

MINUTES

HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

DATE: Thursday, February 20, 2020

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Vander Woude, Vice Chairman Amador, Representatives Anderson, Anderst, Horman, Moon, Scott, Ehardt, Armstrong, Furniss, Hartgen, Lickley, Raybould, Young, Smith, Chew, Ellis, Mason

**ABSENT/
EXCUSED:** None

GUESTS: Roger Batt, Eric Wareham, Western Equip. Dealers Assoc.; Jason Behrand, State Equip.; Amy Lombardo, Tesla Motors; Michael Swore, Swore Farms; Richard Durrant, Ag Producer; Pam Eaton, ID Retailers Assn.; David Taylor, Taylor Chevrolet; Caleb Pirc, ID Farm Bureau; Melinda Merrill, NW Grocery Assoc.; John Eaton, IACI; Ron Williams, ID Cable Broadband; Grant Petersen, Bronco Motors; Ken Ludwell, Tom Greene, Larry H Miller; Jason Kreizenbeck, Lobby Idaho

Chairman Vander Woude called the meeting to order at 1:34 p.m.

H 492: **Rep. Britt Raybould**, presented **H 492**. This legislation provides protection against the use of facial recognition technology in both the private and public sector. If a private entity uses this technology where the public can physically visit, they must obtain consent from an individual prior to enrolling a facial template in their service. For security purposes, it does not require consent, but there is an avenue to apply for redress. This bill also offers provisions for public feedback if the technology is adopted by the public sector, and requires a search warrant for ongoing facial recognition surveillance by public agencies.

Rep. Raybould clarified mall security cannot share data with other stores, just law enforcement, unless an agreement is already in place to provide for sharing. This bill was inspired by legislation from Washington State, supported by Microsoft. Minors are excluded from this process because they cannot provide consent. Rep. Raybould shared that existing algorithms are not able to differentiate some ethnicities and gender, this factor is recognized in the bill. She explained that prematurely banning facial recognition took away reasonable deployment of this technology for security purposes, but emphasized there needs to be a policy in place to protect the public. This bill does not capture businesses on the internet.

Some on the committee expressed concern that citizens visiting from other parts of the state will not have input in accountability when they visit more urban areas of Idaho. It was also worried there isn't enough data to justify 11 pages of new code.

Those speaking **in opposition** were **Pam Eaton**, President of the Idaho Retailers Association, and **Melinda Merrill**, Representative of the Northwest Grocery Assoc. They were of the opinion that the issue is too complicated to be introduced without input from the public. Some of the concerns were: 'appropriate notice' and 'consent from an individual', and how soon retailers must move data to a separate database were not defined well. They also worried it infringed on retailers ability to have the best security available. It was voiced that retailers supported the concept of protecting peoples rights to privacy, but felt this bill was legislating against an unknown threat. In answer to committee questions, facial recognition technology is not being used much in Idaho currently, and those opposed are willing to work with the bill sponsor to strengthen the wording in this bill.

MOTION: **Rep. Young** made a motion to **HOLD H 492** in committee.

The committee commended **Rep. Raybould** for bringing this bill forward and being proactive, and encouraged her to meet with concerned stakeholders to build a future bill. It was also asked that more data be gathered, including meeting with law enforcement for input.

VOTE ON MOTION: **Chairman Vander Woude** called for a vote on the motion to **HOLD H 492** in committee. **Motion carried by voice vote.**

H 452: **Rep. Britt Raybould**, presented **H 452**, which establishes manufacturers (OEMs) provide consumers and independent repair businesses equal access to repair documentation, diagnostics, tools, and service parts as the authorized repair providers. Protections remain for copyrights, patents, and trade secrets, including no alteration or pirating of intellectual property. The federal copyright office has exemptions that allow consumers to access much of the information that is made available in this bill, but must be renewed every 3 years. It addresses approved activities by owners, but does not resolve access to the tools and information to do so. It was explained that there are some manufacturers who provide access to tools and information on their own volition, but both the access from copyright exemptions and manufacturer access can be changed or ended at any time. This legislation will end that uncertainty.

Rep. Lickley declared **Rule 80**.

In answer to committee concerns **Rep. Raybould** explained that there are concerns about intellectual property, and also concerns about creating a patchwork effect with different laws in different states. She reflected that ideally this would be a national law, the hope is if states enact these kinds of laws, it will be addressed at the national level. **Rep. Raybould** responded to the committee, that the market has more specificity between different manufacturers, and more custom tools needed to work on a product, which is locking consumers out of taking care of their own property.

