China. **Representative Hill** explained the threat had to be accessed. It had to be assumed whatever the Chinese send here would be compromised, even construction supplies for a building. He urged viewing China as an enemy. He reported that the Pentagon declared that within two years we could be at some sort of struggle or event (war or blockade) with China. He stated any private company in China was assumed to be owned by the CCP. **Senator Lee** agreed, but in lines 14-15, she read, "...State may not enter into a contract with a company to acquire or dispose of services, supplies, or information technology." She presumed that included clothing or anything from any company with relationships with China. **Representative Hill** said the wording had to have an application of reasonability. This was a guidance for procurement, nothing else. He wanted a change in mind-set to accept the CCP was not our friend.

Senator Ruchti did not have a sense for how difficult this would be to implement. He thought the plain language of the statute suggested this would apply to clothing and such. He asked if the Department of Administration reported how many of its contracts this might effect, or how difficult this would be to execute. **Representative Hill** asked for focus on the technology and threats, and to understand this was a security guide for precise direction. **Senator Ruchti** said legislature was responsible for drafting clear language. If we are telling the State government this was what we wanted them to do, the State did not get to decide which parts of statute to follow. If the concern was information technology, it might be better to strike the rest of the comprehensive language and focus specifically on that. **Representative Hill** said this was a living documents because new threats will emerge. He cautioned using Chinese vendors for things because threats changed. He reiterated this was guidance for procurement officers.

Senator Winder recognized this as important legislation. Line 41 allowed the Department of Administration to promulgate rules, which he appreciated for focus on the technology issues.

MOTION: **Senator Winder** moved to send **H 294** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Chairman Guthrie** commented that on page 1, line 14, it was about that the State, as a public entity, may not enter into a contract. He saw that as a sidebar that gave him comfort with the valid concerns raised by Senators Ruchti and Lee. It would not preclude day to day things.

ROLL CALL VOTE: **Chairman Guthrie** asked for a **roll call vote**. The motion carried.

H 326 **LEGISLATURE - Amends existing law to revise a provision regarding intervention by the Legislature in an action regarding an Idaho statute, to provide for the authority to intervene in certain instances, and to provide applicability.** **Representative Skaug** offered history on the bill. It was a Senate bill that went to the House from the Senate Pro Tem. Amendments were made by attorney's outside of the legislature. Rather than go through House amendments, the bill was reworked and brought to the Senate. The bill sought to amend Idaho Code § 67-465, which passed into law last session (2022). This involved mechanical fixes to the bill to allow the elected Speaker of the House or the elected Senate Pro Tem to initiate legal action. Permissive language was added. He said there were times attorneys were needed to present rather than the Attorney General, because he could not make arguments on laws passed by the legislature.

MOTION: **Senator Anthon** moved to send **H 326** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion.

DISCUSSION: **Senator Ruchti** declared opposition to the bill. He did not think the Speaker could act on behalf of the Senate, nor the Senate Pro Tem act on behalf of the House under this constitutional framework. He said the Constitution was clear that the Senate and the House both had the ability to set up their own rules for internal matters. However, it did not have the ability to act as a group except as outlined in the Constitution, the process used during session. He stated both sides had to agree to move legislation (or whatever) forward out of the body.

Senator Winder, agreed, as Pro Tem, he could not act on behalf of the House, nor could the House act on behalf of the Senate. But, there were potentially times whereby a legal matter of importance to one side or the other would require intervention. What this bill attempted was to take away the argument that the only time the legislature could intervene would be if it was in session.

Senator Anthon explained this bill said the Speaker of the House or the Senate Pro Tem may act for the legislature. It did not preclude the other from acting as well. If the Speaker acted to intervene and the Pro Tem (both elected by the body) disagreed, they had the legal right to intervene as well and submit a different position. There was nothing binding the Speaker of the House from representing a position for the Senator that it did not want to be represented on.

VOICE VOTE: The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** requested to be recorded as voting no.

IMMIGRATION - Adds to existing law to prohibit certain limitations on immigration enforcement by a political subdivision of this state, to provide for a cause of action in certain instances, and to provide for the withholding of sales and use tax revenue in certain instances. Representative Boyle

said there had been concerns that Idaho was getting soft on immigration. She spoke with the Attorney General's (AG) office for help with language to make this bill stronger and to include some monetary penalties. She said **H 338** prohibited any local government (county or city) from enacting an ordinance, or verbally advising law enforcement to not follow federal immigration policy. If Immigration and Customs Enforcement (ICE) requested a detainer, law enforcement was covered to follow that request. As long as local government followed the law, there was no penalty. On line 2, the bill allowed an individual or the AG's office to bring forward to the courts a problem that local government violated this law. Noting other states where an illegal immigrant caused great bodily harm to a United States resident, this would allow the mechanism for the family or the victim to seek monetary damages.

