

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 517

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO ACTIONS IN PARTICULAR CASES; AMENDING TITLE 6, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 37, TITLE 6, IDAHO CODE, TO PROVIDE LEGISLA-
3 TIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR A CAUSE OF ACTION FOR DEPRI-
4 VATION OF RELIGIOUS LIBERTY OR FREEDOM OF SPEECH BY A GOVERNMENT ENTITY,
5 TO PROVIDE FOR DEFENSE AND INDEMNIFICATION OF EMPLOYEES, TO PROVIDE FOR
6 LIMITATIONS OF AN ACTION, TO PROVIDE FOR JURISDICTION AND RULES OF PRO-
7 CEDURE, TO PROVIDE FOR VENUE, TO PROVIDE FOR A SERVICE OF SUMMONS, TO
8 PROVIDE FOR ATTORNEY'S FEES AND COSTS, AND TO PROVIDE FOR A LIMITATION
9 ON DAMAGES; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
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11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended
13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
14 ter 37, Title 6, Idaho Code, and to read as follows:

15 CHAPTER 37

16 DEPRIVATION OF RELIGIOUS LIBERTY OR FREEDOM OF SPEECH BY A GOVERNMENT ENTITY

17 6-3701. LEGISLATIVE INTENT. The legislature hereby finds, deter-
18 mines, and declares that while section 4, article I of the constitution of
19 the state of Idaho provides for the guarantee of religious liberty and sec-
20 tion 9, article I of the constitution of the state of Idaho provides for the
21 guarantee of freedom of speech, current law does not provide a mechanism to
22 enforce these rights against government entities.

23 6-3702. DEFINITIONS. As used in this chapter:

24 (1) "Employee" means an officer, board member, commissioner, execu-
25 tive, employee, or servant of a governmental entity, including elected or
26 appointed officials, and persons acting on behalf of the governmental en-
27 tity in any official capacity, temporarily or permanently in the service of
28 the governmental entity, whether with or without compensation, but the term
29 "employee" shall not mean a person or other legal entity acting in the capac-
30 ity of an independent contractor under contract to the governmental entity
31 to which this chapter applies in the event of a claim.

32 (2) "Governmental entity" means and includes the state and political
33 subdivisions as defined in this section.

34 (3) "Political subdivision" means any county, city, municipal corpora-
35 tion, health district, school district, irrigation district, an operating
36 agent of irrigation districts whose board consists of directors of its mem-
37 ber districts, special improvement or taxing district, or any other polit-
38 ical subdivision or public corporation. As used in this chapter, the terms
39 "county" and "city" also mean state-licensed hospitals and attached nursing
40 homes established by counties pursuant to chapter 36, title 31, Idaho Code,

1 or jointly by cities and counties pursuant to chapter 37, title 31, Idaho
2 Code.

3 (4) "State" means the state of Idaho or any office, department, agency,
4 authority, commission, board, institution, hospital, college, university,
5 or other instrumentality thereof.

6 6-3703. DEPRIVATION OF RELIGIOUS LIBERTY OR FREEDOM OF SPEECH -- RE-
7 DRESS. (1) Except as provided in subsection (2) of this section, any gov-
8 ernmental entity or employee, as defined in section 6-3702, Idaho Code, who
9 subjects or causes to be subjected any citizen of this state or other per-
10 son within the jurisdiction thereof to the deprivation of any rights, priv-
11 ileges, or immunities secured by section 4, article I of the constitution of
12 the state of Idaho, providing for the guarantee of religious liberty, or sec-
13 tion 9, article I of the constitution of the state of Idaho, providing for the
14 guarantee of freedom of speech, shall be liable to such injured person in a
15 civil action or other proper proceeding for redress brought by such injured
16 person.

17 (2) Any governmental entity or employee may substantially burden a
18 person's exercise of religion only if the governmental entity or employee
19 demonstrates that application of the burden to the person is both:

20 (a) Essential to further a compelling governmental interest; and

21 (b) The least restrictive means of furthering such compelling govern-
22 mental interest.

23 (3) The remedies provided by this chapter shall be in addition to any
24 other remedy provided by chapter 9, title 6, Idaho Code, or any other federal
25 or state law, and shall not be interpreted as denying any person the right of
26 seeking other proper remedies provided thereunder.

27 6-3704. LIABILITY OF GOVERNMENTAL ENTITIES -- DEFENSE AND INDEMNIFI-
28 CATION OF EMPLOYEES. (1) A governmental entity shall provide a defense to
29 its employee, including a defense and indemnification against any claims
30 brought against the employee in the employee's individual capacity, when an
31 action brought pursuant to this chapter is related to the course and scope
32 of employment. A governmental entity shall be responsible for the payment
33 of any judgment on any claim or action against an employee for money dam-
34 ages arising out of any violation of section 4 or section 9, article I of
35 the constitution of the state of Idaho within the course and scope of his
36 employment; provided that the governmental entity and its employee shall be
37 subject to liability only for the pro rata share of the total damages awarded
38 in favor of a claimant that is attributable to the actions or omissions of the
39 employee. The provisions of this subsection shall not be construed to alter
40 or relieve any such indemnitor or insurer of any legal obligation to such
41 employee or to any governmental entity vicariously liable or legally respon-
42 sible for damages due to any violation of section 4 or section 9, article I of
43 the constitution of the state of Idaho by such employee.