Those speaking **in support** were **Michael Swore**, farmer; **Richard Durrant**, Producer in Ada County, Farm Bureau; **Caleb Pirc**, Idaho Farm Bureau. They emphasized that legislation has always been about the right to repair, and not the right to modify. Leaving producers sitting, while equipment is backed up in authorized shops is seriously hurting production. Their desire is solely for information and parts readily available for producers to do small repairs during peak seasons of production. The copyright exemptions if expired, leave farmers potentially facing prosecution for infringing on intellectual property rights if they attempt to fix their own equipment. They believed that the price component must be included in the bill so that manufacturers don't effectively price property owners out of the ability to afford to repair their own equipment.

Some points they expressly supported: equipment owners and independent equipment repair facilities should be able to look up diagnostic codes, to have and keep the right to do general maintenance and daily servicing, and to have access to repair and technical manuals. It was emphasized that they do not want trade secrets, they simply want to repair the equipment they own.

Clarifying to the committee, this legislation allows an industry to develop their own memorandum of understanding, which would supersede the requirements of this law. There is nowhere in the bill that a memorandum has to be at the national level. Committee questioned where the bankers weighed in on the right to repair as lienholders, this question could not be answered. It was acknowledged that there are some dealers that give diagnostics and help for self repair, but this is not universally the case. They believed that this access shows that the information is not proprietary. **Caleb Pirc**, acknowledged that Farm Bureau has not drafted legislation, but have passed policy of what they would like to see in legislation.

Those speaking in opposition were **Roger Batt**, **Eric Wareham**, VP of Governr Affairs, Western Equip Dealers Assn.; **Jason Behrand**, Exec. VP of Stokes Equip.; **David Taylor**, Toyota Chevrolet; **John Eaton**, VP of Idaho Commerce and Industry; **Ron Williams**, Idaho Cable Broadband; **Grant Peterson Jr.**, Bronco Motors Dealerships, IADA, and Chair to Dealer Advisory Board for the Governor; **Tom Green**, General Manager for Larry H. Miller, IADA, Dealer Counsel Rep. for Chrysler in Idaho.

They were of the opinion this legislation violated many contracts between manufacturers and dealers and it was pointed out that diagnostic tools are proprietary. There were concerns about the restrictions of how the pricing of tools should be met. It was also believed that requiring warranties to be honored even if non-standard parts were used, and the leaving the burden of proof on the manufacturer, was an unfair burden on manufacturers. Worries were expressed that copyright law does not allow states to contradict federal laws in their legislation. As an industry it was expressed that manufacturers and dealers have made a commitment to make more manuals and diagnostic tools available and have reached out to ask for more input, and have not received any. Many had serious concerns this legislation opened up the opportunity for modifications of their products and not just repair.

Some expressed concern that this bill was not about the right to repair, but about maximizing uptime for producers. They believed that there were two main issues that would support producers better than this bill; workforce development and rural broadband. The worry was expressed that this bill creates a perception that Idaho is hostile to manufacturers. In answer to committee questions opposers felt that this legislation was directed to farm equipment, but the ramifications of it's impact on other equipment was not being acknowledged. **Mr. Behrand** answered committees inquiries, that Idaho is the third largest leasing company in John Deeres network, about 65-70% of vehicles are leased. In this case, the consumer would be taking their vehicle to an independent shop, which might not be in the best interest of the lienholder.

MOTION: **Rep. Furniss** made a motion to send **H 452** to General Orders.

SUBSTITUTE MOTION: **Rep. Scott** made a substitute motion to **HOLD H 452** in committee.

ROLL CALL VOTE ON SUBSTITUTE MOTION: Roll call was requested on **H 452**. **Motion failed by a vote of 7 AYE, 9 NAY, 2 Absent/Excused. Voting in favor** of the substitute motion: **Reps. Horman, Moon, Scott, Ehardt, Armstrong, Young, Smith. Voting in opposition** to the substitute motion: **Reps. Anderson, Furniss, Hartgen, Lickley, Raybould, Chew, Ellis, Mason, Chairman Vander Woude. Reps. Amador, Anderst were absent/excused.**

VOTE ON MOTION: **Chairman Vander Woude** called for a vote on the motion to send **H 452** to General Orders. **Motion carried by voice vote. Rep. Raybould** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:33 p.m.

Representative Vander Woude
Chair

Maggie Price
Secretary