Senator Anthon commented that his county commissioners and sheriffs were concerned about this bill. He wanted to hear more from them. **Representative Boyle's** belief was that a strong law protected local law enforcement by them not being caught between not following a detainer or breaking federal law.

Senator Wintrow tried to reconcile removing penalty language in **S 1030** and including it in this bill. **Representative Boyle** was unaware of the Senate bill until after her bill passed the House with a strong vote.

TESTIMONY:

Mike Kane, of Idaho Counties Risk Management Program (ICRMP), spoke in support **S 1030** and the concept of penalties. ICRMP was concerned about the 72 hours hold. He said ICE only asked for 48 hours in detainer requests because the Supreme Court said an individual could not be held over 48 hours without a probable cause finding. He asked that **H 338** be sent to the amending order to take out the 72 hours to avoid potential problems.

Sheriff Kieran Donahue, Canyon County, represented the Idaho Sheriff's Association. He explained law enforcement could legally hold an illegal in jail for 48 hours per ICE requirements. He could not hold the individual for 72 hours. He knew of no sheriff in Idaho who did not cooperate with ICE. Per the process and protocol for someone being held in jail on a local or state charge was to automatically call ICE. Generally, ICE decided within a few hours to either place a detainer on the person or to decline one. At that point, the illegal possibly had the option to bond out of jail. The sheriffs supported federal law and federal law enforcement officers. He knew of no problems with the bill.

Sheriff Matt Clifford, Ada County, represented the Idaho Sheriff's Association. He said the group voted yesterday in opposition to this bill. He operated the largest jail in the State (Ada County Jail), which was already overflowing. He feared giving the federal government another day to keep their people in a local jail would put jail staff and inmates at risk. He felt it unreasonable to provide an extra day for the federal officials to deal with their problem. He considered this an anti-local control law and something he did not need as a reminder of his oath of office. He anticipated additional costs to already overflowing jail problem.

Seth Grigg, Executive Director of the Idaho Association of Counties (IAC), recalled the Sheriff's Association was neutral on **S 1030**. He said IAC opposed **H 338** because of liability concerns for counties. There were no exceptions for medical emergencies that might necessitate the release of an individual, or an exemption for over crowded jails. To date, this was not a problem in Idaho but there had been counties in Idaho sued for complying with the federal law for holding undocumented immigrants for 48 hours. The sheriff was independent from the county commissioners, which could result in a county being penalized by the actions of a sheriff, even though the board of commissioners had not implemented a policy. IAC was also opposed to the civil cause of action. To this point, counties were not subject to civil causes of action. He said the Tort Claim Act provided the mechanism for individuals to bring a claim against a county.

Representative Boyle reiterated that this law would protect local law enforcement. She saw no problem in changing the 72 hours phrase. She understood the AG felt the 72 hours was a policy of ICE and not a federal law. She acknowledged local sheriffs were over worked and under paid. She did not believe citizens wanted to hear sheriffs were releasing illegal immigrants if there was a detainer from ICE.

Senator Winder presumed the 72 hours could be amended to 48 hours and asked if there were other changes that might be made. **Representative Boyle** suggested without a penalty, there was no incentive to do what was being asked and no protection for law enforcement. She said the legislature tried to make it difficult for the federal government to go after State law enforcement. **Senator Winder** suggested following the Tort Claims Act to clarify a process.

Senator Lee appreciated the intent of this bill and, for the record, she did not support illegal immigration. She wanted to support ICE but **S 1030** was heavily vetted by this Committee. She preferred to support that one over **H 338**.

Representative Boyle had no comment. She was bringing the will of the House.

MOTION:

Senator Winder moved to send **H 338** to the floor with the recommendation it be referred to the 14th Order of Business for possible amendment. **Senator Toews** seconded the motion.

DISCUSSION:

Senator Anthon supported the motion. He was sensitive to county sheriffs and county commissioners. He said he did not support illegal immigration. He agreed with referring this bill to the 14th Order of Business.

Senator Lee stated she would support the motion in order to hear more.

VOICE VOTE:

The motion carried by **voice vote**.

Senator Winder noted the tight schedule for the next few days. He suggested the sheriff and county associations get together with the bill's sponsors to propose amendments.

