



Joint Judiciary Working Group

Sen. Todd Lakey
Co-Chairman

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Co-Chairman

Addendum to the Report of the Judiciary Working Group August 14, 2020

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

Additional Meeting and Recommendations

The Judiciary Working Group held an additional meeting on August 14, 2020 to consider eight proposed amendments to RS28044 that was submitted with the working group's report on July 31. Of the proposed amendments, the following were accepted by the working group and have been incorporated into a new RS28049:

1. A limitation on the scope of suggested legislation to emergency declarations arising from pandemics and epidemics arising from any variety of coronavirus.
2. Clarification that suggested legislation is only to affect actions in tort.
3. An exemption from heightened immunity for China and its proxies with the understanding that the language may be rephrased if a special session is called.
4. An exemption for actions to challenge the legality and constitutionality of orders, rules, and declarations from new sections of code.
5. A sunset date of July 1, 2023.

Rationale and Key Features of the Final RS

Negligence standards require people to act as a "reasonable" person would. However, the science on COVID-19 is still emerging and guidance on best-practices or recommended responsive behavior has changed not infrequently in the few months since the pandemic began. This has caused educators, parents, and employers to become fearful of resuming

business as usual since it is challenging to determine what is “reasonable” from one day to the next.

For these reasons, the contemplated legislation would discourage coronavirus-based lawsuits against schools, businesses, and others making honest attempts to behave responsibly while incentivizing appropriate behavior by denying bad-actors the added protections in the RS.

Specifically, the RS:

1. Would extend heightened protection against lawsuits to individuals, school districts, businesses, and other governmental entities for acts and omissions during a declared emergency related to a pandemic or epidemic arising from a strain of coronavirus (COVID-19 or a successor variant). The heightened protection, subject to conditions explained below, would provide civil tort immunity for conduct amounting to negligence or gross negligence, provide no protection for conduct that is willful or reckless, as defined by 6-1601, Idaho Code, or intentional.
2. In order to qualify for heightened protections, an individual or entity must have made a good faith effort to adapt their behavior in response to the pandemic or epidemic or make a reasoned decision that no adaptation was necessary.
3. In order to qualify for heightened protection, an individual or entity must have made a good faith attempt to comply with statutes, regulations, and orders.
4. Relying exclusively upon coronavirus guidelines and recommendations to establish a standard of care in a lawsuit otherwise falling within the purview of this section would be barred.

An “advisory” vote was taken of the working group at the conclusion of the meeting to gage support for the suggested legislation as amended. Members were advised that their votes were non-binding, and were encouraged to vote “no” if they still harbored reservations about the level of the immunity provided or the scope of persons and entities covered. The Senate members voted 7-2 in support of the legislation. The House membership likewise supported the legislation on a vote of 11-6 (Rep. Heather Scott, abs.).

The new RS may be found in Appendix II of this addendum.

Respectfully yours,



Senator Todd Lakey, Co – Chair



Representative Greg Chaney, Co-Chair

Appendix II



LEGISLATURE OF THE STATE OF IDAHO



Sixty-fifth Legislature

First Extraordinary 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 CORONAVIRUS-RELATED DISASTER OR EMERGENCY, TO PROVIDE APPLICABILITY, TO PROVIDE CERTAIN EXEMPTIONS, AND TO DEFINE TERMS; DECLARING AN EMERGENCY; AND PROVIDING A SUNSET DATE.

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 arising from a coronavirus-related pandemic or epidemic 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, daycare facilities, and the like that function or operate during the coronavirus-related 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 coronavirus-related 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 chapters 6 and 10, title 46, Idaho Code, that is occasioned by a coronavirus-related pandemic or epidemic in an effort to address or mitigate the disaster or emergency arising from a coronavirus-related pandemic or epidemic or to adapt behavior on account of the declared coronavirus-related disaster or emergency or who makes a considered determination that no adaptation to necessary behavior during the declared coronavirus-related 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

1 that occur during a declared coronavirus-related disaster or emergency that
2 are unrelated to or unaffected by the declared coronavirus-related disaster
3 or emergency.

4 (3) Noncompliance with guidelines or recommendations related to a de-
5 clared coronavirus-related disaster or emergency alone shall not be used to
6 establish civil liability.

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

10 (5) The immunity provided in this section shall be in addition to any
11 other immunity protections that may apply in state or federal law.

12 (6) The provisions of this section shall be effective only upon causes
13 of action arising in tort.

14 (7) The immunity provided in this section shall not apply to the acts or
15 omissions of the People's Republic of China, its proxies, agents, or affili-
16 ates related to any cause of action wherein the transmission of COVID-19 is a
17 material fact.

18 (8) The immunity provided in this section shall not apply to causes of
19 action brought against the state of Idaho, its officers, agencies, or polit-
20 ical subdivisions challenging the legality or constitutionality of any dec-
21 laration of emergency, agency rule, regulation, statute, ordinance, or pub-
22 lic health order, irrespective of the remedy sought.

23 (9) For purposes of this section:

24 (a) "Coronavirus" means:

25 (i) Severe acute respiratory syndrome coronavirus 2;

26 (ii) The disease caused by severe acute respiratory syndrome
27 coronavirus 2; or

28 (iii) Any subsequently identified mutation, modification, or
29 strain of coronavirus if the transmission of said virus among hu-
30 mans rises to the level of an epidemic or pandemic and qualifies
31 for an emergency declaration under applicable Idaho law.

32 (b) "Epidemic" means an outbreak of a virus or communicable dis-
33 ease that differs in its makeup from current and recently circulating
34 viruses or diseases and is actively spreading within this state or re-
35 gion.

36 (c) "Pandemic" means a global outbreak of a virus or communicable dis-
37 ease that differs in its makeup from current and recently circulating
38 viruses or diseases and is actively spreading between international
39 boundaries affecting a high proportion of the population either by the
40 number of cases or the sudden rise in the incidence of the virus or dis-
41 ease.

42 (d) "Person" means any entity recognized in this state and shall in-
43 clude but not be limited to an individual, corporation, limited lia-
44 bility company, partnership, trust, association, city, county, school
45 district, other unit of local government, or the state of Idaho and any
46 agency or subdivision thereof.

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

1 SECTION 4. The provisions of Sections 1 and 2 of this act shall be null,
2 void, and of no force and effect on and after July 1, 2023.