

2016 IDAHO LEGISLATIVE UPDATE

ISB Labor and Employment Law Section

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Presented By

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Biography

Grant T. Burgoyne is solo practitioner conducting mediations and arbitrations throughout Idaho. He is a certified professional mediator with 28 years of experience in litigation, mediation, arbitration, employment law, commercial law, personal injury and civil rights law. Mr. Burgoyne received his B.A. from the University of Idaho and his J.D. from the University of Kansas. He is a member of the Idaho State Bar (Employment and Labor Law Section Chair, 1997 – 1998), the Federal Bar Association, and the Idaho Trial Lawyers Association. He is admitted to practice law in Idaho, the Federal District Court for Idaho and the Ninth Circuit Court of Appeals. He has been a member of the Idaho Legislature since 2008 (House of Representatives 2008 – 2014, and Idaho Senate 2014 – present), and has served in legislative leadership since 2012 (House Assistant Minority Leader 2012 – 2014, and Senate Minority Caucus Chair January 2015 – present). He sits on the Senate’s Judiciary and Rules, Local Government and Taxation, and Agricultural Affairs committees, and on the Legislative Council. He is also a member of the Idaho Criminal Justice Commission, and the Idaho Supreme Court’s Guardian and Conservatorship Committee. Mr. Burgoyne’s past affiliations include service as a full time hearing officer with the Idaho Department of Employment, practice with the Boise law firm of Mauk & Burgoyne where he was the Managing Partner (1997 to 2013), and service as an adjunct professor of employment law at Boise State University (2002 – 2007). He has lectured and written widely, and is a co-author of the *Idaho Employment Policies Handbook* (Idaho Law Foundation, 1998; rev. eds. 2001, 2012).

SELECTED BILLS

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Introduction

The following bill descriptions are taken primarily from the 2016 Sine Die Report prepared by the Legislative Services Office, with occasional perspectives from the author. The bills can be accessed at <http://www.legislature.idaho.gov/legislation/2016/minidata.htm#house>.

Attorney Fees and Costs

- SB 1317 provides that attorney fees and costs shall not be subject to a lien or collection by a homeowners' association until found reasonable and awarded by a court.

Administrative Hearings by State Agencies

- SCR 151 authorizes an interim legislative committee to study hearing officer bias and other fairness issues pertaining to administrative hearings.

Civil Protection Orders

- SB1373 provides that victims of stalking, malicious harassment and telephone harassment may obtain civil protection orders. Previous law only permitted civil protection orders in domestic violence cases.

Constitutional Amendment

- HJR 5 proposes an amendment to the Idaho Constitution giving the Legislature's existing statutory authority to approve or reject state agency rules constitutional stature.
- HJR 1 sought to undo Idaho's "Blaine Amendment," so as to allow tax dollars to flow to religious schools.

Criminal Law: Alcohol

- HB 331 prohibits the possession, sale, purchase and use of powdered alcohol.
- HB 494 reclassifies a first offense for underage alcohol possession or consumption from a misdemeanor to an infraction.
- HB 649 allows a minor to be in a brewery where beer is consumed.
- HB 495 allows the courts to seal records and vacate convictions for under age consumption, possession or dispensing of alcohol, if the defendant is not again convicted of an alcohol or drug-related offense within five (5) years of such conviction.
- HB 521 provides limited immunity from misdemeanor liability to minors possessing or consuming alcohol who act in good faith to seek emergency medical help for themselves or others.
- HB 544 allows premises licensed to serve alcohol to show pictures and movies with sexual content, unless that content violates indecency or obscenity laws.
- SB 1354 authorizes alcohol beverage catering permits for musical and cultural festivals, and permits chiefs of police and fire chiefs to set conditions for public safety.

Criminal Law: Public Defense

- HB 504 authorizes the Public Defense Commission to promulgate indigent defense standards, provide procedures for noncompliance with such standards, provide counties grant money for indigent defense, and revise reporting requirements for public defenders.
- SB 1361 authorizes counties to appropriate public defense funds from their Justice Funds, Nonmedical Indigent Funds and Current Expense Funds.

Criminal Law: Other

- HB 429 allows withheld judgments in controlled substance cases so that more offenders can be admitted to problem solving courts.