FIREARMS – Adds to existing law to prohibit the use of merchant firearms codes. **Representative Hill** identified this as a Second Amendment bill. It prohibited credit card companies (CC) from assigning unique CC codes to firearm retailers who sold weapons and ammunition in Idaho. The tracking of the codes was blatant surveillance against Second Amendment rights. He shared that in September 2022, the anti-gun lobby (18 people) sent letters to the major CC companies to enable codes for the purpose of tracking terrorists, gun traffickers, and possible mass shooters. **Representative Hill** saw it as attempted surveillance of all law abiding citizens, contrary to the Second Amendment and Section 11, Article I of the Idaho Constitution. The purpose of this bill was to shut down the tracking. He wanted to make clear that the enforcement of this legislation was at the discretion of the AG and focus needed to be on the big CC companies, not local banks. He said this tracking was being driven by the CC companies and they should be held accountable. If the CC companies refused to comply with an injunction, each deviation could be a \$10,000 fine. He informed several other states were moving on this type of legislation, causing CC companies to feel the pressure.

Chairman Guthrie stated he received nearly 300 emails attacking him for roadblocking **H 295**. He wanted it known this bill was referred to the Committee three days ago on March 21st. **Representative Hill** declared Chairman Guthrie had been proactive and supportive of this bill.

Senator Wintrow wondered why it was so important that we not know about money spent on weapons or ammunition. **Representative Hill** explained it was the surveillance of activity, which was contrary to the Constitution and our right to privacy. He added, this also had an Environment, Social, Governance (ESG) component and a social score. Tracking was not appropriate as it pressured retailers about sales and requirements to share surveillance with the government.

Senator Wintrow stated there might be positive interest in knowing about someone attacking the Statehouse for instance. **Representative Hill** acknowledged the impulse of the anti-gun people was to look for bad guys. He claimed there were other ways to track wrong-doers without blanketing the innocent with the bad guys.

Nathan Guy owned a firearms store in Nampa for 18 years. The store was classified as high risk because he sold legal firearms. In 18 years of business, he had one charge back. He said the CC companies already discriminate against the firearm community: 1) His CC inter chain rates were higher than most businesses; 2) he was limited to very few processors he could access to run CC purchases; and 3) there was a history of discrimination by the CC companies, banks, and processors toward firearm retailers. **Mr. Guy** reported that over the last several months, hundreds of customers expressed concern with CC companies tracking their purchases. As a result, hundreds of customers indicated they would not use their cards to shop at brick and mortar firearm retail stores in Idaho. That hurt Idaho, small businesses, and meant loss of revenue for the State. He did not want to speculate on how people might purchase firearms in the future. Bankers supposedly told Mr. Guy that they could not turn off the tracking. He felt **H 295** needed a do pass recommendation so Idaho could be a Second Amendment leader.

Senator Winder asked if it was the CC company or the local bank that Mr. Guy felt was the problem. **Mr. Guy** stated it was the CC company and the CC processors who wanted unique merchant codes specifically for firearm sales.

Aoibheann Cline provided a handout regarding the financial surveillance used to build a gun owner registry (Attachment 1). Private financial institutions discriminated against firearm businesses in Idaho. She referenced her handout and noted the National Rifle Association (NRA) worked for months on a solution to prevent the surveillance of the lawful purchase of firearms by a private financial institution. The surveillance of firearms purchases was illegal under federal and Idaho laws. The impact of surveillance through merchant category codes (MCC) would enable banks to flag transactions or block them and then file suspicious activity reports with the Treasury. The system would enable quickly filing the report with local law enforcement and the Federal Bureau of Investigation (FBI), curtailing federal law and the State Constitution. The high profile backers of the MCC proposal included Every Town for Gun Safety; Giffords; Guns Down America; Senator Elizabeth Warren; New York Governor, Kathy Hochul; New York Attorney General, Letitia James; New York City Mayor, Eric Adams; and California Attorney General, Rob Bonta. All were anti-gun groups pushing for surveillance through private financial institutions. No financial institution should monitor the lawful purchase of firearms and ammunition. **Ms. Cline** concluded, if we do not protect the Second Amendment, an individual's right to privacy, and the right to keep and bear arms now, we will fight for it later.

Senator Winder asked if the real problem was banks issuing cards or the processor. Why the broad definition of the institution. **Ms. Cline** said the analysis of legal interpretations was, "The liability here attaches to the person or entity that commits a violation allowing a determination to be made as to which institution actually committed the prohibited acts." She said right now the NRA targeted large financial institutions and processors like VISA, MasterCard, American Express, and Discover. They announced they would start requiring the use of this code. Legislation like this prompted them to back off the implementation date. **Ms. Cline** wanted to hold all financial institutions, regardless of size, accountable. If the anti-gun groups could not get their way with VISA and MasterCard, they would go to the next step down, like U. S. Bank or Chase Bank. If that failed, they would go to credit unions. She felt the financial institutions tracking the lawful purchase of firearms had to be held accountable. The bill held the issuer of the MCC code accountable.