44 (2) The defense of an employee by a governmental entity shall be under-
45 taken whether the claim and action is brought in Idaho district court or in a
46 federal court. The governmental entity may refuse a defense or disavow and
47 refuse to pay any judgment for its employee if it is determined that the vi-
48 olation of section 4 or section 9, article I of the constitution of the state

1 of Idaho by the employee was not within the course and scope of his employ-
2 ment.

3 (3) A governmental entity shall not be entitled to contribution or in-
4 demnification or reimbursement for attorney's fees and expenses from its em-
5 ployee unless a court finds that the act or omission of the employee was out-
6 side the course and scope of his employment. Any action by a governmental
7 entity against its employee and any action by an employee against the gov-
8 ernmental entity for contribution, indemnification, or necessary legal fees
9 and expenses shall be tried to the court in the same action brought on the
10 claim against the governmental entity or its employee.

11 (4) For purposes of this section, it shall be a rebuttable presumption
12 that any act or omission of an employee within the time and at the place of his
13 employment is within the course and scope of his employment.

14 (5) Nothing in this section shall enlarge or otherwise adversely affect
15 the liability of an employee or a governmental entity. Any immunity or other
16 bar to a civil action under Idaho or federal law shall remain in effect. The
17 fact that a governmental entity may relieve an employee from all necessary
18 legal fees and expenses and any judgment arising from the civil lawsuit shall
19 not under any circumstances be communicated to the trier of fact in the civil
20 lawsuit.

21 (6) When a claim asserted against an employee in the employee's indi-
22 vidual capacity is dismissed by the court, the dismissed party shall have the
23 right to a hearing pursuant to the provisions of section 12-123, Idaho Code.

24 6-3705. LIMITATION OF ACTIONS. (1) Except upon the occurrence of fraud
25 or concealment, every claim against a governmental entity permitted under
26 the provisions of this chapter or against an employee of a governmental en-
27 tity shall be forever barred, unless an action is begun within two (2) years
28 after the date the claim arose or reasonably should have been discovered,
29 whichever is later.

30 (2) A claim of a person who is a minor shall be brought no later than
31 two (2) years after said person reaches the age of majority or six (6) years
32 from the date the claim arose or should reasonably have been discovered,
33 whichever is earlier.

34 6-3706. JURISDICTION -- RULES OF PROCEDURE. The district court shall
35 have jurisdiction over any action brought under this chapter, and such ac-
36 tions shall be governed by the Idaho rules of civil procedure insofar as they
37 are consistent with the provisions of this chapter.

38 6-3707. VENUE. Actions against the state or its employees shall be
39 brought in the county in which the cause of action arose or in Ada county. In
40 addition, a resident of the state of Idaho may bring an action in the county
41 of his residence. Actions against a political subdivision or its employees
42 shall be brought in the county in which the cause of action arose or in any
43 county where the political subdivision is located.

44 6-3708. SERVICE OF SUMMONS. In all actions under this chapter against
45 the state or its employees, the summons and complaint shall be served on the
46 secretary of state with a copy to the attorney general. This section shall

1 not be construed to release the party making service of process from serving
2 any named defendant other than the governmental entity in compliance with
3 other applicable statutes or rules of civil proceeding. In all actions under
4 this chapter against any employee wherein it is alleged that such employee
5 was acting within the course and scope of his employment, a copy of the sum-
6 mons and complaint shall be served on the governmental entity that is his em-
7 ployer.

8 6-3709. AWARD OF ATTORNEY'S FEES AND COSTS. In any action or proceed-
9 ing to enforce a provision of section 4 or section 9, article I of the consti-
10 tution of the state of Idaho pursuant to this chapter, the court, in its dis-
11 cretion, may allow the prevailing party a reasonable attorney's fee as part
12 of the costs, except that in any action brought against a judicial officer
13 for an act or omission taken in such officer's judicial capacity such offi-
14 cer shall not be held liable for any costs, including attorney's fees, unless
15 such action was clearly in excess of such officer's jurisdiction.

16 6-3710. LIMITATION ON DAMAGES. In no action seeking recovery of dam-
17 ages under section 4 or section 9, article I of the constitution of the state
18 of Idaho pursuant to this chapter, shall a judgment for noneconomic damages
19 be entered for a claimant exceeding the maximum amount of twenty thousand
20 dollars (\$20,000).

21 SECTION 2. An emergency existing therefor, which emergency is hereby
22 declared to exist, this act shall be in full force and effect on and after
23 July 1, 2024.