



Joint Judiciary Working Group

Sen. Todd Lakey
Co-Chairman

Rep. Greg Chaney
Co-Chairman

Report from the Judiciary Working Group July 31, 2020

To: Senator Brent Hill, President Pro Tempore of the Idaho Senate; and,
Representative Scott Bedke, Speaker of the Idaho House of Representatives.

Charge

The working group, composed of membership from the Senate Judiciary and Rules Committee and the House of Representatives Judiciary, Rules, and Administration Committee, was convened to consider the following:

- Statutory changes that may be advisable to protect entities against legal liability due to consequences of a pandemic or other healthcare crisis while considering the health and safety of the public, the effect on the ability of the entities to provide goods and services to the public, and economic consequences of any statutory changes;
- Legislative measures to provide for:
 - The criteria under which liability should be limited;
 - The extent of the liability protection; and
 - The entities that should qualify for limited liability; and
- Whether an Extraordinary Session of the Legislature is needed to consider the working group's recommendations.

Membership

Senator Todd Lakey, Co-chair
Senator Abby Lee
Senator Patti Anne Lodge
Senator Kelly Anthon
Senator Steven Thayn
Senator Scott Grow
Senator Don Cheatham
Senator Grant Burgoyne
Senator Mark Nye

Representative Greg Chaney, Co-chair
Representative Jason Monks
Representative Ryan Kerby
Representative Paul Amador
Representative Christy Zito
Representative Bryan Zollinger
Representative Barbara Ehardt
Representative Heather Scott
Representative Bill Goesling
Representative Linda Hartgen
Representative Gary Marshall
Representative Doug Ricks
Representative Caroline Troy
Representative Julianne Young
Representative John Gannon
Representative John McCrostie
Representative Melissa Wintrow
Representative Muffy Davis

Staff

Ryan Bush, Principal Legislative Drafting Attorney
Jackie Gunn, Secretary

Meetings

- July 28, 2020, via video teleconference
- July 30, 2020, via video teleconference

At its meetings, the working group discussed its charge and considered information, comments, and recommendations from:

- The State Board of Education;
- The Idaho School Boards Association;
- The Idaho Association of School Administrators;
- The Idaho Education Association;
- The Idaho Association of Counties;
- The Association of Idaho Cities;
- The Idaho Hospital Association;

- The Idaho Chamber Alliance;
- The Idaho Trial Lawyers Association;
- The Idaho Sheriffs Association;
- The Idaho Liability Reform Coalition; and
- Members of the public.

The working group also considered two RS's and draft legislation addressing issues of concern raised in the meetings.

Recommendations

It is the belief of the Judiciary Working Group that liability be limited by providing safe harbor to all persons during disasters or emergencies who make good faith efforts to meet the requirements occasioned by such an event subject to certain limitations. Therefore, the working group recommends that the Governor convene an Extraordinary Session of the Legislature as soon as possible, during which legislation based on RS 28044, regarding immunity from civil liability during a declared disaster, may be considered. With various entities continuing to operate during the declared emergency and with the impending start of the school year, it is necessary to consider this RS in an Extraordinary Session.

The RS may be found in Appendix I of this report.



Senator Todd Lakey, Co – Chair



Representative Greg Chaney, Co-Chair

Appendix I



LEGISLATURE OF THE STATE OF IDAHO



Sixty-fifth Legislature

Second Regular Session - 2020

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO CIVIL LIABILITY; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 16, TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 6-1608, IDAHO CODE, TO PROVIDE IMMUNITY FROM CIVIL LIABILITY FOR ACTIONS TAKEN IN GOOD FAITH TO ADDRESS OR AMELIORATE A DISASTER OR EMERGENCY, TO DEFINE A TERM, AND TO PROVIDE APPLICABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. In enacting this legislation, it is the intent of the legislature to limit liability by providing a safe harbor to all persons during disasters or emergencies who make good faith efforts to meet the requirements occasioned by such an event. The immunity is meant to apply broadly to any and all individuals and private and public entities in any location and at any time, including without limitation, providers of goods and services, owners and operators of any premises such as stores, restaurants, bars, hotels, assisted living facilities, offices, schools, libraries, hospitals, medical clinics, residences, homes, churches, day care facilities, and the like that function or operate during the disaster or emergency and to those whose normal activities are interrupted by the disaster or emergency but who make good faith efforts to continue those activities safely during the disaster or emergency.

SECTION 2. That Chapter 16, Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 6-1608, Idaho Code, and to read as follows:

6-1608. IMMUNITY FROM CIVIL LIABILITY DURING A DECLARED DISASTER OR EMERGENCY. (1) A person who acts during a disaster or emergency declared by the governor pursuant to chapter 10, title 46, Idaho Code, in an effort to address or ameliorate the declared disaster or emergency or to adapt behavior on account of the declared disaster or emergency or who makes a considered determination that no adaptation to necessary behavior during the declared disaster or emergency is practical shall be immune from civil liability for acts or omissions made in good faith, unless those acts or omissions constitute an intentional tort or willful or reckless misconduct, as defined in section 6-1601, Idaho Code.

(2) The immunity provided in this section shall not apply if a person fails to make a good faith effort to comply with a statute, rule, or lawful order of a government entity in effect at the time and such failure is the proximate cause of injury to another, nor shall it apply to acts or omissions that occur during a declared disaster or emergency that are unrelated to or unaffected by the declared disaster or emergency.

1 (3) Noncompliance with guidelines or recommendations related to a de-
2 clared disaster or emergency alone shall not be used to establish civil lia-
3 bility.

4 (4) For the purposes of this section, "person" means any entity recog-
5 nized in this state and shall include but not be limited to an individual,
6 corporation, limited liability company, partnership, trust, association,
7 city, county, school district, other unit of local government, or the state
8 of Idaho and any agency or subdivision thereof.

9 (5) The provisions of this section shall not modify the application of
10 worker's compensation laws as provided in chapters 1 through 9, 13, and 14,
11 title 72, Idaho Code.

12 (6) The immunity provided in this section shall be in addition to any
13 other immunity protections that may apply in state or federal law.

14 SECTION 3. An emergency existing therefor, which emergency is hereby
15 declared to exist, this act shall be in full force and effect on and after its
16 passage and approval.