Senator Wintrow pointed out that page 2, lines 44-48 referenced the institution were under the supervision of the Department of Finance. Page 5, lines 3-7 talked about the AG's responsibilities. She questioned setting two different branches of government in opposition to each other. **Ms. Cline** explained the Department of Finance was responsible for the oversight of the banks. The AG's role in this legislation was the investigatory power. **Senator Wintrow** stated she met Gabriel Gifford and did not think she was anti-firearm. Some folks were just talking about what reasonable people did to promote safety.

Senator Anthon expressed support for the Second Amendment. Regarding this bill, what if a small credit union in Burley, Idaho gave out VISA cards as a service to customers, and VISA was a bad actor. He wanted VISA to be reigned in, not to hit his local credit union. **Ms. Cline** repeated that the liability attached to the person or entity that committed the violation. Under **H 295** the violation was the requirement of the use of the MCC code. If VISA required the code, it would be held accountable. There was discretion built into the bill for the AG to investigate who was the requirer of the code. She cautioned creating carve outs for small banks. The anti-Second Amendment groups needed to be held accountable.

Chairman Guthrie recognized a common theme to shut off the source. He was concerned about putting local banks in jeopardy if it was not their doing.

TESTIMONY:

Rob Adams owned three gun stores in Idaho, California, and Nevada. He supported **H 295** to address surveillance and its harm to small businesses. He did not feel it was the CC companies, but the merchant processing companies who were at fault. He claimed the MCC and the International Standard Content Code (ISCC) were vast. His businesses were in a 5099(B) code, which was a broad code. His online portal was on a 5941 code, a lesser rate versus in-store codes. The codes for the firearms industry were the highest fees a processor could charge. Because of the massive fees, he did about \$13 million in volume sales per year and paid about \$100,000 in fees per year. If a unique code was created, he did not know the cost or what was going to happen. **Mr. Adams** claimed to know the CC information was shared and sold.

Chairman Guthrie reiterated the need to keep small banks and credit unions from unintentional harm.

Senator Winder noticed Mr. Adams moved to different banks. **Mr. Adams** said, as a brand new merchant, he was accused of violating schedule C, the lending act. He did not have credit so he used cash. He deposited cash and bought a check from the bank to pass on to delivery companies. As a result, he was accused of finance fraud and U. S. Bank shut down his account. He repeated he deposited his cash, turned it into checks, and paid the delivery company by check. He stated another unique code would create more fees and unknown surveillance. He said the merchant service fees were the problem. Banks issued the credit card, then the merchant service company processed transactions and required the codes.

Hal Scoggins, outside counsel for the Go West Credit Union Association, represented many credit unions across Idaho. He declared credit unions were in favor of the right to bear firearms and for merchants to sell firearms. This bill was like using a shotgun instead of a fly swatter because of its unintended consequences. He stated the bill ignored the differences between acquirer, merchant processors, and issuers of cards. Credit unions did not set interchange fees, they participated in the system and paid interchange fees as assigned by the CC companies. They had no control over the incoming transaction information, including the merchant code set by the processor. This bill made it unlawful for credit unions to retain data or share data with service providers (statement and data processors) that it needed to in order to service the card accounts. He suggested an amendment to recognize the differences between issuers, acquirers, processors, and CC companies.

Nephi Cole, Director of Government Relations and State Affairs for the National Shooting Sports Foundation, said he represented 9,000 manufacturers, retailers, and distributors of firearms and ammunition. He supported this bill. He reported the agency's national efforts with CC companies to ensure merchant codes were not used to discriminate against firearms entities. He cited a 2013 effort called Operation Chokepoint, where financial service providers were pressured into creating a category of merchants for firearms and then forced financial institutions to drop firearms-related companies or charge them higher rates by calling them disfavored businesses. **Mr. Cole** said his agency was working with financial institutions to keep the codes from being implemented. The administration of the codes was paused because state legislators were actively putting bills on the books and pushing back against the efforts.