- HB 524 provides that the first offense for torture of a companion animal is a felony if the defendant was convicted of voluntary infliction of injury upon another within the previous 10 years, and permits the court to require that the presentence investigation include a psychological evaluation.
- HB 525 allows courts to differentiate between at-risk and dangerous canine behavior in setting appropriate restraint conditions for public safety.
- HB 528 provides for appropriate and timely testing of sexual assault evidence kits.
- HB 555 reduces a minor's first offense for sending sexting images of himself/herself from a felony to a misdemeanor, and permits the dissemination of a sexting image for the purpose of reporting it to responsible authorities.
- HB 580 eliminates the prerequisite to rape convictions that the victim resisted even when futile or dangerous to do so.
- SB 1343 provides that a parole violation sanction need not be limited to 90 or 180 days when the violation is sexual or violent in nature.
- SB 1351 provides that county jail prisoners may be required to perform labor on community service projects.

Education

- HB 379 establishes the Computer Science Initiative for public schools.
- HB 451 and HB 526 require public schools to offer a reading intervention program for kindergarten through third grade students who exhibit a reading deficiency.
- HB 458 continues legislative efforts to incentivize high school students to earn college credits in high school and graduate from high school early.
- HB 477 creates scholarships to eligible Idaho postsecondary educational institutions for students earning a specified number of college credits while in high school.
- HB 514, the Idaho School Safety Security Act, creates an Office of School Safety and Security, and an advisory board, to provide Idaho schools on-site security assessments and, if requested, training and technical assistance.

- SB 1293 requires public schools to reasonably accommodate parent/guardian wishes regarding a child's schooling, and specifies factors to be considered for accommodation decisions, which do not include the child's right to receive an adequate education.
- SB 1330 requires school districts to adopt policies permitting diabetic students to self-monitor blood glucose and self-administer diabetes medication.
- SB 1321 (vetoed) sought to allow the Bible to be used as a textbook in public schools.

Elections

- SB 1297 provides for an online voter registration system.

Employment

- HB 487 creates a conclusive presumption that an employee or independent contractor's breach of a noncompetition agreement causes the other contracting party harm.

Federal Lands

- SB 1338 authorizes counties to request that federal agencies abate catastrophic public nuisances on federal lands.
- HB582 endorsed the "equal footing doctrine" claiming Idaho's right under the U.S. Constitution to transfer of federal lands; provided management guidelines for federal lands to be taken over by Idaho. Passed House but not Senate.
- HB586 sought to ban all future acquisition of land by the federal government in Idaho unless authorized by an act of the Legislature. Failed in Committee.

Guardianships

- SB 1352 allows persons interested in the welfare of a ward, or a ward who is at least 14, to petition, and the court to grant modification or termination of a guardianship, if in the best interests of the ward.

Guns

- SB 1389 allows concealed weapons to be carried without a license.

Health and Human Services

- HB 481 permits the terminally ill to try experimental treatments and drugs.
- HB 483 provides that a pharmacist dispensing substitute biological products must notify the prescriber.
- HB 516 provides that the Department of Health and Welfare must compile a list of providers performing free ultrasounds, and that no abortion may be performed until the woman is informed that ultrasound imaging and heart tone monitoring are available.
- SB 1253 provides liability protection for foster parents enrolling their foster children in extracurricular and social activities if they exercise a “reasonable and prudent parent” standard of care in doing so.
- SB 1294 provides that pharmacists may prescribe immunizations for persons six years of age and older.
- SB 1404, the Idaho Unborn Infants Dignity Act, prohibits the sale, distribution or use of fetal remains for experimentation or other purposes in cases of abortion, and establishes penalties for violating the act.

HOAs

- HB511 bars homeowner associations from restricting rentals.

Hunting

- SB 1213 prohibits the use of drones for hunting, molesting or locating game.
- SB1344 requires the Department of Fish & Game to contract with a private entity to conduct drawings for controlled hunt permits.

Local Government

- HB 372 bars local governments from regulating or taxing plastic bags and other “auxiliary containers” used by restaurants and retailers.

- HB 463 bars local governments from establishing minimum wages higher than that provided for by state law (currently \$7.25 per hour).

