

Idaho's Coronavirus Limited Immunity Act

Issue Summary
By Rebecca M. Fitz
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When the closures and stay-at-home orders began in March 2020, the severity and duration of the COVID-19 pandemic in our community were largely unknown. Strict emergency orders and ordinances were swiftly implemented by our governing officials in an attempt to thwart the spread of this deadly virus. As these seemingly temporary measures stretched from weeks into months and the resulting negative effects became increasingly apparent, the critical question arose—how do we return to our daily lives while navigating a global pandemic?

Unsurprisingly, people disagreed and continue to disagree on the best approach. Magnified by a particularly politically charged election year, contrasting ideologies sparked intense debate among public officials, legislators, and citizens alike. As we continued on this discourse, the legal reality of liability settled in. A deadly virus known to have serious long-lasting effects undoubtedly causes harm and injury. Thus, a new question was born—who can be held responsible? The invisible nature of a dangerous, easily communicable virus paired with competing policy rationales provides a unique challenge to determining liability in a statutory context.

In a series of House Bills introduced to the Idaho Legislature in a special legislative session, state lawmakers pursued a solution.¹ On August 24, 2020, House Bills 2, 3, 4, 5, and 6 were presented as a part of the Coronavirus Limited Immunity Act—an effort to provide immunity to individuals, schools, businesses, and other institutions from civil liability for damages or an injury resulting from exposure of an individual to COVID-19.² The various bills contained differing language.³ House Bill 3 focused on educational institutions, explicitly waiving liability for any claims arising from the transmission or contraction of COVID-19.⁴ Outlining legislative intent, House Bills 4 and 5 stated that the immunity liability was meant to apply broadly, however they limited the immunity to only include persons who “make good faith efforts to meet the requirements occasioned by such an event.”⁵ Finally, House Bill 6, which ultimately prevailed, took a simpler approach by stating that a person is immune from liability with the exception of acts or omissions that would constitute an intentional tort or willful or reckless misconduct.⁶ “Person” is defined as:

[A]ny entity recognized in this state and shall include but not be limited to an individual, corporation, limited liability company, partnership, trust,

¹ H.B. 2, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 3, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 4, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 5, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 6, 65th Leg., 1st Extraordinary Sess. (Idaho 2020).

² See *supra* note 1.

³ See *supra* note 1.

⁴ H.B. 3, 65th Leg., 1st Extraordinary Sess. (Idaho 2020).

⁵ H.B. 4, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 5, 65th Leg., 1st Extraordinary Sess. (Idaho 2020).

⁶ H.B. 6, 65th Leg., 1st Extraordinary Sess. (Idaho 2020).

association, church or religious organization, city, county, school district, college, university or other institution of higher education, or other unit of local government. However, “person” shall not include any Idaho public health district; the federal government or any of its agencies; the state of Idaho or any of its agencies, except colleges, universities, and other institutions of higher education; nor any foreign government or foreign jurisdiction.⁷

It is noteworthy that House Bill 6 excludes state and federal entities from this definition, thus denying liability immunity to these institutions.⁸ All of the bills included a sunset provision with an end date of July 1, 2021.⁹

The introduction of these bills fostered rigorous discussion and controversy. Representatives in favor of limiting immunity stressed the importance of providing confidence to schools and businesses so that they may reopen and resume their activities. In support of House Bill 6, the Idaho School Boards Association submitted testimony explaining that “[b]ecause liability insurance providers do not provide coverage for COVID-19 claims, any costs resulting from related litigation would be paid out of the school’s budget or by a taxpayer tort levy.”¹⁰ However, the Idaho Education Association opposed the legislative measure, stating that the legislature should be focusing efforts on providing safe school environments rather than shifting accountability.¹¹ Citing Idaho’s strict laws against frivolous lawsuits, House Minority Leader Ilana Rubel also argued against the bill, maintaining that schools and businesses already had measures in place to protect against COVID-19 litigation.¹²

The good faith requirement found in House Bills 4 and 5 was particularly frowned upon by the Idaho Freedom Foundation, an influential conservative lobbying group.¹³ The group released a statement condemning the bills, asserting a government overreach and that “businesses would be coerced to faithfully administer and enforce government statutes and regulations, even if they’re wrong, immoral, or inappropriate.”¹⁴ Rowdy protestors holding similar beliefs descended on the Capitol building during the first day of the special session.¹⁵

⁷ *Id.*

⁸ *Id.*

⁹ H.B. 2, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 3, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 4, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 5, 65th Leg., 1st Extraordinary Sess. (Idaho 2020); H.B. 6, 65th Leg., 1st Extraordinary Sess. (Idaho 2020).

¹⁰ Clark Corbin, *Legislature passes liability protection bill, wraps up special session*, IDAHO ED. NEWS (Aug. 26, 2020), <https://www.idahoednews.org/legislature/house-passes-liability-protection-bill/>.

¹¹ *Id.*

¹² *Id.*

¹³ James Dawson, *A Coronavirus Liability Bill In Idaho Is Getting Pummeled Across The Political Spectrum*, BOISE STATE PUBLIC RADIO (Aug. 14, 2020), <https://www.boisestatepublicradio.org/post/coronavirus-liability-bill-idaho-getting-pummelled-across-political-spectrum#stream/0>.

¹⁴ *Id.*

¹⁵ Clark Corbin, *Large crowds, protestors turn out for special session*, IDAHO ED. NEWS (Aug. 24, 2020), <https://www.idahoednews.org/legislature/large-crowds-protestors-turn-out-for-special-session/>.

Disobeying capitol security officers, mask mandates, and social distancing guidelines, members of the crowd shouted at legislators and even broke a glass door above the chamber.¹⁶

Despite the chaos, House legislators persevered over the next few days to pass House Bill 6 with a vote of 54 Ayes and 15 Nays.¹⁷ The piece of legislation was met with little opposition in the Senate, where it passed with a vote of 27 Ayes and 7 Nays.¹⁸ On August 27, 2020, Governor Brad Little signed the bill into Idaho law, where it is now codified in Sections 6-3401 through 6-3403.¹⁹ Thus, schools, businesses, and other institutions are now protected from civil liability resulting from negligently exposing an individual to COVID-19. With an aggressive vaccination campaign currently underway, one question remains—will the legislation be extended beyond July 1, 2021?

¹⁶ *Id.*

¹⁷ Judiciary, Rules and Administration Comm., *H.B. 6 Coronavirus Limited Immunity Act*, IDAHO LEGISLATURE (Aug. 27, 2020), <https://legislature.idaho.gov/sessioninfo/2020spcl/legislation/h0006/>.

¹⁸ *Id.*

¹⁹ *Id.*