Senator Bernt asked for confirmation this was a processor issue as opposed to a bank or credit union issue. **Mr. Cole** said it was a nuance question and he did not agree entirely. He disclosed the largest CC processors in the world had a discriminatory policy against firearm entities. The provider of the credit who issued the VISA card and a lot of smaller banks were subsidiaries of the larger

banks. There were active policies at Bank of America and Citi Bank to refuse business with the firearms industry. The MCC codes allowed banks to flag or deny services to some businesses. The MCC code justified denial of services throughout the banking system.

Senator Winder believed Idaho made efforts to curtail this beyond what some other states did. He understood it was the merchant processor that was the problem. He asked if push back on the processors would be the fix at a national level. **Mr. Cole** agreed it would. He said if Idaho did that, it would create opportunities to keep VISA from implementing the application.

David Taylor, President of the Idaho State Rifle and Pistol Association, reiterated everything Representative Hill said. He said this was a back door into some kind of gun control from the federal government. He urged preventing infringements on the firearms industry in Idaho.

Trent Wright, Idaho Bankers Association, provided the appended indicating the amendments he made to **H 295** (Attachment 2). He encouraged sending **H 295** to the 14th Order of Business for amendments as described in the handout. His amendments began with the drafting of **H 241**, which was passed to the sponsors of **H 295**. The noticeable difference in the bills was no private right of action language. The merchant codes assigned by card issuers (all sizes of institutions) was not under the control of bank associations. If the issue was on the MCC fee or getting legal transactions processed without tracking, the legislature needed to focus on the payment processing network.

Senator Anthon wondered why a financial institution should not be liable. **Mr. Wright** stated the bank did not track the information, it was a pass through for the transaction. If the proposal was to stop the code so the banks did not get the information, **H 295** did that; however, the private right of action component could equate to more litigation for things that were not happening. **Senator Anthon** asked what would prohibit an Idaho bank from refusing to issue cards to gun businesses. **Mr. Wright** was unable to recall a law saying it could or could not issue the card based on that decision. But, he said gun businesses in Idaho were good customers. He did not believe banks would want to track gun sales or put gun sellers out of business. **Senator Anthon** noted, the processors were tracking. He identified the practice as ideological and political, and not about the bottom line. **Mr. Wright** clarified, the processors were separate from the banks. There was no case to point to or a scenario to identify that behavior, but the language in **H 295** reacted that way.

Senator Bernt agreed the processors were the issue. He asked of any discriminatory practices regarding firearm sales in Idaho. **Mr. Wright** was unaware of a specific case in Idaho. He suspected that was why **H 189**, **H 190**, and **H 191** were difficult to digest. He noted banks had different policies and interpretations, 30 of which operated in Idaho.

Representative Hill closed by talking about enforcement and unwarranted concerns. He felt the conversation veered into the weed and repeated, the bill went after CC companies that put the tracking codes on cards. It made no sense to go after local banks or credit unions. The threat was with the processors.

Senator Bernt stated the bill specified financial institutions and words mattered. He was concerned about unintended consequences as related to financial institutions in Idaho. He stated this could be a solid bill, with slight tweaking.

Representative Hill said recourse came about with rogue players. The NRA and

the banks each had their versions. He stated the matter was time sensitive and he did not want to slow down the process. He was agreeable to amendments, if it did not delay the bill.

Senator Winder wanted to make sure laws were good ones. He supported the core target to eliminate the coding. He thought it would be interesting to deal with the issue of tracking. The AG only had the rights given to him by the Constitution or legislative body. A minor clarification that the local issuer was not perceived to be the problem was amenable to him. He agreed the focus needed to be on merchant services and the processors. He promised the legislature would get this across the finish line.

MOTION: **Senator Winder** moved to send **H 295** to the floor with a recommendation it be referred to the 14th Order of Business for possible amendments. **Senator Bernt** seconded the motion.

DISCUSSION: **Senator Anthon** supported the bill as is, and he supported the referral to the 14th Order of Business. On important issues in Idaho, some of those items had been weaponized, monetized, and politicized to become fodder for special interest groups. He recognized Chairman Guthrie for announcing he did not get this bill until three days ago. **Representative Hill** reaffirmed Chairman Guthrie did nothing to hold back this bill. **Senator Anthon** admonished special interest groups that maligned Chairman Guthrie, claiming he withheld this bill. He continued, Idaho had the number one position for gun friendliness. That happened through the guidance of this Committee and the Chairman who was instrumental in advancing Second Amendment legislation.

VOICE VOTE: The motion carried by **voice vote**.

H 242 **Chairman Guthrie** informed the Committee he would hold **H 242** until the March 27th meeting in order to accept testimony.

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting 9:28 a.m.

Senator Guthrie
Chair

Joyce Brewer
Secretary