Minors' Compromises

- HB 558 allows guardians, conservators and other legal representatives of a minor, in addition to parents, to submit a proposed compromise of a minor's legal claim to the courts.

Oil and Gas

SB 1339 establishes expedited procedures relating to applications for oil and gas drilling and to treat wells, amends the division of responsibilities between state entities and provides for the confidentiality of certain applicant information for specified periods of time.

Probate Code

- SB 1303 allows a fiduciary to access digital assets of a deceased, and allows a digital asset account holder to specify whether such assets should be preserved beyond death, distributed to heirs or destroyed.

Religion

- HB568 sought to ban recognition of Islamic law in Idaho courts.

State Purchasing

- HB 538 recodifies state purchasing laws into a new State Procurement Act and enacts new requirements for contract oversight, procurement training and ethics.
- HB 541 creates an exception to local government purchasing laws for contracts entered into by the State Division of Purchasing.

Taxes

- HB 345 allows appeals from an assessor's determination that real property no longer meets the criteria for classification as forest land.

- HB 352 extends the deadline for employers to submit wage and withholding (W-2) information to the State Tax Commission, and provides a deadline for the correction of errors on W-2s submitted electronically.
- HB 360 requires that new taxing districts must be formed or organized by the first day of January in order to make a levy for that calendar year.
- HB 425 updates references to the current Internal Revenue Code and adds language regarding same sex marriages.
- HB 431 removes cost of living adjustments on the homeowner property tax exemption, and sets the exemption value at \$100,000 or 50% of assessed value, whichever is less.
- HB 474 requires public notice and a public hearing before a taxing district can adopt a budget which includes forgone budget increases.
- SB 1325 allows private property owners to request a regulatory takings analysis from agencies or entities taking regulatory or administrative action, and providing that failure to make such a request does not preclude legal action seeking legal or equitable remedies.
- SB 1388 provides that the seizure and sale of real property for taxes due does not extinguish easements.

Transportation

- HB 513 provides for the issuance of driver's licenses and identification cards meeting the federal REAL ID Act requirements, and presumably does not preclude the issuance of non-compliant licenses and cards to those requesting them.
- HB 553 provides that off road vehicles and motorbikes may travel on state highways in cities and within one mile of city boundaries when the posted speed limit is 45 miles per hour or less; that such vehicles may cross state highways at public road intersections, and that state and local road authorities may restrict such travel and crossings for safety.
- SB 1229 authorizes truck gross weight limits of 129,000 lbs. in specified locations.
- SB 1246 provides that any future Director of the Idaho Department of Transportation shall be an at-will employee serving at the pleasure of the Idaho Transportation Board.

Urban Renewal

- HB 606 (i) allows local governing bodies (e.g., city councils) to pass ordinances requiring that urban renewal agency commissioners be elected; (ii) requires that commissioners be residents of the county where the urban renewal agency is located or doing business; (iii) prohibits members of the local governing body from holding a majority of commission seats; (iv) prohibits the amendment of a revenue allocation area except to extend its boundaries; (v) with certain ministerial exceptions, requires that a revenue allocation area's base value for the year immediately following the year in which an urban renewal plan is modified must include the current year's equalized assessed value of taxable property; (vi) requires that indebtedness be repaid if the base is reset; (vii) with exceptions for infrastructure (e.g., parking, streets, sidewalks, utilities, etc.), requires that projects not subject to property tax and financed with urban renewal funds must receive 60% voter approval; (viii) prohibits inclusion of modified plans and de-annexed property in the new construction roll; and requires that urban renewal plans and modifications be placed in a new repository at the State Tax Commission.

Water

- HB 595 provides that water right holders in compliance with an approved ground water management plan are not subject to prior appropriation rules.
- SB 1239 and 1260 enable Idaho to take over enforcement of federal water quality standards by creating a process to appeal from pollution discharge permits issued by the Idaho Department of Environmental Quality ("DEQ") and by ensuring that DEQ is can to regulate dairy and beef cattle operations.

Worker's Compensation

- HB 501 allows insurance companies to utilize certain Idaho bonds as security for worker's compensation insurance.
- HB 554 creates a presumption that cancers suffered by firefighters are occupational diseases, subject to certain conditions.

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