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Idaho COVID-Related Civil Liability Immunity – Special Session Legislation

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When Gov. Little called the Legislature into Special Session on August 24th, he did so with a proclamation that attached draft legislation establishing immunity from liability when a person or company makes “good faith efforts” to undertake activities safely during the coronavirus emergency.

The draft legislation must be introduced and passed in the House and Senate and that has not happened as of this writing. However, a review of the draft bill attached to the Governor's proclamation gives an idea where the legislation may go.

“Good faith efforts” loom large in the legislation as the basis to insulate a party from a claim of negligence during the pandemic. The intent of the bill is that anyone who acts or operates their business in good faith to address or mitigate the effects of COVID during the pandemic will not be subject to liability in court. Good faith efforts can include no adaptation to pre-pandemic activities if adaptation is impracticable.

The legislation does not define “good faith efforts” but Idaho case law refers to the phrase repeatedly. Unfortunately, the cases don't define the phrase other than in the context of specific facts of the cases when determining if good faith efforts were made to do this or that. For example, selection of a method of communication was deemed to have been made with good faith efforts when those efforts were “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

“Good faith” is also defined elsewhere in Idaho law for particular purposes. For example, Idaho Code § 6–2104(1)(b) defines “good faith” for its purposes as follows: “an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous.”

Black's Law Dictionary defines “good faith” as a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage. At the same time, the dictionary acknowledges that the concept is “an elusive idea” that means different things depending on the context in which it is used.

Regardless of the definition of good faith and good faith efforts, the law, if enacted as written, would sunset on July 1, 2023. In the meantime, the legislative situation is very fluid as the House and Senate deliberate. The Governor will then be called upon to sign the resulting bill into law, allow it to become law without his signature, or veto it in which case the Legislature will need to determine if it can override a veto. All these steps will play out quickly this week and perhaps into next week.

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